

EVOLUTION OF THE SAP CONDITIONALITY IN THE FIELD OF MINORITY RIGHTS - CASE OF THE REPUBLIC OF NORTH MACEDONIA

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The paper analyses the implementation of the European Union (EU) conditionality in the field of minority rights in the case of the Republic of North Macedonia. The questions considered concern the origins of the conditionality framework, as well as the sources supplementing it in the context of the policy of SAP. The analysis attempts to discern the evolution of the content of the minority rights conditionality, as well as its relative importance for the progress of the country on the scale of the EU enlargement policy. Considering the multitude of conditionality sources launched, the minority rights conditionality within the framework of the standard legal instruments and the soft law/policy documents issued by the EU Institutions are analyzed separately.

I. INTRODUCTION

The respect for minority rights forms an important part of the conditionality defined in the framework of the European Union (EU) policy named ‘‘Stabilization and Association Process’’ (SAP) for the case of Republic of North Macedonia (RNM). The origin of this framework derives from a number of sources. During the 1990’s, the respect of minority rights was included in the EU enlargement conditionality for the Central and Eastern European countries (CEEC). In parallel, the field was given an increasing attention in the context of EU foreign policy, a notable example being the framework of the policy toward the Western Balkans, named ‘‘Regional Approach’’. After 1999, when the policy of ‘‘Regional Approach’’ was replaced by the SAP, the sources of conditionality developed in these two frameworks were integrated.

The objective of this paper is an analysis of the evolution of SAP conditionality in the field of minority rights in what concerns both its content and its relative place on the scale of progress of the Republic of North Macedonia (RNM) vis à vis other elements of conditionality. Therefore, after a brief overview of the conditionality deriving from the fifth and sixth EU enlargement and the policy of ‘‘Regional Approach’’ (part 2), the paper analyses the sources of the current EU enlargement conditionality with regard to minority rights, as it is defined for the case of the RNM (part 3). Considering the multitude of conditionality sources launched, each part analyses separately the minority rights conditionality within the framework of the standard legal instruments and the soft law/policy documents issued by the EU Institutions.

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II. INHERITED SOURCES

1. The conditionality concerning minority rights in the framework of the fifth and sixth EU enlargement

Already in 1993, the European Council of Copenhagen defined the enlargement criteria for the ex-communist States from Eastern and Central Europe which, after the fall of communism, wished to access the EU – in this context, the political criteria included ‘‘respect for and protection of minorities’’.¹ The implementation in practice of these criteria in the following years faced several challenges, primarily due to the fact that the sources of the EU domestic law on minority rights developed slowly, unevenly and was, in general, very limited. Famously, the constitutional foundation of this element of accession conditionality remained an opened question until the adoption of the Treaty of Lisbon. The crucial challenge concerned the interpretation of the wording of the Treaty provision (to which the Article 49 of the Treaty of Amsterdam referred) defining the principles that the accession State is obliged to respect in order to access the EU membership. Namely, the provision in question – Article 6(1) of the Treaty of Amsterdam – enumerated, among the EU principles, the human rights, without explicitly mentioning the rights of persons belonging to minorities.² Much later, the Treaty of Lisbon, in force since December 1, 2009, amended the Article 49 TEU which refers to the Article 2 TEU (amending the previous Article 6(1) TEU). The current Article 2 TEU enumerates the EU values, where the rights of persons belonging to minorities are explicitly involved, the accession conditionality framework being, therefore, clarified.

Unsurprisingly, then, throughout this period, the interpretations of the EU legal basis for the minority rights conditionality were numerous.³ Some authors underlined that the minority rights do not form a part of the wording of Article 6(1) of the Treaty of Amsterdam.⁴ However, the European Commission interpreted the Treaty in a manner that the minority rights form part of human rights.⁵ Several authors shared this view, referring to other sources of international law, such as the interpretation of the Council of Europe’s European Convention on Human Rights (ECHR), as well as the Framework Convention on the Protection of National Minorities (FCNM) and the documents from the framework of the Organization for Security and Cooperation in Europe (OSCE).⁶ In what the European Council is concerned, throughout the fifth and sixth enlargement, its insistence on the respect for the minority rights as an important element of conditionality relied on the Copenhagen political criteria, instead of relying on the Article 49 (1)

¹ European Council, Copenhagen, 21-22 June 1993, Presidency Conclusions, point I.13, Bull. EC 6-1993.

