THE EFFECT OF LATE ENLARGEMENTS OF THE EU TO THE STUDY OF EUROPEANIZATION: FROM A SERIES OF THEMATIC SHIFTS TO A PARADIGMAL CHANGE. Some political and integration policy consequences.

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In the context of the ongoing crisis, the EU must re-evaluate why enlargement has been successful in the past and understand the obstacles facing it today. Only then will the EU be able to reconceptualise enlargement for a new era and revive its foundering soft power.
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Abstract

The paper focuses on three main topics: 1. The paradigmal change in EU enlargement studies which results from a series of thematic shifts - from the study of the factors influencing the success of the enlargement towards the registration and understanding of the crisis in the Eastern enlargement which culminates in the reversibility of Europeanization; from the commonality of the processes of enlargement, or at least of compatibility of the national states, the crisis redirects the attention at national, sectoral and temporal differences; from levels of harmonization of Law through the crisis of the acquis implementation and the protracted fight against corruption towards the more fundamental problem of the rule of law establishment and promotion; from descriptive studies and naïve interpretations of the enlargement crisis towards systematical historical explanations of the socio-structural premises for the resistance against the Europeanization. 2. The linkage among the state-patronizing over economy, the high-level political corruption and the ineffective judicial system which predetermines the failure of the EC's Cooperation and Verification Mechanism. 3. The main accents of the due new political approach to the EU enlargement - prioritization of the *institutional mechanisms for responsible governance*, both at government level for policy-making and at the level of work of the public administration in protection of the public interest through dialogue with the citizens, which implies a radical decentralization of power; establishment of mechanisms for *public accountability and responsibility of the judiciary* by the delivery of results of its work – fair justice in reasonable terms; *radically higher responsibility of the European Commission for a real partnership* in the post-accession process by placing the main emphasis on practices of promoting and protecting the rule of law as opposed to the current practice of distant monitoring of the passive sabotage to effective Europeanization.

The study of the enlargement-led Europeanization has never been a completely homogeneous and monolithic disciplinary field. However, until a few years ago there has been a clearly recognizable mainstream in this disciplinary tradition to which the alternative themes and theses remained marginal or ignored in general. The most important feature of the disciplinary field was the focus on the enlargement of the EU as an outstanding socio-political *natural success* and, accordingly, the study of the factors that influence the degree and depth of this

success in the paradigm of rational choice or rational institutionalism (Sedelmeier 2011, 2012; Vachudova/ Spendzharova 2012; Trauner 2011). The reason for this situation is, firstly, in the historical fact that up to 2004 the series of enlargements are actually an overwhelming success-story. But this fact has several historically specific key premises:

- The earlier the EU accession takes place, the more limited the Europeanization is in the field of economic integration and it does not have to affect the depth of the socio-political organization of the national societies (Agh, Papakostas);

- At all stages of enlargements until the fifth, the newly accepted societies are in general, despite some episodes of authoritarian or dictatorial regimes (such as those in Greece, Spain, and Portugal), civilizationally homogeneous and the tasks for the preparation for full integration are limited to the catching-up with (and the acceleration of the existing models of) the socio-economic development of the OMS.

With the Fifth enlargement these preconditions cease to be valid and therefore the tasks change their character - because the new accepted states have to overcome a) a much wider range of оьи deeper problems of social change with b) much more smaller and c) inadequate institutional, political and cultural resources. On a top of all, these societies are significantly different one from another (Mendelski 2008), and were only formally uniformed under the dictatorship of the ideological and repressive apparatus of, loyal to Moscow, communist parties. The success of Europeanization under such conditions becomes uncertain.

