

No. 32

TRONDHEIM STUDIES
ON EAST EUROPEAN CULTURES & SOCIETIES



DAG OLE HUSEBY

**THE CATHOLIC CHURCH AND THE
EUROPEANIZATION PROCESS**

October 2010

Dag Ole Huseby wrote his Master's thesis at the Department of Sociology and Political Science of the Norwegian University of Science and Technology in Trondheim. The present book is a thoroughly revised version of the thesis.

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ISBN 978-82-995792-8-5

ISSN 1501-6684

Trondheim Studies on East European Cultures and Societies

Editors: **György Péteri** and **Sabrina P. Ramet**

Editorial Board: Trond Berge, Tanja Ellingsen, Knut Andreas Grimstad, Arne Halvorsen

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**The Catholic Church and the Europeanization Process.
An Empirical Analysis of EU Democratic Conditionality and
Anti-Discrimination Protection in Post-Communist Poland
and Croatia**

by

Dag Ole Huseby

Acknowledgments

I am deeply grateful for the patience and support Professor Sabrina P. Ramet has shown while I was working on this piece. Her academic knowledge, fine tuned eye for detail, constructive criticism and numerous advices has proven invaluable for the final result.

Warm thoughts also go to Kristin who for a very long time now has had to put up with my tedious elaborations on the beautiful complexities of the Europeanization process. Thank you for listening.

Asker, August 2010

Dag Ole Huseby

List of Abbreviations

AWS	Electoral Action “Solidarity” (Akcja Wyborcza Solidarność)
CARDS	Community Assistance for Association, Democratization and Stabilization
CBOS	Public Opinion Research Center in Poland (Centrum Badania Opinii Społecznej)
CEE	Central and Eastern Europe
CEEC	Central and Eastern European Countries
CEELI	Central and East European Legal Initiative
CFSP	Common Foreign and Security Policy
CBCEC	Commission of the Bishops’ Conferences of the European Community
CoE	Council of Europe
CSCE	Conference on Security and Co-operation in Europe
EC	European Community/European Council
ECHO	European Community Humanitarian Office
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EFTA	European Free Trade Association
EP	European Parliament
EU	European Union
EUMC	European Monitoring Centre on Racism and Xenophobia
FCNM	Framework Convention for the Protection of National Minorities
FRA	European Union Agency for Fundamental Rights
HDZ	Croatian Democratic Union (Hrvatska Demokratska Zajednica)
HSLs	Croatian Social Liberal Party (Hrvatska Socijalno Liberalna Stranka)
HSS	Croatian Peasant Party (Hrvatska Seljačka Stranka)
ICTY	International Criminal Tribunal for the former Yugoslavia
IMF	International Monetary Fund
IPA	Instrument for Pre-Accession Assistance
IR	International Relations
ISPA	Instrument for Structural Policies for Pre-Accession
JNA	Yugoslav People’s Army (Jugoslovenska Narodna Armija)
KNS	Coalition of People’s Agreement (Koalicija Narodnog Sporazuma)
LGBTs	Lesbians, Gays, Bisexuals and Transsexuals
LPR	League of Polish Families (Liga Polskich Rodzin)
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
OBNOVA	European Community Initiative for the Rehabilitation and Reconstruction of Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
PHARE	Poland and Hungary: Assistance for Restructuring their Economies
PiS	Law and Justice Party (Prawo i Sprawiedliwość)
PNCC	Polish National Catholic Church
PO	Civic Platform (Platforma Obywatelska)
PSL	Polish Peasant Party (Polskie Stronnictwo Ludowe)

PZPR	Polish United Workers' Party (Polska Zjednoczona Partia Robotnicza)
ROP	Movement for Rebuilding Poland (Ruch Odbudowy Polski)
SAA	Stabilization and Association Agreement
SAP	Stabilization and Association Process
SAPARD	Special Accession Program for Agriculture & Rural Development
SDP	Party of Democratic Changes (Stranka Demokratskih Promjena)
SEE	South-Eastern Europe
SFRY	Socialist Federal Republic of Yugoslavia
SKH	League of Communists in Croatia (Savez Komunisti Hrvatske)
SKH-SDP	League of Communists in Croatia-Party of Democratic Changes (Savez Komunisti Hrvatske-Stranka Demokratskih Promjena)
SKL	Conservative People's Party (Stronnictwo Konserwatywno-Ludowe)
SLD	Democratic Left Alliance (Sojusz Lewicy Demokratycznej)
SP	Stability Pact
SRP	Self Defense of the Republic of Poland (Samoobrona Rzeczpospolitej Polskiej)
TEC	Treaty establishing the European Community
TEEC	Treaty establishing the European Economic Community
TEU	Treaty on European Union
UD	Democratic Union (Unia Demokratyczna)
UN	United Nations
UNPROFOR	United Nations Protection Force
UP	Union of Labor (Unia Pracy)
UW	Union of Freedom (Unia Wolności)
WTO	World Trade Organization

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1 Introduction

1. 1 Objective and Background

This work sets out to achieve two goals. It seeks to assess the strength of the European Union's (EU)¹ democratic conditionality in relation to anti-discrimination protection in the post-communist countries Poland and Croatia, and thus contribute to the research field of Europeanization and the question of EU influence on this process. At the same time, it will explore the Catholic Church's role in this process as a potential *veto player*,² and therefore also contribute to the increasingly important field of research on the ways in which religion is influencing politics, a factor traditionally ignored in International Relations (IR).³

The academic significance for such an analysis lies in the fact that the level of EU influence or Europeanization on the domestic reform processes in the former communist states of Central and Eastern Europe (CEE) and South-Eastern Europe (SEE) is highly disputed among scholars studying Europeanization processes.⁴ The main contention is between two approaches to EU-influenced Europeanization. The first approach assumes a *top-down* approach toward Europeanization and sees EU pressure or conditionality as a direct source of the political and economic reform processes that took place at the domestic level in the former communist states of the CEE and SEE. The second approach assumes a *bottom-up* approach toward

¹ For the sake of simplicity this work refers to the EU only, even though the European Community (EC) in some instances is more historically correct (the EC became the EU after the 1993 Maastricht Treaty). All subsequent references to the EC are therefore to the European Council (not to be confused with the Council of Europe [CoE]).

² A *veto player* is defined as "(...) actors whose agreement is necessary for change in the status quo", see George Tsebelis, "Part I: Veto Players Theory", *Veto Players: How Political Institutions Work* (Princeton, N.J.: Princeton University Press, 2002), p. 17. Veto players can thus be actors whose powers can influence the political status quo in a state, for example oppositional parties blocking certain issues in Parliament, or civil interest groups lobbying the political parties to get their interests heard, see Antoaneta L. Dimitrova, "Europeanization and Civil Service Reform in Central and Eastern Europe" in Frank Schimmelfennig and Ulrich Sedelmeier (eds.) *The Europeanization of Central and Eastern Europe* (Ithaca, N.Y.: Cornell University Press, 2005).

