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Europeanization from Below

The Formation of Gender Equality Policies in the Western Balkans

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Abstract: The article argues that, compared with the other countries in the Western Balkans, the Europeanization of gender equality policies in Bosnia and Herzegovina represents an interesting case of “Europeanization from below”. It was not the EU, which called for the introduction of gender equality policies in the Stabilization and Association Process, but domestic policy entrepreneurs, who constructed a “shadow of membership conditionality”. They framed their requests as element of the accession process tapping into the aspiration of policy-makers to joining the EU. The case illustrates that Europeanization matters in the Western Balkans, not only in terms of a direct influence of the EU but also because it provides opportunities for domestic policy entrepreneurs to further European objectives themselves.

Keywords: Europeanization, gender equality policies, Western Balkan, Bosnia and Herzegovina, domestic policy entrepreneurs
Europäisierung, Geschlechtergleichstellungspolitiken, westlicher Balkan, Bosnien und Herzegowina, inländische PolitikunternehmerInnen

1. Introduction

Scholars have attached a great deal of importance to membership conditionality when debating the effectiveness of the European Union (EU) in its Eastern enlargement process (Ethier 2003; Kelley 2004a, 2004b; Schimmelfennig/Sedelmeier 2004; Schimmelfennig 2005; Vachudova 2003). Less attention has so far received the question of how Europeanization changes the preferences and strategies of domestic actors, which themselves develop an interest in advancing Europeanization in their policy fields without being subject to direct top-down adoption pressure from the EU. The comparative analysis of the Europeanization of gender equality policies in South Eastern Europe reveals an interesting case of “Europeanization from below” (Georgakakis/Weisbein 2010) and of the “strategic, legitimizing usage of Europe” (Woll/Jacquot 2010): In Bosnia and Herzegovina (BiH) it was

not the EU, which put gender equality policies onto the agenda but domestic policy entrepreneurs from non-governmental organizations (NGO), political parties and governmental institutions responsible for the advancement of gender equality. They strategically framed their requests as element of the accession process to European organizations, thus tapping into aspirations of the Bosnian government to joining the EU. In this “shadow of membership conditionality”, domestic policy entrepreneurs decisively contributed to the initiation, formulation and adoption of respective laws and policies, regardless of the direct influence of the EU itself.

Before turning to the Bosnian case, the next section provides a brief overview of the Europeanization process of gender equality policies in the Western Balkans, also revealing the peculiarity of BiH in that regard. The subsequent section focuses on the strategic discursive action by Bosnian policy entrepreneurs. The article concludes with a brief discussion of the potential of a repeated application of their strategies in other policy fields and some policy implications for the Europeanization of gender equality policies in the Western Balkans.

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2. The Europeanization of Gender Equality Policies in the Western Balkans

There has been a vital debate about the meanings and applications of the concept of Europeanization (cf. Featherstone 2003). I follow Radaelli's understanding here of Europeanization as "(p)rocesses of (a) construction, (b) diffusion, and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things', and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures, and public policies" (Radaelli 2003: 30). This understanding can be applied to both EU member states and other countries, such as the potential and current candidate states of the EU in the Western Balkans (all successor states of the former Yugoslavia, excluding Slovenia, but including Albania).

Drawing on this understanding, most gender equality policies in the Western Balkans are to varying degrees Europeanized. Since 1975, the EU has integrated several Council Directives on equal treatment of women and men in employment and social affairs into its Community law (cf. Burri/Pechal 2008), and established a number of soft law measures on other gender equality issues, such as family policy, domestic violence, and political decision-making (cf. Lombardo/Meier 2008). Labor and Gender Equality Laws, for instance, in Albania, Bosnia and Herzegovina, Croatia, Macedonia, and Serbia more or less reflect EU Council Directives on equal pay and equal treatment in employment (cf. Dedić/Frank 2008; Friscik/Dimova 2006; Lukic 2006; Metani/Omari 2006; Sofronic/Inic/Lukic 2006). Labor legislation, for example, in Croatia (2003), Macedonia (2005) and BiH (2000) includes the prohibition of direct and indirect discrimination, of harassment and sexual harassment and the reversal of the burden of proof as prescribed by Council Directives 97/80/EC, 2000/78/EC and 2002/73/EC. However, implementation of many of these new laws and policies has been problematic (*ibid.*). In BiH, for example, despite the introduction of a relatively comprehensive women's rights and gender equality legislation, covering issues such as women's political representation, gender-based discrimination in all public spheres, and violence against women (cf. Jenichen 2010), the situation of women has improved only slightly since