As a result of the undergoing historical change in the subject-matter of investigation, the relevant academic literature began to undertake a series of reorientations for which the empirical facts in Bulgaria and Romania have become a kind of "magnifying glass". The major shifts are:

- From the study of the factors influencing the success of the enlargement towards the registration and understanding of the crisis in the Eastern enlargement. Even if the crisis is not explicitly thematized (as in the case of the Agh 2007, 2008, 2013; Kochenov 2009, Verheugen 2013, but also of Guy Verhofstadt as early as in 2005) in the literature more consistently emphases are put on the "shallow Europeanization" (Ladrech 2009; Dąbrowski 2012; Börzel/ Risse 2012) "empty shells" (Dimitrova 2010), "enlargement on paper against enlargement in practice" (Trauner 2009, Mendelski), "backsliding" (Rupnik 2007) "Back- pedalling" (Buzogány 2012) and, more generally, on *the reversibility of the process of Europeanisation*. In this particular regard, the processes in Bulgaria and Romania are interesting as drastic examples of very limited, predominantly *imitative Europeanization* in the pre-accession period and whose falsehood the post-accession period *revealed by the reversal of the achievements of the previous years thus minimizing the Europeanization only to documents adoption and legislation that is not applied in practice*.

- Since the success of the Europeanisation means achieving a high degree of commonality, or at least of compatibility of the national states, the failure naturally redirects the attention of the researchers at national, sectoral and temporal differences (Toshkov 2013, Agh 2013, Dirzu 2011, Mendelski).

- As far as the preparation for membership of the new countries takes the form of a dialogue between the European Commission and the governments of the candidates the latter focus *mainly on the adoption of the EU acquis*, because that was practically all that was meant to happen, the post-accession period already puts a heavy emphasis on *the implementation of this legislation, and this turns out to be a huge problem.* Because nowhere in CEECs there is a deep-rooted Rule of Law culture.

- Directly related to the above, the course of the historical process is shifting the research interest form the question of the acquis implementation *to the more general question of the crisis of the rule of law* (Mungiu-Pippidi, Mendelski).[1] It is important to note that there is an important sub-shift of attention from the crisis of the rule of law as a partial and an suppmementory problem of the fight against corruption to the more general problem of the prerequisites of sustainable democracy (Verheugen 2013, The anti-corruption report of the EC from 2014 and the successive introduction of the political mechanism to safeguard the rule of law in March).

- In this conventional history of the paradigmatic shift, it could be delineated an initial phase, in which – due to the very novelty problem - the attention of the researchers is primarily on the *evidence for the fact of the crisis of EU enlargement*, and - in the case of Bulgaria and Romania (Ganev, Andreev, Ivanov, Tanasoyu, Rakovita) but also significantly in Hungary, Greece and other countries, on the symptoms of the failure of the real, deep Europeanisation. There is a clear imbalance between the narrative part of these studies properly systematizing the diversity and abundance of empirical evidence for the crisis of European integration in the countries manifested through systematic violations of the rule of law, the freedom of speech, of the principles of

[1] "[…] the EU is less transformative than assumed by Europeanization scholars (see chapter 1 in this volume). I show that EU-driven reforms have an uneven impact on two key dimensions of rule of law, which in the aggregate produces more continuity than real transformative change. I propose a two-dimensional conceptual framework of rule of law, consisting of an efficiency-related dimension (judicial capacity) and a power-related dimension (judicial impartiality). […] in terms of efficiency-related aspects of the rule of law, judicial reforms have engendered considerable change, while in terms of power-related aspects only few change is observable. My explanation for this uneven development and the overall lack in rule of law progress centers around the technocratic, non-coherent and efficiency-focused reform approach as applied by the EU and its domestic reform partners." (Mendelski 2013) „The requirement of a broad and inclusive reform approach which attacks the existing political and judicial culture and the underlying modes of socio-economic organization (e.g. clientelistic and criminal structures) by dismantling vertical power-relations has been in practice difficult to achieve. This is especially the case in the Western Balkans and other transitional societies which prefer to rely on strong actors (rule of men) rather than on weakly enforced legislation. Rule of law reforms, which are required to enter the EU, can be seen as an attack on the existing mode of judicial and political organization." (Ibid.)

modern democracy proper, on one hand, and the analytical explanations offered, on the other. At the explanatory level one can find a spectacular over-*simplicity of explanatory models which remain as a mechanical extrapolation of behavioristic schemes* - the famous parable of the carrot and the stick (Gateva), or frivolous metaphors ... of the football hooligan (Ganev). Only later complex, integrative explanations of the crisis of the enlargement appear (Agh 2014, Mendelski 2013, Dimitrov et al. 2014, Toneva 2014) in a way in response to a methodological task for the research of the Europeanisation, formulated by Ekiart back in 2008.