³ Jonathan Fox and Samuel Sandler, *Bringing Religion into International Relations* (Houndmills, Basingstoke and New York: Palgrave Macmillan, 2004).

⁴ Even though Europeanization is not a new field of research, there exists little consensus on any coherent definition of the term. There is thus a broad debate in this research field. This is, however, a much too complex debate to be discussed any further here. This work will therefore analyze one strand of this debate, namely EU-influenced Europeanization. For further information on the Europeanization debate, see Kevin Featherstone and Claudio M. Radaelli, *The Politics of Europeanization* (Oxford: Oxford University Press, 2003); Klaus H. Goetz and Simon Hix, *Europeanised Politics? European Integration and National Political Systems* (London: Frank Cass, 2001); Johan P. Olsen, "The Many Faces of Europeanization", ARENA Working Paper WP 01/02 (Oslo: ARENA, 2002); and Thomas Risse, Maria Green Cowles, and James Caporaso, "Europeanization and Domestic Change: Introduction" in Maria Green Cowles, James Caporaso, and Thomas Risse (eds.) *Transforming Europe: Europeanization and Domestic Change* (Ithaca, N.Y.: Cornell University Press, 2001).

Europeanization, and gives the EU little direct influence on these post-communist domestic reform processes. It merely sees EU standards as ideals a country can choose to implement at will during a self-initiated domestic reform process.⁵

The empirical background for this analysis is found in the political and economic reform processes that have taken place in post-communist Poland and Croatia since the late 1980's. Poland became a member of the EU in 2004, while Croatia hopes to achieve EU membership by the end of 2012. However, the EU demands certain concessions when it comes to a state's respect for liberal democratic principles, human rights and market economy in exchange for aid, support, and ultimately an EU membership. Both of these countries have therefore been subject to the democratic conditionality of the EU.⁶ Consequently, they both undertook to adopt a uniform set of legal standards on a variety of policy areas corresponding to EU law, and to show that they conform to the liberal democratic norms of the EU, one of which is anti-discrimination. These two countries have, however, followed two radically different trajectories on their way "back to Europe". Poland was one of the "EU frontrunners" managing to reform its state institutions in the early 1990's, adapting to the new political and economic reality, and was rewarded with EU membership in the first eastward enlargement in May 2004.⁷ Croatia, however, experienced a destructive post-Yugoslav conflict which undermined the democratization process initiated in the late 1980's, and led to a decade of nationalistic and isolationist policies. Notwithstanding, it has since 2000 refocused its efforts, initiated democratic reform, introduced a more open and pro-EU foreign policy, and managed to traverse several difficult national problems preventing it from moving forward. Croatia was therefore granted EU candidate status in April 2004.⁸

⁵ Frank Schimmelfennig and Ulrich Sedelmeier, "Introduction: Conceptualizing the Europeanization of Central and Eastern Europe" in Schimmelfennig and Sedelmeier (eds.) *The Europeanization of Central and Eastern Europe* [note 2].

⁶ I am here using Schimmelfennig and Sedelmeier's dichotomy of EU conditionality, which distinguishes between democratic conditionality and *acquis* conditionality, see Frank Schimmelfennig and Ulrich Sedelmeier "Conclusion: The Impact of the EU on the Accession Countries" in Schimmelfennig and Sedelmeier (eds.) *The Europeanization of Central and Eastern Europe* [note 2], pp. 210-221. For a more thorough definition of this typology see chapter 2. 2.

⁷ Graham Avery, "The Enlargement Negotiations" in Fraser Cameron (ed.) *The Future of Europe Integration and Enlargement* (New York: Routledge, 2004); and Frances Millard, "Polish Domestic Politics and Accession to the European Union" in Karen Henderson (ed.) *Back to Europe: Central and Eastern Europe and the European Union* (London: UCL Press, 1999).

⁸ Sharon Fischer, *Political Change in Post-Communist Slovakia and Croatia: From Nationalist to Europeanist* (Houndmills, Basingstoke and New York: Palgrave Macmillan, 2006); Sabrina P. Ramet, *Balkan Babel: The*

Paradoxically, while Croatia still has had some serious obstacles to overcome before the EU liberal democratic ideals could be fully respected in practice,⁹ it is now generally doing quite well in its integration project. It has been working hard to meet all EU demands and has made great progress in implementing EU standardized legislation in policy areas such as anti-discrimination, among other things by adopting a series of amendments to its constitution on 16 June 2010, which included a provision guaranteeing the Serbian minority three seats in the *Sabor*.¹⁰ Poland, at the same time, has temporarily regressed in complying with the EU anti-discrimination norms, especially after EU membership was granted. It conducted a national and foreign policy during part of the first decade of the twenty-first century which could be characterized as chauvinistic, homophobic and xenophobic, and thus distanced itself both from Europe and from the EU liberal democratic ideals.¹¹

An interesting aspect in this context is that both Poland and Croatia are predominantly Catholic, with national Catholic Churches that have strengthened their positions significantly since the fall of communism. Furthermore, the Catholic Church in both countries has adopted a critical stance toward a key EU requirement (essential for any liberal democracy), namely tolerance. The Catholic Church remains committed to traditional values such as religious piety, sexual abstention before marriage, pro-life and anti-abortion positions, and heterosexual marriage.¹² The EU, which is a secular institutional body, on the other hand, has, for the past thirty years with an increasing vigor argued for more liberal policies on abortion and sexuality, women's rights and same-sex marriage, urging its members, and candidate members to recognize the discrimination and intolerance which occur in most

Disintegration of Yugoslavia from the Death of Tito to the Fall of Milošević, 4th ed. (Boulder, Colo.: Westview Press, 2002); and Marius Søberg, "Croatia since 1989" in Sabrina P. Ramet and Davorka Matić (eds.) *Democratic Transition in Croatia: Value Transformation, Education & Media* (College Station: Texas A&M University Press, 2007).

⁹ Gjeraqina Tuhina, "Croatia Makes Progress in EU, Others Falter". *BalkanInsight.com* (5 November 2008), at <http://www.balkaninsight.com/en/main/news/14579/> (retrieved 5 November 2008).

¹⁰ *Die Presse* (17 June 2010), at http://diepresse.com/home/politik/eu/574369/index.do?from=suche_intern_portal (retrieved 12 July 2010).

¹¹ Pawel Filipek and Maria Pamula, "Executive Summary Poland", *Employment and Social Affairs, Action Against Discrimination, Civil Society*, The European Commission, 2005; and Peter Vermeersch, "Ethnic Minority Protection and Anti-Discrimination in Central Europe Before and After EU Accession: the Case of Poland", *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 1/2007.