² The Treaty of Amsterdam (in force since May 1, 1999) amended the Article O of the Treaty of Maastricht (and enumerated it as Article 49) in order to include a reference concerning the respect of the principles of EU, defined by Article 6(1). For an analysis, see : Kochenov D., *EU Enlargement and the Failure of Conditionality*, Alphen aan den Rijn: Kluwer Law International, 2008, pp. 12-21.

³ Sasse G., ‘‘EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy’’, *EUI Working Papers RSCAS* No 16, 2005, San Domenico di Fiesole: EUI, pp. 4-5.

⁴ Toggenburg G., ‘‘A Rough Orientation through a Delicate Relationship: The European Union’s Endeavours for (its) Minorities’’, *European Integration Online Papers*, vol. 4, no 16, 2000, pp. 1-31 at pp. 17-19.

⁵ Van Bossuyt A., ‘‘L’Union européenne et la protection des minorités: Une question de volonté politique’’, *Cahiers de droit européen*, 2010, pp. 425-455 at p. 440 and fn. 44.

⁶ For example : Hoffmeister F., ‘‘Changing Requirements for Membership’’, in Ott A., Inglis K., *Handbook on European Enlargement*, The Hague, T.M.C. Asser Press, 2002, pp. 90-102 at pp. 94-95; Van Bossuyt A. ‘‘L’Union européenne et la protection des minorités: Une question de volonté politique’’, op. cit., pp. 440-441.

of the Amsterdam Treaty⁷ - one observes, therefore, an example of the standard EU enlargement practice – the lack of clarity of the Treaties being remedied by the customary law, developed by the EU Institutions.⁸

Another crucial question related to the conditionality in the field of minority rights concerns the content of this enlargement criteria and its function – its relative importance vis à vis other criteria – during the progress of individual States on the scale of enlargement. According to the European Council in Luxemburg, December 1997, the respect of the Copenhagen political criteria was deemed necessary for the stage of opening the accession negotiations – therefore, the field formed a part of the EU admissibility test.⁹ Considering that the content of the Copenhagen criteria was not provided by the European Council, the detailing was the responsibility of the European Commission, charged by the European Council to perform repeated evaluations of the progress of reforms in each individual State. As mentioned above, faced with the lack of regulation in the EU domestic law, the European Commission invoked standards from other European international law frameworks - the crucial document from this period, ‘‘Agenda 2000’’ of 1997 introduced a title on minority rights and explicitly cited the documents from these frameworks (FCNM and Recommendation 1201 of the Council of Europe Parliamentary Assembly) as reference points.¹⁰

In accordance to these sources, the European Commission standards included an enlarged definition of minorities – ethnic and cultural, echoing the approach of the FCNM Advisory Committee, which disregards the reservations by the States signatories about certain minorities.¹¹ Even more, the European Commission evaluated the level of an effective application of the rights in practice – the successful integration of minorities was considered a part of the democratic stability.¹²

There was a lack of consistency of the Commission’s approach, as, despite noting shortcomings in the minority rights protection, it never halted for that reason the progress of States on the scale of enlargement.¹³ The case of Turkey provides a good example – in 1999, the Commission mentioned the lack of progress in the field of minority rights, but it was, nevertheless, recognized as an official candidate, although the negotiations were not opened.¹⁴ In 2004, the Commission

⁷ Hillion Ch., ‘‘Copenhagen Criteria and Their Progeny’’ in Hillion Ch. (ed.), *EU Enlargement: A Legal Approach*, Oxford, Hart Publishing, 2004, pp. 1-22 at p. 21.

⁸ For an analysis of the customary enlargement law, developed by the EU institutions, see: Kochenov D., ‘‘EU Enlargement Law: History and Recent Developments: Treaty - Custom Concubinage?’’, *European Integration online Papers (EIoP)*, vol. 9, no. 6, 2005, pp. 1–23.

⁹ European Council, Luxemburg, 12-13 December 1997, Presidency Conclusions, para 25, Bull. EC 12-1997.

¹⁰ Commission of the European Communities, *Agenda 2000: For a stronger and wider Union*, vol. II: The Challenge of Enlargement, Strasbourg/Brussels, 16.7. 1997, COM (1997) 2000; Van Elsuwege P., ‘‘Minority Protection in the EU – Challenges Ahead’’ in Inglis K., Ott A. (ed.), *The Constitution for Europe and an Enlarging Union: Unity in Diversity*, op. cit., pp. 259-278 at p. 264. Also, see: Grizo M., Ananiev J., Poposka Z., ‘‘The Right of the Minorities to Participate in the Public Life on Local Level: The Case of Republic of Macedonia in the Framework of the EU Policy of ‘Regional Approach’ ‘’, *Lex Localis, Journal of local self-government*, vol. 13, no. 3, 2015, pp. 875 - 891 at pp. 880-881.