the adoption. Women's political representation is still quite low (10.5% in the national parliament in 2008, 19.1% since the last elections in 2010), women in leadership positions are extremely rare, and the estimated occurrence of gender-based discrimination on the labour market is high, as are numbers of domestic violence and trafficking in women (cf. Agencija za statistiku BiH 2009; Global Rights 2004; Ler Sofronic/Inic/Lukic 2006; US Department of State 2011). Given the lack of implementation, the described changes in the Western Balkans have been more of an "absorption" of policy requirements of the EU without real modification of essential structures and changes in the logic of political behaviour, rather than a really "transformative" change yet (cf. Radaelli 2003: 37f).

The Europeanization of the Bosnian gender equality legislation is a special case in the region, revealing an interesting Europeanization process "from below". Unlike in other countries of the region, BiH had clearly started to establish its gender equality legislation *before* the EU itself put this issue on the agenda. A closer glance at the accession requirements, or to be more precise, the requirements in the Stabilization and Association Process preceding the actual accession process of countries of the Western Balkans (cf. Vachudova 2003), provides a clearer picture of the status of gender equality in that process.

The table summarizes the SAP in the Western Balkans, as well as the timing of the EU calls for gender equality legislation and the actual introduction of gender-sensitive labour laws and gender equality laws in those countries. Most striking, in my opinion, are two facts, both concerning BiH: First, the EU started comparatively late to explicitly call for the advancement of gender equality by the Bosnian government. Second, BiH is the only country in the list, which had adopted gender-sensitive labour legislation and a Gender Equality Law before the EU asked to do so. Furthermore, BiH was not only faster than the EU but also than all other countries in the region. This and the peculiarity of BiH as a post-war state subject to the intervention by a variety of other international organizations may be part of the explanation for why the EU has been so cautious to integrate gender equality issues into the Bosnian SAP.

The SAP in BiH was divided into several stages, including a "Road Map" in 2000 (European Commission 2000), and a Feasibility Study assessing the country's capacity to implement

Table: The EU and gender equality legislation in the Western Balkans

	SAA	Candidate status	First calls by EU to promote gender equality	(Amendment of) labour legislation	Gender equality law
Croatia	2001	2004	2001 (SAA)	2003	2003/2008
Macedonia	2001	2005	2001 (SAA)	2005	2006
Montenegro	2007	2010	2006 (Progress Report)	2008	2007
Albania	2006	not yet	2003 (S&A Report)	(1995)	2004/2008
Serbia	2008	not yet	2003 (S&A Report)	2001/2004	2009
BiH	2008	not yet	2008 (Progress Report)	2000	2003

Sources: Website of the European Commission on enlargement, including Stabilization and Association Agreements and reports, and Progress Reports available there (http://ec.europa.eu/enlargement/index_en.htm), ILO: NATLEX (http://www.ilo.int/dyn/natlex/natlex Browse.home?p_lang=en), OSCE-ODIHR: LegislatiOnline (<http://www.legislationonline.org>); Dedić/Frank 2008; Friscik/Dimova 2006; Lukic 2006; Metani/Omari 2006; Sofronic/Inic/Lukic 2006.

a Stabilization and Association Agreement (SAA) in 2003 (Commission of the European Communities 2003), each containing 18 and 16 requirements, respectively, to be met before reaching the next stage. In October 2005 the Commission launched the negotiations on a SAA (Commission of the European Communities 2005), which was finally concluded on 16 June 2008 (Council of the European Union 2008).