¹² Mirella W. Eberts, "The Blessed Union? The Roman Catholic Church and Poland's Accession to the EU". Paper: Fifth Scholarly Panel: European Civil Society and Cooperation, 1st Global Conference, Redefining Europe: Federalism & the Union of European Democracies, Friday 26th March – Tuesday 30th March 2004, Prague, Czech Republic, 2004; and Sabrina P. Ramet, "Thy Will Be Done: the Catholic Church and Politics in Poland Since 1989" in Timothy A. Byrnes and Peter J. Katzenstein (eds.) *Religion in an Expanding Europe* (Cambridge: Cambridge University Press, 2006).

European countries, and to implement sufficient anti-discrimination legislation to protect these groups of people. The EU has therefore also criticized Poland and Croatia for discrimination.¹³ The subject of anti-discrimination protection in the EU thus often touches upon sensitive moral issues which are at the heart of the Catholic social teachings, and which very often are non-negotiable for the Catholic Church, but which are also vital for liberal democracy as promoted by the EU.

1. 2 Research Question

The reenergization of the Catholic Church in certain post-communist countries has led some scholars to propose a *multiple modernization* approach, giving both religious revival and secular modernization represented by political and economic reform a role in the modernization process¹⁴ of which the Europeanization process is a part. Furthermore, an assumption will be made in this work that EU democratic conditionality will lead to a Europeanization process of anti-discrimination legislation at the domestic level. However, because anti-discrimination is a contested policy area in both Poland and Croatia, and since the Catholic Church is vocal on these issues, to identify to what extent the Catholic Church as a potential veto player is influencing this Europeanization process is interesting. Based on this reasoning, the main research question for this work is: *Does the Catholic Church influence the effectiveness of EU democratic conditionality in post-communist Poland and Croatia?*

1. 3 Theory and Method

Three theoretical models accounting for the two aforementioned approaches of Europeanization will therefore be tested for the purpose of gaining a better understanding of this process. Two of these theoretical models fit into the *top-down* approach, while the third fits into the *bottom-up* approach. The first model, the *external incentive model*, is a rational choice approach which assumes that domestic actors respond in a cost-benefit calculating manner to EU conditionality, weighing costs against benefits for EU rule adoption. The second model, the *social learning model*, is a social constructivist approach and assumes that domestic actors respond to EU conditionality on basis of the EU rules' correspondence with national ideals

¹³ Knut Erik Solem, "Croatia, Regional Cooperation, and the EU" in Ramet and Matic (eds.) *Democratic Transition in Croatia* [note 8], pp. 300-325; and Gabriel N. Toggenburg, "A Remaining Share or a New Part?, The Union's Role vis-à-vis Minorities After the Enlargement Decade", EUI Working Papers, LAW No. 2006/15, European University Institute, Department of Law, 2006.

¹⁴ Peter J. Katzenstein, "Multiple Modernities as Limits to Secular Europeanization?" in Byrnes and Katzenstein (ed.) *Religion in an Expanding Europe* [note 12], pp. 1-33.

and identity. The third model, the *lesson-drawing model*, accounts for both the rational choice and the social constructivist approaches, but is essentially different from the two aforementioned theoretical models, as domestic reform is initiated from the post-communist country itself and is not contingent on EU pressure or conditionality.¹⁵

To reveal the motives behind the domestic rule adoption and reform, or the lack of such change, it is necessary to identify significant events which influence this process on a time-line from before the potential EU pressure is supposed to take place (t_0) until rule implementation (t_1) is expected. In order to establish the causal path of the factors leading up to the implementation of Europeanized rules (or lack thereof), a method of process tracing will be utilized,¹⁶ and a within-case analysis of the anti-discrimination protection implementation in post-communist Poland and Croatia will be conducted. These countries will then be compared against each other in an effort to establish if EU democratic conditionality and/or domestic idiosyncrasies have had any different or similar effects in the two countries.

1. 4 Main Findings and Structure of this Work

The findings in this work suggest that the governments in post-communist Poland and Croatia have been forced to conduct cost-benefit calculations between the potential rewards EU membership can provide and the domestic costs of adopting EU standardized anti-discrimination legislation. In both countries, the governments have had to compromise their EU-strategies with the domestic veto players when their governmental powers have been weak. Given a high level of traditionalism and a rather weak civil society in both countries, there has not been any strong popular demand for more anti-discrimination protection. Consequently, the well organized moral authority, the Catholic Church, has been the only really powerful veto player which has managed to voice its interests in the area of anti-discrimination in these countries. The Church has allies in conservative political circles in Poland, which are not necessarily directly dependent on the Catholic Church, but rather supportive of its traditionalist stand, and thus allow domestic policies to be influenced by conservative Catholic values. In Croatia, the Church's former ally, the governing Croatian Democratic Union party (HDZ), has distanced itself from ecclesiastical interests since

¹⁵ Schimmelfennig and Sedelmeier, "Introduction", [note 5].

¹⁶ Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (London: MIT Press, 2005), p. 28.

2003, and has pursued a pro-EU foreign policy often at odds with the Catholic Church's interests. The Croatian government has been able to take this line as there has been an intra-party consensus on a pro-EU stand in Croatia for the past few years, and the Church therefore has few political allies in influential positions. The Catholic Church's political influence and veto power in both countries is therefore found to be limited and only directly influential in the Europeanization process when it has conservative political allies in government or in a strong opposition. These findings therefore lend the hypothesized outcome of the external incentive model the most support among the theoretical models tested. Thus, suggesting a rational domestic conduct toward the Europeanization process of anti-discrimination protection in post-communist Poland and Croatia.

Chapter 2 accounts for this work's theoretical approach and after this introduction present the concept of EU conditionality, and three theoretical models explaining its influence (or lack thereof). Then, in chapter 3, the methodological approach is presented, and the process tracing method introduced, a methodological approach essential for analyzing processes such as the Europeanization process. Chapter 4 establishes which anti-discrimination standards are conditions for EU support and eventual membership, and where the legal basis for these norms can be found. Chapter 5 provides a short review of how and why the Catholic Church might influence the political processes in post-communist Poland and Croatia. These two chapters function as an introduction to the more thorough treatment and analysis of the empirical background of the Europeanization process of anti-discrimination norms in post-communist Poland and Croatia.

To best keep the analytical levels distinct, the EU level and the domestic level are treated in two separate sub-chapters in each of the two succeeding chapters 6 (on Poland) and 7 (on Croatia). Then, in the last section of each chapter the interaction between these two levels is analyzed. In other words, the country chapters, 6 and 7, consists of three sections each, EU-level, domestic level and country analysis. This distinction is important to make to be able to scrutinize the research question sufficiently, namely to find out at which level the influential factors in the Europeanization process are found, and what these factors are. Therefore, the EU strategies in post-communist Poland and Croatia are first described in sub-chapter 6.1 and 7.1. The Catholic Church's role in these two countries is then established, and the national responses to the European integration project the past

two decades accounted for in sub-chapter 6.2 and 7.2. These two levels and their interaction are then analyzed in the sub-chapters 6.3 and 7.3 by evaluating the empirical findings against the three theoretical models. The factors influencing the Europeanization process of anti-discrimination protection in post-communist Poland and Croatia will by this be identified. The findings in each country are also compared against each other. Last, chapter 8 provides the conclusion and thoroughly sums up the findings of this work.