¹¹ Van Elsuwege P., ‘‘Minority Protection in the EU – Challenges Ahead’’, op. cit., pp. 259-278 at p. 265 and fn. 36.

¹² *Ibidem*, p. 265.

¹³ COM (1997) 2000.

¹⁴ European Commission, Composite paper - Reports on progress towards accession by each of the candidate countries, 13.10.1999, pp. 14-15 ; European Council, Helsinki, 10-11 December 1999, Presidency Conclusions, para 12, EU Bulletin 12-1999.

again noticed lack of progress in the same field, but it did recommend opening of negotiations.¹⁵ The academic comments also underlined that the standards were not equally applied to all States and all minorities.¹⁶ Equally, the recommendations were insufficiently coherent.¹⁷ Finally, it was pointed out that the Commission failed to pressure individual States,¹⁸ the result being that, even after the accession some CEEC still do not conform to the requirements in this field.¹⁹ It should be added, nevertheless, that, in several cases, significant results have been achieved.²⁰ Despite of the shortcomings, the Commission's annual reports became a basis for the priorities involved in the Council's Accession Partnerships – the fulfillment of these demands meant financial aid and, it was supposed that, in case of their disrespect, sanctions were to be introduced²¹ - although in practice, it never happened.

2. The conditionality in the field of minority rights in the framework of the "Regional Approach"

In parallel to the flexible nature of the accession conditionality in the field of minority rights, the EU developed a somewhat higher level of precision in the case of the Western Balkans States targeted by the policy of "Regional Approach". It was the first comprehensive EU policy toward this region, conceived in late 1995, the major objective being stabilization following the conflicts. Respect for the human and minority rights were involved in the conditionality provisions of several legal instruments launched in this framework, including commercial preferences, financial and technical assistance, as well as cooperation agreements.²² The "Regional Approach" serves as an important source of SAP conditionality in the field of minority rights.

The most interesting document from this context is the "Council Conclusions on the principle of conditionality regulating the development of the relations of the EU with certain countries from

¹⁵ Commission of the European Communities, Communication from the Commission to the Council and the European Parliament, Recommendation of the European Commission on Turkey's progress towards accession, Brussels, 6.10. 2004, COM (2004) 656 final, p. 14.

¹⁶ Kochenov D., "A Summary of Contradictions: An Outline of the EU's Main Internal and External Approaches to Ethnic Minority Protection", *Boston College International and Comparative Law review*, vol. 31, no. 1, 2008, pp. 1-51 at pp. 22-48. See, also: Van Den Berghe F., "The EU and the Protection of Minorities: How Real is the Alleged Double Standard?", *Oxford Yearbook of European Law*, 22, 1, 2003, pp. 155-202; Van Elsuwege P., "Minority Protection in the EU – Challenges Ahead", op. cit., p. 266 and fn. 43.

¹⁷ Hughes J., Sasse G., "Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs", *JEMIE*, issue 1, 2003, pp. 1-36 at pp. 16-30; Van Elsuwege P., "Minority Protection in the EU – Challenges Ahead", op. cit., pp. 266-267. For a detailed analysis of the diverse approaches toward the political rights of minorities in various States, see: Kochenov D., Commission's Approach to Minority protection during the Preparation of the EU's Eastern Enlargement: Is 2 Better than the Promised 1?, *European Diversity and Autonomy Papers*, 2, 2007, pp. 1-50 at pp. 29-31. See: Grizo M., Ananiev J., Poposka Z., "The Right of the Minorities to Participate in the Public Life on Local Level: The Case of Republic of Macedonia in the Framework of the EU Policy of 'Regional Approach' ", op. cit., p. 880.

¹⁸ Van Elsuwege P., "Minority Protection in the EU – Challenges Ahead", op. cit., pp. 266-267.

¹⁹ On the minority rights in individual EU States: Shoraka K., *Human Rights and Minority Rights in the European Union*, Routledge, London, 2010, pp. 167-232.