Unlike in the other countries of the region, gender equality issues have not played a noteworthy role in the Bosnian SAP. They were not part of the requirements for concluding the SAA. They were neither mentioned in the Road Map nor part of the requirements included in the Feasibility Study (although briefly mentioned there). This is surprising as in Serbia, the other laggard in terms of EU accession, gender equality issues had reached the process several years earlier. In BiH, the EU started to monitor the situation of women's rights and gender equality in 2004. Since the second Stabilization and Association Report of that year, the EU has repeatedly criticized the problematic human rights situation of women in the fields of gender equality and trafficking in human beings, initially without going into detail though (Commission of the European Communities 2004, 2007). The Bosnian Gender Equality Law and the Gender Centers, the two sub national state institutions responsible for the promotion of gender equality, were not mentioned before the first Progress Report in 2005, several years after they had been established. Since then, the EU has repeatedly referred to the lacking implementation of the gender equality legislation (European Commission 2005; Commission of the European Communities 2006, 2007). But not before 2008 did it start to observe progress and shortcomings more in detail and to explicitly demand the strengthening of the rights of women (Commission of the European Communities 2008; Council of the European Union 2008). The only women's rights issue considered more thoroughly in the Bosnian SAP has been the combat against trafficking in human beings, in fact primarily women (cf. Commission of the European Communities 2003, 2006, 2008; Council of the European Union 2004, 2006, 2008; European Commission 2005). This focus on the trafficking issue, which can be retraced in the SAPs of the other Western Balkan countries as well, might be explained by the security interests of the EU, seeking to prevent transnational organized crime and illegal migration from spilling over to its own territory (Juncos 2005: 100).

The timing of the Europeanization of gender equality legislation in the other countries of the region suggests a considerable influence of the EU by demanding respective changes within the SAP. However, as presumed for the case of Croatia, even then the cooperative effort of domestic women's NGOs and female parliamentarians may have been more important in transposing EU law to national gender equality legislation than the EU's direct influence itself (Dedić 2007: 83). Yet, in the case of BiH, the different timing basically excludes EU direct influence as main explanation. How else can it be explained? Since the majority of domestic policy-makers in post-war BiH has not displayed much political interest in actively promoting gender equality, reforms in gender equality policies have often – incorrectly – been ascribed to the intervening international community, including the EU (Oslobodenje 2005; Pupavac

2005; Stachowitzsch 2006). The detailed reconstruction of the corresponding policy processes in BiH in contrast reveals the significant impact of domestic policy entrepreneurs and their specific framing strategies.

3. Framing Strategies by Policy Entrepreneurs in BiH and beyond

The strength of domestic public agencies responsible for the promotion of gender equality, women's movements and female politicians are important mediating factors in translating pressures from Europeanization into domestic change and incorporation of European norms, not only in old and new EU member states (Avdeyeva 2010, Caporaso/Jupille 2001), but in potential candidate states such as Bosnia and Herzegovina, too. My own research on BiH, primarily based on semi-structured interviews with then involved domestic and international stakeholders and on archival research, revealed that the driving forces of gender equality policy reforms in BiH have neither been the EU nor other intervening international organizations, but domestic women's organizations, female politicians and later also the governmental institutions for the advancement of gender equality ("Gender Centers", one in each sub-national entity – Federation BiH and Republika Srpska – in which BiH has been divided since the end of the war). In the face of massive sexualized war violence, Bosnian women had already during the war started to support survivors of rape and female refugees (Korac 2006). When women's political, economic and social marginalization continued after the war, many of them carried on to advocate the rights of women. In the beginning ignored by the majority of the intervening international community, they were the first to call for legal measures tackling discrimination and violence against women. However, since they lacked the necessary resources to push through their demands, these domestic policy entrepreneurs heavily relied on international allies for support. These domestic policy entrepreneurs were supported by just a few representatives of international governmental and non-governmental organizations, such as the Organization for Security and Co-operation in Europe (OSCE), the Office of the High Commissioner for Human Rights (OHCHR) and the International Human Rights Law Group/Global Rights (exclusively run by domestic staff), as well as the Finnish government, and they were able to enforce their demands long before the EU even considered those issues (cf. Jenichen 2010).