2 Theoretical Approach

This chapter presents some of the considerations in the academic Europeanization debate which are relevant for the theoretical approach in this work. On basis of these considerations the three theoretical models are presented.

2.1 The Origin of EU Conditionality

The literature in the field of EU integration does not agree on a common definition of conditionality, but as Hughes, Sasse and Gordon¹⁷ show, three main characteristics crystallize when reviewing the literature. First, conditionality is traditionally not seen as a goal in itself, but rather as a mechanism or instrument applied for achieving other objectives. Second, there has been an evolution of the inner mechanisms of conditionality where the relationship between aid and conditions has been more tightly knit, and where the nature of conditionality has been made more complex by, for example, applying mechanisms of sanctions such as negative and positive conditionality to secure compliance. Last, even though the degree of altruism or interest-based motivations behind conditionality can be discussed in each given case, donor interests have been seen as the most important motivation for applying conditionality and the interests of the recipient as secondary. On this basis, it can be established that conditionality is used as an instrument in an asymmetrical power relationship where a *donor* provides a *recipient* with aid and assistance in exchange for the *recipient's* compliance with a certain set of conditions which fulfillment is in the self-interest of the *donor*.

EU conditionality grew out of an international conditionality trend that evolved during the 1980's. This was an extension of the first generation economic conditionality that solely promoted neo-liberal macroeconomic reorganization (promoted by the International Monetary Fund [IMF]/the World Bank [WTO] from the late 1960s), and which combined this market economic factor with a political element for the cause of promoting democracy. The new characteristic of this second generation conditionality is that democracy and development are seen as correlated. The end of the Cold War and of Soviet hegemony redefined the national security and economic interests of the members of the EU (but also the USA). The international conditions now provided an opportunity and a necessity, in the eyes of the Western

¹⁷ James Hughes, Gwendolyn Sasse and Claire Gordon, *Europeanization and Regionalization in the EU's enlargement to Central and Eastern Europe: The Myth of Conditionality* (Houndmills, Basingstoke : Palgrave, 2004), pp. 13-14.

democracies, to promote and advance a political and economic reform process in the potentially unstable post-communist countries to secure and advance these changed interests. Modernization of the political state structures in the direction of liberal democracy would also provide increased access for market economic forces as no anti-capitalist authoritarian power now existed to corrupt such engagements. Support for democracy as a way to promote market economy was thus a logical step seen in a liberal perspective.¹⁸ Corresponding to the conditionality trend of the day, the EU therefore followed a strategy which made financial support and institutional ties with these non-member states conditional on compliance with certain Western liberal democratic, market economic, and human rights standards.¹⁹

2. 2 Democratic and Acquis Conditionality

Schimmelfennig and Sedelmeier²⁰ furthermore distinguish between two different, but not mutually exclusive types of EU conditionality, namely *democratic conditionality* and *acquis conditionality*. The former concerns the general EU rules and values of liberal democracy and human rights, and is thus of a political character. It has as such been applied and emphasized by the EU immediately from the start when normalization of relations with post-communist countries in CEE and SEE came on the agenda in the late 1980's-early 1990's by providing financial assistance and institutional ties, and is more formally enshrined in the European Council declaration of 1993 the *Copenhagen Criteria*.²¹ This declaration drew on the normative foundation previously established in the Conference for Security and Cooperation in Europe's (CSCE) *1990 Paris Charter* and the *Europe Agreements* established between the EU and the Central and East European states in 1990-91,²² and elaborated the criteria of "guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union"²³ as a prerequisite for being considered eligible for EU membership. *Democratic conditionality* helps prepare the ground for the further accession process

¹⁸ *Ibid.*, pp. 15-16.

¹⁹ Frank Schimmelfennig, Stefan Engert and Heiko Knobel, "The Impact of EU Political Conditionality" in Schimmelfennig and Sedelmeier (eds.), *The Europeanization of Central and Eastern Europe* [note 2], p. 30.

²⁰ Schimmelfennig and Sedelmeier, "Conclusion", [note 6], pp. 210-221.

²¹ *Ibid.*; and Paul J. Kubicek, "International Norms, the European Union, and Democratization: Tentative Theory and Evidence" in Paul J. Kubicek (ed.) *The European Union and Democratization* (London and New York: Routledge, 2003), p. 7.

²² Hughes, Sasse and Gordon, *Europeanization and Regionalization* [note 17], p. 19.

²³ European Council, "Conclusions of the Presidency", *Bulletin of the European Communities*, no. 6/1993, p. 13.

and implementation of the more specific and required EU rules, and in relation to this work, it is also supposed to promote tolerance as a liberal democratic principle, and therefore also anti-discrimination. It is, however, a type of conditionality which is influenced and accompanied by other organizations' efforts, such as the Organization for Security and Co-operation in Europe (OSCE, the CSCE until 1994) and the Council of Europe (CoE). These organizations also help further the democratization process in the region, and EU democratic conditionality is as such only one among several mechanisms to help this transformation come about.²⁴

Acquis conditionality is the next logical step in a state's accession process to the EU, as an aspiring EU member state is asked to prove its administrative capacity to apply the whole body of EU law and practice as stated in the *acquis communautaire*.²⁵ This body of law establishes the more technical aspect in the Europeanization process where specific EU norms and rules adhering to the variety of policy areas are required to be implemented, and are thus supposed to help continue the democratic consolidation process, furbish up the aspiring member states for market economy, and basically prepare them for an eventual full membership.²⁶ At this time, *democratic conditionality* is pushed ever more to the background as the fundamental principles of EU rules and values of liberal democracy, human rights and market economy are supposed to be accepted and obeyed by the post-communist states in question. Still, the Commission keeps monitoring the compliance with these democratic and human rights aspects through the whole EU accession period.²⁷

These two types of EU conditionality define the two historical stages in the Europeanization process in which each aspiring EU member state has found itself at different times and on different issues. However, this temporal classification is not always distinguishable and certain countries may start negotiating the *acquis* requirements while still not having straightened out all democratic aspects of the EU requirements. Again, in context of this work's research question, the anti-discrimination legislation demanded implemented by any aspiring EU member can also be found in the chapters of the *acquis*. Nonetheless, this distinction is useful as

²⁴ Schimmelfennig and Sedelmeier, "Conclusion", [note 6], pp. 211-212.