²⁰ See, for example: Dorodnova J., "EU Concerns in Estonia and Latvia: Implications of Enlargement for Russia's Behaviour Towards the Russian-speaking Minorities", *EUI Working Papers 2000/40*, pp. 1-45. Cited according to : Van Elsuwege P., "Minority Protection in the EU – Challenges Ahead", op. cit., p. 266.

²¹ Van Elsuwege P., "Minority Protection in the EU – Challenges Ahead", op. cit., pp. 265-266.

²² Grizo M., Ananiev J., "The Policy of the European Union toward the Yugoslav Successor States 1996–1999: Stabilization through Regional Cooperation", *New Balkans Politics*, vol. 16, 2014, pp. 1-16.

South-East Europe’’, adopted on April 29, 1997.²³ Unlike the Copenhagen criteria, the document provides detailed content of the minority rights whose respect is required: right to create and maintain their Institutions, organizations and associations - educational, cultural and religious; right to express themselves in their language in front of the courts and public authorities and, finally, adequate protection of refugees and displaced persons returning to the regions where they form an ethnic minority.²⁴ The sources of the criteria are not cited, but, while the last criteria derives from the efforts for post-conflict stabilization, some special rights of the minorities are also protected - the right to establishment of minority Institutions and use of minority language derive from the ECHR and the regional law regulating the protection of minorities developed during the 1990s’ - the FCNM, the European Charter for Regional and Minority Languages (ECLMR) and the Recommendations of the OSCE High Commissioner on National Minorities (HCNM).²⁵ Therefore, the Council followed the logic of the enlargement conditionality – the lack of EU standards is remedied through relying on other European legal frameworks. Once the SAP is launched, this framework continued being frequently cited.²⁶

III. SAP: THE CONDITIONALITY FRAMEWORK SUPPLEMENTED

1. Policy documents

Since 1999, the EU relationship with the States from the Western Balkans develops within the wide foreign policy of SAP which integrates the stabilization efforts with the association processes. The documents issued by the EU Institutions defining this policy invariably include, among their objectives, a reference on the crucial role of respect of the rights of minorities.²⁷ The European Commission clarified, already in 1999, that, besides the demands outlined by the Article 6 (1) of the Treaty of Amsterdam and the Copenhagen criteria, the Western Balkans countries (i.e. ex-Yugoslavia without Slovenia, including Albania) which aspire to membership in the EU should fulfill several conditions, generally linked to regional cooperation, including solving the pending disputes related to the treatment of national minorities.²⁸

In the following years, the question never lost its crucial place in the framework of the conditionality of SAP, although its development became complex. The key document of SAP – the “Agenda of Thessaloniki for the Western Balkans”, 2003, prioritized the minority rights, without, however, providing a detailed content. This document cites the respect of human and minority rights among the key objectives of the common efforts between the EU and the countries from the region.²⁹ In addition, the document points out the importance of the integral

²³ For a detailed analysis, see: Grizo M., Ananiev J., Poposka Z., “The Right of the Minorities to Participate in the Public Life on Local Level: The Case of Republic of Macedonia in the Framework of the EU Policy of ‘Regional Approach’”, op. cit., pp. 881-882.

²⁴ Ibidem.

²⁵ Ibidem, pp. 878-79 and pp. 881-882.

²⁶ See, for example: Commission of the European Communities, Communication from the Commission, Commission Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, 09.11.2005, Brussels, COM (2005) 562 final, p. 3; Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA), OJ L 210, 31.7.2006, Article 21(1).

²⁷ For example: General Affairs Council, 2186th Council meeting, 31 May 1999, Brussels, PRES/99/171, para 1.

²⁸ European Commission, Composite paper - Reports on progress towards accession by each of the candidate countries, 13.10.1999, p. 37.

²⁹ The Thessaloniki agenda for the Western Balkans: Moving towards European integration (subtitle: Further consolidating peace and promoting stability and democratic development).

application of various peace treaties signed by these States following the conflicts from 1990s'.³⁰ These treaties frequently regulate various aspects of interethnic relations, including minority rights – the Ohrid Framework Agreement (OFA), 2001, whose application is specifically required, forms a good example.³¹

Although, as it was explained above, the flexible application of this element of conditionality was evident already during the fifth and sixth enlargement, in the case of SAP, the flexibility was enhanced. Namely, in the Western Balkans, several peace treaties which ended the conflicts defined various concepts regulating the rights of minorities. In practice, in all of these States, the minorities' situations were very diverse – in what concerns the number of persons belonging to various minorities, their territorial distribution and the level of integration. Consequently, although most of these States have introduced comparable systems of minority rights (frequently inspired by the concepts defined by the FCNM), these systems are far from identical to each other.³² One may provide the case of Bosnia and Herzegovina where these criteria include federalization on ethnic basis. Another example concerns several provision of OFA, which require the threshold of twenty percent for the activation of some linguistic rights – a solution which does not stem from the FCNM and which is not envisaged by the other constitutional systems in the region.