- As a consequence of the paradigmatic reorientation, the results of research recently identify *not internal national factors* for the crisis, but *the weaknesses of the political approach of the EC*, which hinder effective partnership with local governments. Hence, *the political interaction* between the Commission and the national governments in the process of *post-accession management of the integration* becomes a major problem (Mendelski, Ivanov, Gateva, Dimitrov et al., Agh, Vachudova and Spendzharova, Mungiu-Pippidi[2]).

  What is the provisional situation, which could be summarized out of the analyses of the local researchers:

[2] To understand why the EU's influence was so limited, we have to look both at the supply side (the EU's rule-of-law promotion efforts) and the demand side (national circumstances and factors in the recipient countries). The supply side – EU efforts – was not without problems. One problem was the speed and timing of the process: the time factor. In the effort to grasp the political opportunity while at the same time not allowing any real room for negotiation with the newcomers (who had to adopt the *acquis* in full), the whole accession process became a bureaucratic exercise. The European Commission's detailed requirements and the related issue of conditionality created a relationship in which the Commission (as opposed to the domestic constituencies or their representatives) became the sole principal and the governments its agents. Reforms were not geared to policy feedback or impact evaluations, but instead to the need to satisfy the pressing bureaucratic requirements of the Commission's regular monitoring reports, creating a sort of 'prescription-based' evaluation mechanism with perverse incentives. Thus countries were judged in the monitoring process not by the effectiveness of their reforms or even by their real potential for change, but by the number of 'prescription pills' taken. The more advice a 'patient' or assisted country accepted the higher it was rated, with little checking of the 'symptoms'. (Mungiu-Pippidi 2011: 152)

1. The researchers of *empirical reality* are almost unanimous that *the post-communist transition* - with significant differences in each national case, of course, *remained unfinished* (Agh, Kavrakova, Vachudova and Spendzharova. Tanasoyu and Rakovita, Mendelski, Ganev, Andreev). First, on one hand, the state has no longer the monopoly on economic assets and activities. But on the other hand, it remains the bighest and decisive consumer of goods and services in national economies. Therefore, a huge part of the national economy, with its typical deficits of competitiveness on the European free market, is fundamentally dependent on the "government procurement". The latter are a *matter of survival* for the firms, rather than *of profit*, and therefore all the means of acquiring them appear as justified, including largescale corruption-data from interviews with participants in these practices shows that state officials want up to 60 percent of the funds allocated by their institutions, to return back to them as individuals. This is an offer too hard to refuse. Second, on the other hand, *the conducted constitutional changes are more in the macro-framework of representative democracy* and *the separation of powers*, ensuring party pluralism and the peaceful transition of power, *but they do not solve the key problem of the representation of interests*. The constitutional amendments do not provide institutional mechanisms *especially for responsible political behavior in policy-making in the interest of citizens* (Ganev, Slavov, Agh). On the contrary, the regulatory change in the institutional design of public administration solves only the problem of its depolitization, but not of the partnership with the citizenship (Agh, Dimitrova, Toneva). Therefore *the current new institutional design of this administration is particularly suitable for the maintenance of key redistributive mechanisms of*

the state to loyal quasi-economic subjects excluded from market relations and structurally prone to corruption (Kopecky and Spirova 2011).