²⁵ Heather Grabbe, "How does Europeanization Affect CEE governance? Conditionality, diffusion and diversity", *Journal of European Public Policy*, Vol. 8, no. 6 (December 2001), p. 1015.

²⁶ Schimmelfennig and Sedelmeier, "Introduction", [note 5], pp. 1-2; and Avery, "The Enlargement Negotiations" [note 7], pp. 37-38.

²⁷ *Ibid.*, pp. 210-212.

it can help identifying and separating the relevant factors that influence the Europeanization process under certain conditions in the different countries and at different times during the accession period.²⁸

2. 3 The Top-Down Approach

The basic rationale behind the EU conditionality is therefore that it should function as a regulative mechanism limiting the non-member states' latitude of action in an asymmetrical power relationship with the EU, and help define the non-member state's required strategy in the political and economic reform process in post-communist Europe.

Following this logic, a non-member state (dependent variable) that is sufficiently tempted by the financial and/or institutional rewards provided by the EU (independent variable) will comply with the EU requirements and thus also go through an Europeanization process of institutional reform and normative change. It is also assumed that because of the extensive transformation that is taking place in these post-communist countries, they are viewed as rather politically and institutionally fragile, and therefore expected to be malleable to external political forces such as the EU urging convergence with the EU norms.²⁹ As visualized in figure 1 the EU conditionality therefore should causally lead to Europeanization in a *top-down* fashion.

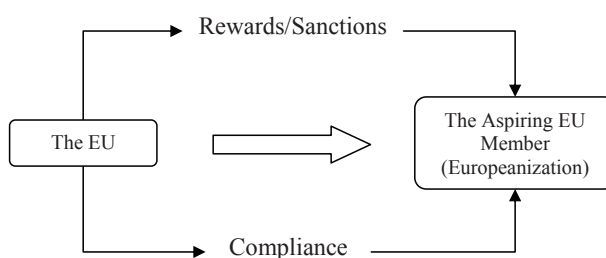


Figure 1: The Conventional Model of EU Conditionality.

(Based on Hughes, Sasse and Gordon, *Europeanization and Regionalization* [note 17], p. 3).

²⁸ Schimmelfennig and Sedelmeier, "Conclusion", [note 6], p. 212.

²⁹ Attila Ágh, "The Reform of State Administration in Hungary: The Capacity of Core Ministries to Manage the Europeanization". Paper Presented at Workshop 19, Europeanisation and National Political Institutions, ECPR Turin session, 22-27 March 2002, p. 3; and Schimmelfennig and Sedelmeier, "Introduction", [note 5].

Implicit in this approach is a notion that there exists a *misfit* between the domestic policies and national institutions on the one side, and EU norms on the other. The EU norms thus create an adaptation pressure which leads to domestic change as a way to align national norms with the EU (also called a “goodness of fit” approach).³⁰

Furthermore, the EU follows a conditionality strategy of reinforcement by *reward* rather than reinforcement by *punishment*. This is a reactive strategy of reinforcement which does not punish non-compliance by actively intervening “(...) coercively by inflicting extra costs (“reinforcement by punishment”) or supportively by offering extra benefits (“reinforcement by support”).³¹ Actors that fail to comply with the EU requirements are simply not offered assistance, association or ultimately membership, and are just left behind in the competition for the EU support available.³²

The EU’s tools of sanctions are thus rather limited and the effectiveness of the EU conditionality *itself* is therefore the essential factor deciding the actual influence which the EU manages to exercise on non-member states. Schimmelfennig and Sedelmeier³³ have therefore suggested three theoretical models for analyzing the potential influence of EU conditionality on policy transfers in post-communist Europe, two of which account for this *top-down* approach (the third model will be presented in chapter 2. 4. 1).

2. 3. 1 The External Incentive Model

The first model is the *external incentive model* which takes an actor-centered rational choice approach, where the *logic of consequence* guides the domestic actors’ conduct. This model is based on the assumption that without EU conditionality there is a certain domestic political *status-quo* where the power structure is maintained by the actors through a process of bargaining with each other and with other international actors. It is this status-quo that the EU conditionality upsets by offering these actors new incentives and goals. The actors thus conduct cost-benefit calculations of the potential benefits and rewards versus the costs of EU rule

³⁰ Risse, Cowles, and Caporaso, “Europeanization and Domestic Change” [note 4].

³¹ Schimmelfennig and Sedelmeier, “Introduction” [note 5], p. 11.

³² *Ibid.*

³³ *Ibid.*, pp. 8-10.

compliance. It is therefore the basic logic of the EU conditionality that lies at the heart of this external incentive model.³⁴

There are two ways in which a target government can respond to EU conditionality – either by *intergovernmental bargaining* or by *differential empowerment of domestic actors*. The former approach envisages the government as a calculating and rational actor which conducts a cost-benefit analysis of the domestic costs for rule adoption or the opposite, non-compliance versus the potential reward that is expected after rule adoption. By contrast, the latter approach emphasizes the empowerment of domestic actors which have independent incentives for complying with EU regulations; it may either originate from the urge to resolve certain policy problems the actor may have, or just be a way for domestic actors to gain more political influence and power. The actors' bargaining power, however, is decided by the asymmetrical distribution of information, where the actor with the most or best information can manipulate the result of the bargaining process. The potential benefits the actor can reap versus other alternative sources of benefits are also important in this relationship as alternative sources of benefits that outweigh the benefits of EU rule implementation can undermine the influence of EU conditionality.³⁵

This picture needs to be even more nuanced as there is a set of additional premises that has to be taken into account in order to identify the variety of responses in such a cost-benefit calculation in respect to EU conditionality. The conditions established by the EU have to be as *determinate* as possible in the capacity of being stated clearly which requirements are needed for fulfillment. Similarly the determinacy of conditionality is influenced by the formality or legality of the rule. The *credibility* of EU conditionality is influenced by the ability of the EU to withhold rewards when requirements are not met, but without being too costly for the EU itself. The target governments thus need to know that their membership is inessential to the EU and thus can be sacrificed at will if they do not comply with EU conditions. However, this credibility can again be undermined if the conditionality requirements are not given priority by the EU, or if concessions and rewards are granted in spite of non-compliance for certain non-members and not for others. Internal conflict among the EU members on strategies toward non-members, leading

³⁴ *Ibid.*, pp. 8-17.