Therefore, the UE relies on a variable content of minority rights in the system of each individual State. In no other case of enlargement conditionality the system of ‘proper merit’ has gone that far, relying on standards which are so diverse. In that way, in the case of the SAP, the enlargement conditionality and its monitoring in the field of minority rights became very similar to the approach taken, already during the fifth enlargement, towards other elements of the first Copenhagen criteria - the democracy and the rule of law -, fields where *acquis communautaire* lack entirely – a question which has arisen an interest by the doctrine.³³

During the following years, the conditionality framework of SAP retained this characteristic. In the context of the announcement of the new approach toward the conditionality in 2006, the Commission insisted that “fair and rigorous conditionality” is applied to all States covered by SAP – each of them was supposed to advance on the grade of enlargement according to the principles of its proper merits.³⁴ In the field of minority rights, despite of the announced “fair and rigorous conditionality”, in reality, the conditions continued being unequal for different countries – a circumstance which did not prevent the Commission to warn that, during the monitoring process, it can recommend a suspension in case of grave violation of the fundamental EU principles.³⁵ The importance of this principle has been, ever since, reiterated by the

³⁰ Ibidem.

³¹ Ibidem.

³² Petrichushic A., “The impact of the enlargement process on the development of a minority protection in Southeastern Europe“, in *New Perspectives of South East European Public Law. South East European Post-Doctoral Colloquium in Public Law – Proceedings*, Skopje, South East European Law School Network, June 2014, pp. 13-31 at p. 23. A detailed analysis of the minority rights' systems developed in the countries of South-East Europe: Lantschner E., Marko J., Petrichushic A. (ed.), *European Integration and its Effects on Minority Protection in South Eastern Europe*, Baden-Baden, Nomos, 2008.

³³ See: Kochenov D., *EU Enlargement and the Failure of Conditionality*, op. cit.

³⁴ Commission of the European Communities, Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2006 – 2007 Including annexed special report on the EU's capacity to integrate new members, 8.11.2006, Brussels, COM(2006) 649 final, p. 3 and p. 6.

³⁵ Commission of the European Communities, Communication from the Commission 2005, Enlargement Strategy Paper, 9.11.2005, Brussels, COM (2005) 561 final, p. 3.

Commission.³⁶ One should briefly point out that, during the first steps of the EU foreign policy in what concerns the protection of minority rights, the cooperation treaty with Yugoslavia was suspended in 1991.³⁷ Considering the constant importance consecrated to the minority rights in the framework of SAP, one may expect the same rigor in future.

The application, in the case of RNM, of the commitment of the EU to honor its actual obligations toward the States encompassed by the enlargement policy³⁸ deserves a mention. Namely, considering the level of the EU involvement in the process of negotiations of OFA, as well as in its implementation (which included deep constitutional and legal reforms, sometimes contested by the majority population), the EU was certainly supposed to recompense the country. In the past, the signature of the OFA, was interpreted in that manner as, in 2005, it resulted with the granting of the status of candidate for EU membership.³⁹

One may also point out to another principle element of the SAP conditionality, the gradual approach, whose treatment leads to the same conclusions as the principle of proper merit - in the absence of defined criteria, applicable for all, one observes a flexible approach in what concerns: the conclusion of the Stabilisation and Association Agreements (SAAs), the declaration of the status of State candidate for EU membership, as well as the opening of enlargement negotiations and their closure.

Other novelties introduced in the enlargement policy bring a potential to strengthen the conditionality in the field of minority rights. In 2011, the concept of benchmarks was introduced, signifying a vigorous evaluation at the beginning and the end of negotiations of each negotiation chapter.⁴⁰ Namely, in the case of Romania and Bulgaria, the EU decided to introduce, for the period following the enlargement, safeguard clauses reinforced by mechanisms of cooperation and verification in the field of judiciary reform and organized crime and corruption.⁴¹ A similar type of monitoring might be applied on all future new Member States, in all domains, including the minority rights.