2. In the context of the early post-communist transition the parties drew public legitimacy and support primarily from the different stakes offered on the outcome of the process in their mutual confrontations. However, in the perspective of European integration presented as having no alternative, they lost the opportunity to offer real programmes and authentic representation of specific interests. Hence, the party leaders recognized the excessively short horizon of governance (because of a lack of a stable electoral support), whose *main objective becomes the recruitment of loyal clienteles, which trough the access to state procurement and other forms of state patronage should provide back financial resources for vote-purchases* (Toneva 2010). Politics – whether we talk about Bulgaria, Romania or Hungary - means party control of state institutions for the purpose of maintenance of clienteles. Here it is especially important to note that the global economic crisis, which further worsened the chances of market realization of the national economies over the past five years, *only further intensified the pressure for 'softening the state', manifested on the surface as a growth of corrupt practices among all political parties who have lost ideological legitimacy and structural robustness*.[3] Including populist parties who are doomed to lie to the expectations of the electorate. In this

[3] See reports from the last years of CSD (eg. Http://www.csd.bg/artShowbg.php?id=16730), who first advocated that public procurement and state subsidies are a key tool to control corruption in the country ; and the Index of transparency of party funding of Transparency, that in elections for the EP this year in May marked an absolute collapse- since 2007- the lowest value.
(http://www.transparency.bg/media/publications/MONITORING_REPORT_Izbori_EP_Transparency_InternationalBulgaria_2014.07.25_F.pdf). And last but not least the Bulgarian Centre for Legal Initiatives have interesting open letter about the case Bisserov (http://www.bili-bg.org/354/news_item.html), which argued that the system for corruption prevention in the high floors is kept inoperative on purpose: "the whole system of control and prevention of corruption at the highest levels of government does not work and is created and maintained in a state of charades."

regard, *the new access to EU funds does not change anything in general - notwithstanding the new level of sharp appetite for the distribution of large, according to the local standards, European "aids" by the public institutions* (for firm-survival and party financing). These funds only extend the corruption schemes to involve European programmes also.

3. Since in the communist societies the role of Law was minimized and marginalized during the transition period there was no way to transform the society directly to a new system where the law is actually the supreme value and the basic principle of public order (Hristov, Chalakov et al.). Moreover, the significant dose criminal character of economic transformation (Ganev, Stanchev, Chalakov et al., Stark) required weak and largely corrupt judicial system (Hristov). Hence, the main focus of the judicial reforms so far essentially repeats what happened in the political sphere - *they ensure the relative independence of the system against direct government dictate, but do not create any conditions for public accountability and responsibility through the performance of the courts, thus making the magistrates dependent on the powers behind the curtains.* This historically natural character of the national judicial systems becomes evident in the conditions of EU membership, where the rule of law is a prerequisite for the effectively functioning market economy, the authentic representative democracy, for the freedom of speech, for the vitality of the civil society, and the effective anti-corruption fight. *The historical occurred institutional irresponsibility of the judiciary system is functionally necessary for the corrupt party system which deliberately maintaines the dependence of national economy on the state redistributive mechanisms, which the European funding is a particularly powerful tool for*

(Mungiu-Pippidi)[4]. The membership in the EU just highlighted this structural problem, assigning to the judiciary system *an impossible for it task* - not only to fight systemic corruption *through the prosecution of individuals*, but also to change the character of public life in general.[5]

4. Hence the inevitable crash of the Cooperation and Verification Mechanism (Alegre, Ivanova, Smyslov, Ivanov, Tanasoyu, Rakovita, Dimitrov et al., Toneva). He failed to achieve its own goals to help local governments in their efforts to promote irreversible rule of law in national societies[6]. According to H. Grabbe the post-accession conditionality of the EU in general is designed to support the efforts of governments for effective integration, not to overcome the resistance from corrupt governments[7]. **There is a paradigmatic defect in the EC's approach which the CVM is based on - it does not take into consideration the resistance of the entire socio-political system against the rule of law as a key initial framework of the problems tackled**. Actually every consequent government is only a successive transmitter of the universal

[4] „Reforms in Romania and Bulgaria frequently had to be pushed through against the will of the very people who were supposed to implement them." (Mungiu-Pippidi 2011: 152)