³⁵ *Ibid.*

to indecision or confused signals on the requirements can also have the same effect, as the target governments may be able to manipulate such conflict to their own advantage. In other words, conditionality needs to be consistent with the already stated requirements or conditions for reward.³⁶

The size and speed of the potential rewards also affect the effectiveness of the conditionality. The target government may need consequent incentives for complying if the reward is temporarily far away, such as trade and cooperation agreements, association agreements, pre-accession support and accession negotiations, and thus binding the target country more firmly into the EU institutional framework while the rewards have ever more “worth” for the target country. In relation to this, it is important that no alternative sources of benefits outweigh the EU rewards promised. Such a cross-conditionality has to be as small as possible, but preferably totally absent.³⁷

In other words, and in context of this work’s research question, the anti-discrimination norms promoted by the EU, as part of its conditionality strategy, have to be stated clearly. Their legal basis have to be found in the EU legal framework, be it treaties, secondary legislation (e.g. Council Directives) or ECJ case-law, which will clearly indicate which provisions that have to be implemented. The importance of the implementation of this legislation also has to be communicated firmly by the EU, and the candidate country needs to be made aware that no rewards will be granted if the required anti-discrimination measures are not implemented sufficiently and profoundly respected. There has to be no discrimination at the level of rule implementation among the candidates. It is thus also necessary that the anti-discrimination legislation in question is respected by other EU members as well, proving the norms’ legitimacy and credibility within the EU.

Furthermore, as the external incentive model assumes that rule adoption is costly for the target government in question (if not, conditionality would not be necessary) and thus is constantly evaluated against the potential rewards provided, the model states that if the EU conditionality is both *determinate* and *credible*, it is the size of the domestic adoption costs which will determine compliance or rejection of a certain EU rule. Hence, rule implementation is not contingent only on the government’s cost-benefit analysis, but also on other potential domestic actors which

³⁶ *Ibid.*

³⁷ *Ibid.*

might have the power to influence the implementation process in addition to the target government,³⁸ be it strong oppositional parties or influential civil interests groups.³⁹ Such *veto players* will thus also weigh the pro and cons for rule implementation and will support the government in its rule implementation process if this is seen as beneficial, or try to retard such rule implementation if the net benefits are believed to be higher with non-compliance. Compliance is expected to be conducted by the target governments in ways which minimize their costs. While the target governments ideally should conduct a *behavioral adoption* process where a profound domestic change is taking place and where the target government bears the full costs of compliance, these actors can also for example only rhetorically adopt EU rules by leading a *discursive adoption* process. The target government is thus only superficially complying, but with little formal rule adoption. *Formal rule adoption* on the other hand, conforming national laws and institutions to EU ideals, may also be a form of superficial domestic change by not actually leading to a significant alternation in domestic politics and decisions even though a rather costly institutional change has been conducted.⁴⁰ The EU thus has needed to closely assess and check the progress of the target country on several stages in the process toward rule implementation to be able to reward the non-members accordingly, as for example through the Commission's Progress Reports.

Taking this model into account, the Catholic Church, as a veto player and norm provider, will not influence the Europeanization process if a cost-benefit calculation made by the government does not give the Church any decisive power and if the government believes ignoring the Church's interest does not jeopardize the government's power position. However, the Catholic Church will be able to influence the process if respecting its wishes is seen as crucial for the power position of the government. I therefore pose the following hypothesis (H1): *The government will adopt EU rules detrimental to the Catholic Church's interests if the government's cost-benefit calculations of adopting EU rules do not demand respecting these.*

2. 3. 2 The Social Learning Model

The second model, the *social learning model* is based on the core tenets of social constructivism and assumes that domestic actors are guided by *logic of*

³⁸ *Ibid.*

³⁹ Dimitrova, "Europeanization and Civil Service Reform", [note 2], pp. 77-78.

⁴⁰ Schimmelfennig and Sedelmeier, "Introduction", [note 5], pp. 16-17.

appropriateness. This means that the EU is seen as the formal organizational structure representing the fundamental and commonly shared norms and values of the European community as a whole. Hence, if the non-member government and society's core norms and values concur with the values and norms promoted by the EU, rule implementation is assumed to be most likely. A shared identity thus has to be present.⁴¹

Just as important is the existence of a domestic *resonance* for such rules. EU legislation goes through cognitive filters at the national level,⁴² and an EU standardized anti-discrimination right has to correspond with the commonly accepted notion of such a right if it is to be adopted. An EU rule is much more likely to be accepted by the non-member if there are no existing rules which can compromise the proposed rule. It is easiest to adopt new EU rules where they are compatible with the existing political culture, but the best chance an EU rule has for being accepted without much commotion is if a policy area has been struck by political crisis and the existing rules are not seen as legitimate any more, or if there simply is no existing rule in a certain policy area.⁴³

Still, as in the external incentive model a certain EU rule has to be comprehended as *legitimate* by the non-member. The EU rules have to be determinate and not seen as being used inconsistently or defined ambiguously. The EU's motives and tenets have to be clear for the non-member, and they have to be generally accepted within the EU and their provisions found in EU law. This point is especially important when remembering that the non-members have not participated in the EU rule-making. The way these rules are promoted will decide how they are perceived by the target government, and, as the EU demands that these rules are implemented and respected by the non-member without much discussion, it may in fact create a legitimacy problem for the EU if the target government is not convinced by the rationale of the EU rules in question and does not accept these as its own. The government might simply perceive this EU rule promotion efforts as an example of foreign imposition. Furthermore, the legitimacy of the EU rules is dependent on not being challenged by other international actors' rules, such as the United Nations

⁴¹ *Ibid.*, p. 18.

⁴² Virginie Guiraudon, "Anti-Discrimination Policy" in Paolo Graziano and Maarten P. Vink (eds.) *Europeanization: New Research Agendas* (Houndmills, Basingstoke and New York: Palgrave Macmillan, 2007), p. 298.

⁴³ Schimmelfennig and Sedelmeier, "Introduction", [note 5], p. 20.

(UN), CoE, and the OSCE, offering alternatives to the EU rules. If similar rules are offered by such an organization, it is therefore especially important that the EU rules are in line with these as the EU rules might then receive a boost of confidence rather than contestation. The interaction between the EU and the non-member state will also have an impact on these considerations as high and active interaction might undermine other norm proving actors' influence on the non-member state in question.⁴⁴

The existence of veto players is also important here, as not all strands of the society or the government may see certain EU rules as appropriate. Certain relevant domestic actors may oppose rule implementation and, if powerful, may be able to undermine non-member state compliance.⁴⁵ The EU is, for example, promoting certain liberal-secular values which in societies that are predominantly Catholic or otherwise religious might be hard to accept. Anti-discrimination protection is a good example in this respect, as legal protection in areas such as abortion and homosexuality is highly contested in many societies, especially those where the Catholic Church is strong. The Catholic Church as a norm provider might thus play a prominent role in opposing the Europeanization process in such societies. The second hypothesis (H2) therefore states: *Candidate states accept the liberal-secular values of the EU to the extent to which their governments judge they will not encounter unacceptable domestic resistance.*

2. 4 The Bottom-Up Approach

Claudio Radaelli,⁴⁶ on the other hand, argues that the unidirectional *top-down* causality is too simple and misinterprets the real nature of the Europeanization process. The top-down model risks missing the actual strategies that the non-member states are implementing by not being able to distinguish mere *copying* strategies or, as Schimmelfennig and Sedelmeier⁴⁷ call it, a phenomenon of hollow rhetorical *discursive adoption*, from those strategies of profound change. Radaelli therefore suggests that we also should be aware of actual *learning* among the state

⁴⁴ *Ibid.*, pp. 18-19.