The new approach from 2011 also introduced modifications of the order of priorities. The ‘‘fundamentals’’ which are given priority related to the field of rule of law.⁴² According to the

³⁶ ‘‘While reform progress needs to be incentivised and rewarded more tangibly, there is equally a need for more decisive measures proportionally sanctioning any serious or prolonged stagnation or even backsliding in reform implementation and meeting the requirements of the accession process.’’ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Enhancing the accession process - A credible EU perspective for the Western Balkans, European Commission, Brussels, 5.2.2020, COM (2020) 57 final, p. 5.

³⁷ Van Elsuwege P., ‘‘Minority protection in the EU – Challenges Ahead’’, op. cit., p. 262.

³⁸ COM (2006) 649 final, p. 3.

³⁹ According to Erwan Fouéré, granting of the candidate status was ‘‘... a clear recognition of the commitment of the country’s leaders to fully implement the Ohrid Framework Agreement and progress achieved in that respect’’, Fouéré E., ‘‘Meeting the Expectations and Fulfilling the Obligations: Macedonia and the EU Enlargement’’, *Crossroads: The Macedonian Foreign Policy Journal*, 1, 2007, pp. 195-203, at p. 198. See also: Rehn O., ‘‘Ohrid Agreement: Vital for the European Path’’, speech at the Conference on the Ohrid Framework Agreement in Skopje, 8 February 2007, SPEECH/07/69. Cited according to: Giandomenico J., ‘‘Path Dependency in EU Enlargement: Macedonia’s Candidate Status from a Historical Institutional Perspective’’, *EFAR*, 14, 2009, pp. 89-112 at p.93.

⁴⁰ COM (2006) 649 final, pp. 6-7.

⁴¹ Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded, OJ L 157, 21.6.2005. See also: Trauner F., ‘‘Post-accession compliance with EU law in Bulgaria and Romania: a comparative perspective’’, *European Integration online Papers (EIoP)*, vol. 13, special issue 2, 2009, pp. 1-18.

⁴² European Commission, Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2013-2014, 16.10.2013, Brussels, COM (2013) 700 final, p. 2.

Commission, in accordance to this approach, the States were supposed to concentrate on strengthening the rule of law at a stadium preceding the negotiations, as it happened in the cases of Montenegro and Serbia.⁴³ The approach is of great significance for the treatment of OFA, as, since very beginning, the EU Institutions insist that the application of this agreement forms part of the criteria of democracy and rule of law. In addition, the plan of reforms presented by the Commission for the States encompassed by the SAP reveals other priorities, including the respect of fundamental rights,⁴⁴ where, as we have seen, several authors include the minority rights. The Commission pointed out that all of the required reforms should be fully implemented in practice.⁴⁵ This implies that the OFA, which is already a priority issue will remain high on the agenda of the priorities.

In the recent years, the EU accession conditionality was further modified. Among other novelties, the European Commission reframed the negotiating chapters into thematic clusters which cover broad areas - good governance, internal market, economic competitiveness and connectivity.⁴⁶ In what concerns the regular monitoring, the implementation of various aspects of the OFA, as well as minority rights in general still form an important part of the Commission's reports.⁴⁷

2. Legal instruments

Criteria related to the respect of minority rights are also included in the conditionality clauses of the legal instruments adopted in the framework of the enlargement strategy. They are involved, together with the respect of human rights, in the conditionality clauses of the legal instruments regulating the commercial liberalization, financial aid, the European partnerships, as well as the SAAs.⁴⁸

⁴³ Ibidem, p. 8.

⁴⁴ Ibidem, p. 2. For a more recent explanation of this approach, see: European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, European Commission, Strasbourg, 6.2.2018, COM (2018) 65 final, pp. 4-5.

⁴⁵ COM (2013) 700 final, p. 2.

⁴⁶ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Enhancing the accession process - A credible EU perspective for the Western Balkans, Brussels, 5.2.2020, COM(2020) 57 final, p. 4.

⁴⁷ With regard to the treatment of minority rights in the recent years, see: COM(2018) 65 final, pp. 4-5 ; European Commission, Commission Staff Working Document, North Macedonia 2019 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2019 Communication on EU Enlargement Policy, 29.5.2019, Brussels, SWD(2019) 218 final, p. 3, pp. 9-10, p. 13 and pp. 31-32; European Commission, Commission Staff Working Document, North Macedonia 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2020 Communication on EU Enlargement Policy, 6.10.2020, Brussels, SWD(2020) 351 final, p. 4, pp. 10-11, p. 14 and pp. 34-35.