Though drawing on several arguments to mobilize political support for their requests, one argument proved to be particularly effective in these campaigns: namely, that the country's future accession to European organizations, particularly the EU, but also the Council of Europe, would make the establishment of a coherent legal and policy framework enhancing gender equality and the rights of women mandatory. Particularly telling in this regard was the process of bringing the Bosnian Gender Equality Law to the political agenda. The then director of the Federation's Gender Center used her contacts to the newly appointed Deputy Minister for Human Rights to

introduce the proposal to the Council of Ministers. The Deputy Minister, herself a doctor with experiences in working together with women's NGOs and female victims of sexualized (war) violence, had been appointed after the first – and last so far – post-war victory of a non-nationalist government coalition in the year 2000. Together, they framed the Gender Equality Law as a precondition for joining the Council of Europe and the EU and thus mobilized political support for the proposal within the Council of Ministers, which in April 2001 included the law into its working schedule for the same year. In reality, the law constituted neither a requirement for joining the EU, as explicated above, nor for joining the Council of Europe, which BiH finally acceded to in 2002 (cf. Council of Europe 2001a, 2001b, 2002). The proponents of the law just exploited the fact that the advancement of equal opportunities for women and men was an integral component of the EU's *Acquis* as well as the Council of Europe's framework, which were going to be transposed during the accession process. They thus constructed a "shadow of membership conditionality", which was able to unfold its effectiveness because many Bosnian policy-makers perceived the accession process to European organizations, particularly the EU, as one of their first priorities (cf. International Crisis Group 2002) and apparently lacked detailed knowledge about the concrete accession requirements (Džihić 2006; Juncos 2005).

The framing strategy emphasizing the accession process to the EU as main argument for the introduction of innovative gender equality policies was developed in cooperation with international partners, particularly within the scope of the bilateral "Gender Equity and Equality Project" (GEEP) between the Bosnian and the Finnish government (2000-2006), which aimed at developing a coherent gender equality strategy for BiH. The project was initiated by the then President of the Federation BiH and primarily managed by domestic partners, such as the Gender Centers, as well as an international NGO exclusively run by domestic staff (the International Bureau for Humanitarian Issues, IBHI). The Finnish government did not impose concrete conditions for the funding, rather attached importance to the support of domestic ideas and solutions (cf. GEEP 2006). However, it did send a Finnish consultant to BiH on a regular basis to train and support the Bosnian project partners, and to jointly develop arguments and strategies for how to use, for example, European norms and standards in mobilizing support for the project's endeavours. The following passage from the project's final report vividly summarizes this strategy:

"In ensuring the highest level political commitment different tools were used. Requirements of the EU and interest of BiH to be part of the EU enlargement process and candidacy for the Council of Europe; commitment of the BiH government to UN; BiH Constitution; and also experiences from other EU countries, particularly Finland, were used to show that there are instruments that provide standards according to which BiH may be judged and held accountable" (GEEP 2006: 45).

After the Gender Equality Law had been successfully included into the government's agenda, its proponents from the Gender Centers, from Bosnian women's NGOs and their international allies further on used, among other arguments, the intended

integration of BiH into European organizations to mobilize political support for the law, both within the working group drafting the law, the subsequent parliamentary process (cf. Komisija za ostvarivanje ravnopravnosti spolova u BiH 2002) and the accompanying NGO campaign, as one of the NGO campaigners explained during an interview to the author:

"Basically we used the fact that BiH wants to become member of the European Union and used recommendations and directives that EU has in relation to gender equality issues. And we also used some practice from regional and other European countries for drafting the text of the law" (Interview, NGO IHRLG/Global Rights, Sarajevo, 2006).

However, while the decision of the BiH Council of Ministers in 2001 to introduce the Bosnian Gender Equality Law can primarily be explained by the government's desire for joining the EU, the adoption of the law in parliament can be ascribed to further factors, such as the wish of Bosnian parliamentarians to present themselves as progressive to the international community, to their underestimation of the potential impact of the law and the societal pressure created by the highly visible NGO campaign – that is at least how NGO representatives then involved interpreted the process in interviews with the author.

The strategy of constructing and utilizing a "shadow of EU membership conditionality" has been observed in other (South) East European countries as well. Andrea Krizsan and Raluca Popa (2010), for example, identified a strategic framing of domestic violence as part of European integration criteria in Hungary, Bulgaria and Romania, regardless of whether the issue was formally included in the conditionality criteria. "As accession dates near, related debates stretch to include domains of policy not formally within the purview of accession negotiations; 'EU accession' tends to become a general framing for issues not core to the accession process, such as domestic violence" (ibid.: 393). Whether and how domestic policy entrepreneurs have used such strategic framing in other policy fields as well has still to be discovered by further research.