⁴⁵ *Ibid.*, p. 20.

⁴⁶ Claudio Radaelli, "Europeanisation: Solution or Problem?". *European Integration Online Papers (EIoP)*, Vol. 8, No. 16. (October 2004), at <http://eiop.or.at/eiop/texte/2004-016a.htm> (retrieved 10 August 2008).

⁴⁷ Schimmelfennig and Sedelmeier, "Introduction", [note 5], p. 17.

actors.⁴⁸ He has thus developed a more complex Europeanization model which portrays a more interactive relationship between the EU, the domestic level and also horizontally between relevant domestic actors. He wishes to account for the variety of national interest groups and political actors that are constantly negotiating with the EU across different policy areas, and thus blur the causal relationship between the dependent and independent variable as proposed by the *top-down* approach. This suggests a *bottom-up* approach emphasizing the influence of domestic actors, national culture and national politics. In other words, it gives national idiosyncrasies and identities a more influential role in the Europeanization process, and does not automatically assume that the national political systems across Europe are becoming more uniform as a consequence of Europeanization, as some scholars assume.⁴⁹

However, the European Union is still vital for Europeanized domestic change as EU norms and ideals are a prerequisite for such, but the Europeanization process is not just a *black-box* where an independent variable (EU pressure) simply creates change in the dependent variable (domestic change) in a *top-down* fashion. The question is not “why domestic change?”, but rather “why Europeanization?”, thus establishing the *process* as the dependent variable. The independent variable(s) must therefore be sought both on the domestic level and on the EU level, as both these levels might interact in the Europeanization process.⁵⁰ Radaelli’s complex understanding of Europeanization is visualized in figure 2.

⁴⁸ Sabine Saurugger, “Europeanization as a methodological challenge: The case of interest groups”, in *Journal of Comparative Policy Analysis: Research and Practice*, Vol. 7, No. 4. (December 2005), p. 295.

⁴⁹ Radaelli, “Europeanisation”, [note 46], p. 4; see also Saurugger, “Europeanization as a methodological”, [note 48], p. 295.

⁵⁰ Radaelli, “Europeanisation”, [note 46], pp. 4-5.

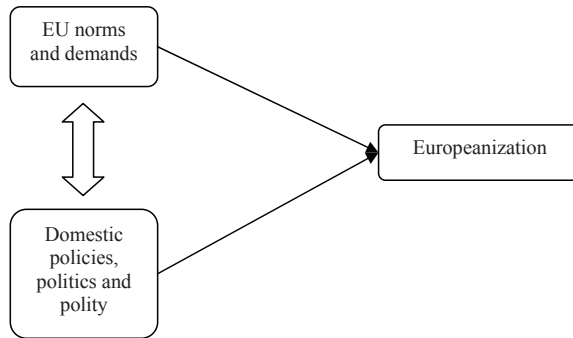


Figure 2: The Complex Model of EU Conditionality.

(Based on Radaelli, “Europeanisation” [note 46], p. 4; and Saurugger, “Europeanization as a methodological” [note 48], p. 301).

It is thus not the European integration process (how and why member states produce European integration, and whether the EU is more intergovernmental or supra-governmental, or something else) that is in focus, but rather the domestic effects of such a process. The Europeanization process is in his view not the *explicans* (the premise or the independent variable), but rather the *explicandum* (the problem that needs to be understood and explained rather than being the phenomenon explaining domestic change, i.e., the independent variable).⁵¹ Schimmelfennig and Sedelmeier’s⁵² third theoretical model for analyzing the potential influence of EU conditionality on policy transfers in post-communist Europe is therefore useful in this context as it accounts for a *bottom-up* approach to the Europeanization process.

2. 4. 1 The Lesson-Drawing Model

The *lesson-drawing model* utilizes both a rationalistic (“simple learning”) variant and a sociological (“complex learning”) variant to explain cases of rule adoption. This is a *bottom-up* approach where domestic *dissatisfaction* with the status quo in certain failed policy areas leads the non-member government to voluntarily engage in an implementation process of EU rules and norms so as to remedy these domestic difficulties. This approach is thus essentially different from the two aforementioned theoretical models, as domestic change is initiated from the target country itself and

⁵¹ *Ibid.*, pp. 4-5.

⁵² Schimmelfennig and Sedelmeier, “Introduction”, [note 5], pp. 20-25.

is not contingent on EU pressure. The lesson-drawing model, thus, does not assume that EU conditionality or its pursuance is decisive for domestic rule implementation strategy to be applied. Domestic *dissatisfaction* is the “first mover” and not EU pressure.⁵³

EU values and norms are more a framework or ideal that these non-members might consult and choose to apply as a strategy to implement suitable rules for domestic circumstances when there is *dissatisfaction* with the existing domestic rules. Such rule change can, on the one hand, stem from the domestic actors’ fears of domestic sanctions such as loss of support or public office, thus changing the means but not necessarily the goals as a way of trying to mitigate certain policy failures (a rationalistic simple learning). Or, on the other hand, a policy failure caused by the malfunctioning of the existing rules may discredit the existing and fundamental *ideas* of what measures are appropriate to apply for solving certain policy issues. Policy failure may thus lead to a normative paradigm shift and a modification of the underlying goal of the norms and values which inform a certain policy (sociological complex learning).⁵⁴

Furthermore, the success of EU rule implementation is dependent on the rules’ *transferability* over to the non-member state. EU rules which are contradictory to the domestic political system will have a harder time being implemented sufficiently, or implemented at all. Thus, there need to be institutions available that can see to it that the relevant EU rules are implemented as they should be. In this context, an EU rule also has to be politically acceptable for the relevant domestic actors, which means that domestic veto players such as the Catholic Church may undermine the government’s implementation process if its preferences are not in accord with those of the government. Still, there may be only certain rules among a wide set of EU rules that such veto players oppose; the government must therefore rationally calculate the adoption costs of changing the political status quo, in addition to evaluating the diverse rules it should implement. *Resonance* is also relevant here as the specific change and its effect has to be compatible with the domestic political discourse. A rule’s success will thus depend on its ability to resonate in the domestic political community consisting of collectively shared norms and values.⁵⁵

⁵³ *Ibid.*, pp. 20-21.

⁵⁴ *Ibid.*, pp. 21-22.

⁵⁵ *Ibid.*, pp. 23-24.