⁴⁸ Council Regulation (EC) No 2007/2000 of 18 September 2000 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process, amending Regulation (EC) No 2820/98, and repealing Regulations (EC) No 1763/1999 and (EC) No 6/2000, OJ L 240, 23.9.2000; Council Regulation (EC) No 1215/2009 of 30 November 2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process, JO L 328, 15.12.2009; Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC, OJ L 306, 7.12.2000, Article 5;

The legal sources which provide a general view on the importance, as well as the details on the content of minority rights conditionality are the European partnerships. Introduced in 2004, these documents defined the priority areas of each State encompassed by the SAP.⁴⁹ The Article 1 of the Regulation accentuates the importance of the implementation of SAP and the regional cooperation. Nevertheless, the analysis of the partnerships with each State encompassed by SAP reveals that the attention given to the minority issues frequently seems greater than that given to regional cooperation. Therefore, the European partnership with Macedonia from 2004 reveals that the identified priorities concern the capacity of the State to fulfill the criteria fixed by several conditionality sources and which encompass the minority rights: the Copenhagen criteria and the conditions defined for SAP, in particular those defined by the Council in the Conclusions from April 29, 1997 and June 21-22, 1999, as well as the Final Declaration of the Zagreb Summit from November 24, 1999 and the Thessaloniki Agenda.⁵⁰ In addition, the clause regulating the “Conditionality”, inserted in the decision, involves the minority rights.⁵¹ The detailed analysis of the priorities defined by the partnership reveals that a particular attention is consecrated on the questions stemming from the OFA – an example are the criteria on the legislation regulating the decentralization, one of the key components of OFA.⁵² Therefore, the analysis of the Partnerships – notably the one adopted in 2004, clearly points out that OFA is the principal element of the stabilization dimension of SAP. In the partnerships from 2006 and 2008, this dimension remains important, although it is less accentuated.⁵³

Considering that some authors maintain that the analysis of the priorities defined in the European partnerships provide clear indicators of progress – contrary to the SAAs which are more rigid legal instruments – one can see the analysis of the European partnerships with RNM as an evidence of the prioritizing of the questions deriving from the OFA in the process of the integration of the State in the EU.⁵⁴ In accordance to the priorities defined by the European partnerships, the financial aid granted to RNM for the programs on implementation of the OFA

Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA), Article 21(1). See: Blockmans S., *Tough Love. The European Union's relations with the Western Balkans*, The Hague, T.M.C. Asser Press, 2007, pp. 276-277; Pippan Ch., “ The Rocky Road to Europe: The EU's Stabilisation and Association Process for the Western Balkans and the Principle of Conditionality “, *EFAR*, 9, 2004, pp. 219-245 at pp. 230-231.

⁴⁹Council Regulation (EC) No 533/2004 of 22 March 2004 on the establishment of European partnerships in the framework of the stabilisation and association process, OJ L 86, 24.3.2004, recital 5 of the preamble.

⁵⁰ Council Decision (EC) 2004/518 on the principles, priorities and the conditions contained in the European Partnership with Former Yugoslav Republic of Macedonia (2004) OJ L222, 23.6.2004, see Annex, point 2 (“Principles”).

⁵¹ Ibidem.

⁵² Among the short term priorities, the first subtitle “Democracy and rule of law” begins with the tasks related to the implementation of the OFA (see subtitle “Ensure the functioning of State institutions in all the territory”). In addition, the subtitle “Human rights and the protection of minorities” includes a paragraph on the establishment of a State University for the Albanians. The analysis of the priorities on medium term reveals the same priorities. Council Decision (EC) 2004/518.

⁵³ Council Decision of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with the former Yugoslav Republic of Macedonia and repealing Decision 2004/518/EC (2006/57/EC) OJ L 35, 7.2.2006; Council Decision 2008/212/EC of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the former Yugoslav Republic of Macedonia and repealing Decision 2006/57/EC, OJ L 80, 19.03. 2008.