[5] *Regular Reports* and *Accession Partnerships* consistently relied on the criminal law character of the *acquis* in order to make their assessments and they did not strive for a comprehensive analysis of the phenomenon. They concentrated candidate Member States' attention in taking the necessary legal measures without looking at the specific root causes of corruption, as well as the best ways of countering them." (Papakostas 2012: 228)

[6] „… national politicalelites, released from the pressure of conditionality and accession, are guided by a relaxed understanding of contractual obligations a country has as a EU member state, and rather cavalier attitudes towards EU rules and regulations. Despite the rise in anticorruption discursive narratives (to significant electoral success) and occasionally securing convictions, this has not been translated into the effective or impartial implementation of anticorruption practices."(Tanasoiu/Racovita 2012: 224). Compare with data and summaries of Ganev, Ivanov, Andreev (with 377, 390) or with the results form empirical studies of the legal situation in Bulgaria of nongovernmental institutions.

[7] [7]"***Using membership conditionality for precise policy influence requires willing, not reluctant partners*:** in considering the coercive/voluntary mix, the voluntary cooperation is critical because the EU's coercive power is very limited. **…**This lack of coercive tools is hardly surprising, given the EU's history and purpose: it was established as a vehicle for the economic and political integration of willing states, not as a force for transition in unwilling regimes." (Grabbe 2006: 53, italic – added).

resistance against the reforms both in Bulgaria and Romania. The CVM, however, is trying to change the nature of the social system by partial procedural measures, which is impossible and politically unattainable. Thus we find the explanation of the apparent paradox that the EC gives the same general political assessment for both countries, despite the difference in the factual processes in Bulgaria and Romania. The problematic situation is substantially the same, beyond the variety of specific events – there is a need for a wide and far-reaching social reform, which is threatened by the reversibility of the progress in the effort to promote the rule of law. The paradox is ostensible only because the two countries with different measures - Romania by creating specialized institutions for curbing corruption, but under overt parliamentary opposition and subsequent actions which subvert the work of these institutions; Bulgaria through writing hollow strategies and programs and persistent inactivity of the institutions, they both achieve the common purpose - to carry out not effective judicial reform (Rakovita, Tanasoyu, Ivanov, Ganev, Dimitrov et al.). *The sabotage of the reforms is truly necessary to maintain the corrupting relationship between politics and state intervention/patronage in the economy*.[8] Here we find the explanation for the absence CVM in Croatia - this is not just a result of the frustration of the Commission of the inefficiency of this mechanism to stimulate effective Europeanization of the new members. Croatia is distinctly different in structural and quality of life aspects on indicators for market economy, efficient governance, democracy and the rule

[8] "National political elites show a remarkable consensus across party-lines in resisting pressure from Brussels to reform those areas where personal costs trump national benefits, i.e. judicial reforms and anticorruption measures. As successive governments promised change, which was achieved little and by the end of their mandate had more to show in terms of corruption scandals than dissembling corrupt networks, there is little trust in the ability of national politicians to deliver." ."(Tanasoiu/Racovita 2012: 224).

of law, according to comparative data from the European catch-up index for three consecutive years 2011, 2012, 2013.[9]

In a nutshell, the experience of the crisis of the Eastern enlargement in recent years provides some major evidence for the need of a *systematic approach in the preparation for effective EU membership:*

1) prioritization of the *institutional mechanisms for responsible governance*, both at government level for policy-making and at the level of work of the public administration in protection of the public interest through dialogue with the citizens, which implies a radical decentralization of power;

2) *public accountability and responsibility of the judiciary* by the delivery of results of its work – fair justice in reasonable terms,

but also

3) *radically higher responsibility of the European Commission for a real partnership* in the post-accession process by placing the main emphasis on practices of promoting and protecting the rule of law as opposed to the current practice of distant monitoring of the resistance to effective Europeanization.

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[9] See European Index of catching up - http://www.thecatchupindex.eu/TheCatchUpIndex/.

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