4. Concluding Remarks

Europeanization matters in the formation of gender equality policies in the Western Balkans, as was shown in this article, both "from above" and "from below". Particularly BiH represents an insightful case here, because it reveals how domestic actors make use of the Europeanization process to push through their own demands, even though in accordance with the EU's norms and policies but without direct intervention of the EU, so to say in the "shadow of membership conditionality".

Which factors facilitated the discursive integration of Bosnian gender equality policies into the "shadow of membership conditionality", and what kind of implications may it have for the implementation of these policies? First of all, there was the aspiration of the Bosnian government to joining the EU soon. This wish became stronger after the change of government in 2000 towards a non-nationalist coalition led by the Social Democrats, which put the EU accession on top of its agenda

(International Crisis Group 2002) and appointed a former NGO activist to serve as the Deputy Minister for Human Rights. The process was further facilitated by the lacking knowledge of Bosnian policy-makers about the concrete requirements in the Stabilization and Association Process (Džihić 2006; Juncos 2005). However, this is also the reason why it is questionable whether such a construction of accession incentives regardless of the EU's direct influence can frequently be replicated. With the Europeanization process advancing, the knowledge about the accession requirements likely increases. Also the information advantage of domestic policy entrepreneurs as a precondition for the functioning of the strategy thus disappears. However, for the implementation of gender equality policies, the perception that they were imposed by the EU, even if they were not, may be problematic anyway, because domestically driven policy campaigns seem to have more legitimacy.

Yet, domestic political support for gender equality issues is still relatively low in most of the countries of the Western Balkans. The direct support of domestic policy entrepreneurs by the EU will therefore become more and more important. The EU could be a particularly strong ally in the implementation of the Southeastern European gender equality legislation, in BiH as well. The Bosnian Gender Agency, supported by the United Nations Development Program (UNDP), has already recognized this potential and, therefore, organized a conference in 2007 to advocate gender equality as a political instrument in the EU accession process (UNDP BiH 2007). The Bosnian Gender Action Plan of 2006 also linked the implementation of the Gender Equality Law to the integration of BiH into the EU (vgl. Agencija za ravnopravnost spolova Bosne i Hercegovine 2006, chapter 1). More efforts in this direction are necessary.

The EU should attach more importance to gender equality and women's rights in negotiations with the countries of the Western Balkans. Domestic policy entrepreneurs should actively demand this from the EU and at the same time continue using the Europeanization process for advocating the implementation of gender equality policies, because, as this article has emphasized, this will be of utmost importance in facilitating national compliance.

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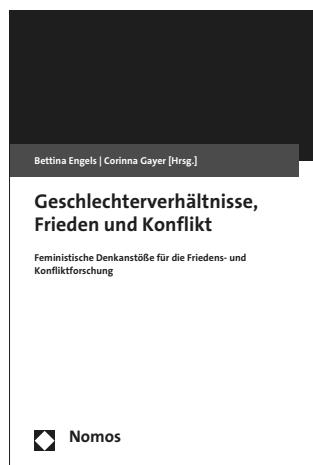
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Feministische Friedens- und Konfliktforschung



Geschlechterverhältnisse, Frieden und Konflikt

Feministische Denkanstöße für die Friedens- und Konfliktforschung

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Die Kategorie Geschlecht ist in der Friedens- und Konfliktforschung angekommen. Der Band gibt einen Überblick über aktuelle feministische Forschung zu Konflikt, Gewalt und Frieden aufbauend auf der Vielfalt der Positionen der vergangenen zwei Jahrzehnte.

Zwei Beiträge befassen sich mit der Indienstnahme feministischer Argumentationen durch den politischen und wissenschaftlichen Mainstream/Malestream. Zwei weitere verdeutlichen den Einfluss der Kategorie Geschlecht im Prozess empirischer Forschung und legen dar, was eine intersektionale Perspektive in diesem Zusammenhang leisten kann. Andere Kapitel machen Erkenntnisse aus der Männlichkeitsforschung fruchtbar und zeigen, dass die Neuverhandlung von Weiblichkeit und Männlichkeit in Post-Konflikt-Gesellschaften weitaus vielschichtiger ist, als lange in der Forschung angenommen wurde. Ein Beitrag widmet sich aus feministischer Perspektive dem noch jungen Forschungsfeld der Transitional Justice.

Das Buch gibt wichtige Denkanstöße für die Theorie und Praxis feministischer Friedens- und Konfliktforschung.



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