⁵⁴ Rapoport C., “Les Accords de Stabilisation et d'Association, Instruments de Stabilisation et de Pré-adhésion” in Drouet M. et Richet X., *Vers l'élargissement de l'Union européenne à l'Europe du Sud-Est*, Rennes, PUR, 2007, pp. 173-185 at pp. 184-185.

is much higher than the assistance for the implementation of the SAA.⁵⁵ As a consequence of the conditionality and the financial aid granted, the State responds to the demands posed, as it is evident from the analysis of the national programs for the adoption of the *acquis*, prepared by the RNM.⁵⁶

The problematic of the minorities is also included in the context of the SAA, despite the fact that SAA largely regulates the economic field. Actually, already in 1999, the Commission conditioned the conclusion of each SAA with the conformity of the State with the conditions of April 29, 1997, including the minority rights.⁵⁷ Notably, its preamble confirms the engagement of the State in the field of rights of persons belonging to the minorities;⁵⁸ according to the evolutionary clause, these rights should be considered during the decision on the evolution of the relations between the EU and the RNM, on the basis of the TEU and the respect of the Copenhagen criteria;⁵⁹ the respect of the minority rights forms part of the clause on the “essential element” of the agreement – which invokes various sources of international law which include minority rights.⁶⁰ Also, Article 3 regulating the good neighborhood criteria underlines the Council Conclusions of April 29, 1997.⁶¹

The doctrine pointed out that, despite of its largely economic content, the SAA was signed to recompense RNM for its good interethnic relations.⁶² Some authors underline the signature of the SAA as an instrument of the EU policy of stabilization during the crisis in 2001 and an example of the use of the anticipation effect of the EU conditionality.⁶³ Also, the importance of this essential element of the political conditionality of accession is visible in the context of the evaluation of the minority rights in the framework of the institutional structure of the SAARNM.⁶⁴

IV. CONCLUSION

The analysis of the SAP conditionality in the field of minority rights, applied in the case of the RNM reveals interesting results. In broad sense, this conditionality is harmonized with the approach taken toward the other Western Balkans States, encompassed by the policy of SAP. Its origins draw from the decade of the 1990’s when the EU Institutions defined a broad spectrum of

⁵⁵ Phinnemore D., “Stabilisation and Association Agreements: Europe Agreements for the Western Balkans?”, *EFAR*, 8, 2003, pp. 77-103 at pp. 94-95.

⁵⁶ Several documents defining the priorities are available on the official website of the Secretariat on European Integration : http://www.sep.gov.mk/content/?id=14#.VbuIE_mqqko

⁵⁷ Commission of the European Communities, Communication from the Commission to the Council and the European Parliament on the Stabilisation and Association process for countries of South-Eastern Europe Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia, former Yugoslav Republic of Macedonia and Albania, 26.05.1999, Brussels, COM (1999) 235 final, p. 4.

⁵⁸ SAAM, preamble. The same formulation is included in the preamble of the agreement with Albania.

⁵⁹ Ibidem. The same formulation is included in the SAA with Albania. The SAA with Serbia also refers to “the conditions of SAP”.

⁶⁰ SAAM, Article 2.

⁶¹ Ibidem, Article 3.

⁶² Rapoport C., “Les Accords de Stabilisation et d’Association, Instruments de Stabilisation et de Pré-adhésion”, *op. cit.*, p. 183.

⁶³ Pippan Ch., “The Rocky Road to Europe: The EU’s Stabilisation and Association Process for the Western Balkans and the Principle of Conditionality”, *op. cit.*, p. 240.

⁶⁴ See, for example: Stabilization and Association Council EU-Macedonia, Brussels, 14.9.2004, 12336/04 (Presse 263) ; Seventh European Union – Republic of Macedonia Joint Parliamentary Committee, Skopje, 18-19 February 2010, points 16-17.

special minority rights, the monitoring of whose application was rather flexible. While the lack of clarity and precision remain a hallmark of the field, the policy of SAP maintains the essential importance of the field through a multitude of policy documents and financial incentives, as well as in the clauses of virtually all types of legal instruments.

The application in the particular case of the RNM nevertheless merits attention. In this case, despite of the broad formulations on the protection of minority rights in several EU policy documents and legal instruments, the EU Commission has, for a prolonged period of time, prioritized the implementation of minority rights deriving from the provisions of OFA. As a result, it is hard to deny the determining influence of the EU for the considerable, if not even, success in the implementation of the minority rights deriving from the OFA, as well as many of those deriving from other sources. Even more, the field may serve as an example of the ways in which the stabilization and association objective of the EU foreign policy toward the region of the Western Balkans are integrated - in the case of the RNM, SAP strongly prioritizes the (interethnic) stabilization objective rather than the association objective. Finally, the analysis confirms an important aspect of the nature of the EU enlargement conditionality – its success is due less to the precise, legal nature of the enterprise; on the contrary, it is a dynamic, flexible approach of political and economic incentives which ensures the compliance of the States concerned.

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