In other words, a government has to scan for other norm providers, such as the EU, to find alternative anti-discrimination legislation which can help protect against a certain type of discrimination, either because such a measure is demanded by a sentiment in the society which can threaten the government's power position, or because the government sees the domestic problem as a consequence of the norms' illegitimacy, as not being appropriate. The third hypothesis (H3) therefore states that *Rule adoption of EU standardized anti-discrimination law is initiated if pressing domestic problems demand that alternative rules be applied.*

3 Methodological Approach

This chapter presents the methodological approach which best can be utilized for analyzing the Europeanization process, namely process tracing, and will furthermore discuss some considerations in relation to this methodological approach.

3.1 Process Tracing

Informed by the considerations on the problematic causal path of the Europeanization process it will be of the utmost importance to seek an in-depth understanding of the relationship between the potential actors (both domestic and international), the nature of the domestic political structures in question, and the continuities and changes in these relationships.⁵⁶ I thus propose a *within-case analysis* utilizing the method of *process tracing* to be better able to identify the nature of the Europeanization process, the causal relationship between the independent and dependent variable(s), and to test the theoretical validity of the hypothesized outcomes.⁵⁷

Informed by the theoretical expectations proposed by the three theoretical models, mentioned above, and based on the empirical material provided later in this work, a thorough investigation of the historical data can lead to detailed tracing of the causal process of social phenomena, such as the Europeanization process. Hence, the researcher may be able to identify the path of causality between the independent variable(s) and dependent variable in addition to potential intervening variables. This method can, in other words, actually observe the factors influencing the Europeanization process, and does not simply rely on predictions made about the nature of such a process, as many other IR theories do. It is therefore often used both for theory testing and for theory development.⁵⁸ Arend Lijphart⁵⁹ has argued in this connection that, even though it is impossible to make scientifically sound generalizations on basis of only one case study, case studies can still indirectly contribute to general propositions and theory building. On basis of the aforementioned disagreement on the effects of EU conditionality in the research area

⁵⁶ Saurugger, "Europeanization as a methodological" [note 48], p. 300.

⁵⁷ George and Bennett, *Case Studies and Theory* [note 16], p. 179.

⁵⁸ Jeffery T. Checkel, "It's the Process Stupid! Process Tracing in the Study of European and International Politics", *Working Paper* No. 26. (Oslo: ARENA Centre for European Studies, University of Oslo, October 2005), p. 6; George and Bennett, *Case Studies and Theory* [note 16], pp. 207-208.

⁵⁹ Arend Lijphart, "Comparative Politics and the Comparative Method". *The American Political Science Review*, Vol. 65, No. 3. (September 1971), pp. 691-692.

of Europeanization, I seek to test the three aforementioned theoretical models, and therefore conduct a *theory-confirming* or *theory-infirmiting* case study, dependent on the outcome of my analysis. This work may thus either strengthen the external incentive model, which follows the logic of EU democratic conditionality, by finding supportive evidence, or weaken it if contrary evidence is found. Still, to make the analysis more robust I will conduct a two-country comparative case analysis, and compare the outcome of the Europeanization process of anti-discrimination protection in post-communist Poland and Croatia against the three theoretical models proposed above. I will, however, have to use moderation when it comes to drawing conclusions and summarizing the results, rather using “contingent generalizations” which is more appropriate to a historical approach and a comparative case study with only two countries. These two cases can therefore be seen as representing *sub-classes* or *building blocks* of an overall and more *general phenomenon* of the specific phenomenon they produce, namely Europeanization.⁶⁰

Furthermore, if the researchers have a set of competing theories trying to explain a casual process by making different predictions on the outcome, confirmation or rejection of the theorized paths of causality is still feasible with the process tracing method as long as the researcher has sufficient and relevant data at his/her disposal. Observation of alternative causal paths other than the hypothesized causal path can thus potentially be revealed if the process tracing method is conducted by thoroughly investigating a wide set of data and carefully analyzing its relevance for the process in question,⁶¹ even though the data material requirements for the process-tracing approach makes it a rather time consuming method, demanding enormous amounts of information. Thus, such research has to take into consideration the risk of causal spuriousness and over-determination in the face of lacking data or dealing with underspecified theories.⁶²

3. 2 Case Selection

I will, as noted, apply a comparative approach, examining two post-communist countries – Poland and Croatia – where each country is subject to a within-case analysis using process tracing, seeking to identify the causal path(s) leading to EU rule implementation (or lack thereof). These countries are moreover chosen on the

⁶⁰ George and Bennett, *Case Studies and Theory* [note 16], pp. 76-79.

⁶¹ *Ibid.*, pp. 28-29.

⁶² *Ibid.*, pp. 222-223.

basis of four criteria related to the research question: 1.) They have both been, or are subject to EU democratic conditionality, where Croatia now has EU candidate status and Poland is already an EU member; 2.) They are both post-communist countries (Poland since 1989, Croatia since 1990); 3.) They are both predominantly Roman Catholic of denomination (Poland: 89.8% of the population,⁶³ and Croatia: 87.8% of the population⁶⁴). Knowing that this institution has strong opinions on certain human rights issues that sometimes come into conflict with European norms, analyzing “Catholic” countries may help me understand the situation in these two countries in relation to anti-discrimination issues. This choice is also informed by the assumption that the Catholic Church as an moral authority may be able to conduct a certain level of influence on the domestic level in these two countries, possibly being an important veto player in the political processes; 4.) These two countries have followed two radically different trajectories toward the accession process; whereas Poland was an “EU frontrunner” granted EU membership in the first enlargement in 2004, Croatia has moved on a slower trajectory, partly as a result of the war fought on its territory during the years 1991—1995. In this context and in accordance with the literature on the democratic conditionality imposed by the EU, I assume that the EU has followed a different strategy of democratic conditionality in each of the two countries, as the different national circumstances have been taken into account (these strategies will be accounted for more thoroughly in chapter 4). I therefore seek to analyze how these two types of EU democratic conditionality have influenced the two countries respectively, and if the difference in the character of the democratic conditionality has had a different impact among the countries.

3. 3 Operationalization

As mentioned above, this work seeks to analyze if the democratic conditionality of the EU (*independent variable*) has any effect on the Europeanization process in the area of anti-discrimination protection in post-communist Poland and Croatia (*dependent variable*). While knowing that the Roman Catholic Church (*intervening variable*) potentially has an extensive national influence in both these countries by being a moral authority often at odds with EU anti-discrimination norms, I want to

⁶³ CIA The World Fact Book, 2009, at <https://www.cia.gov/library/publications/the-world-factbook/geos/pl.html> (retrieved 8 May 2009).

⁶⁴ CIA The World Fact Book, 2009, at <https://www.cia.gov/library/publications/the-world-factbook/geos/hr.html> (retrieved 8 May 2009).

analyze the Catholic Church's influence as a potential *veto player* on this rule implementation process. To be able to identify the nature of this Europeanization process and to test my hypotheses then, I need to analyze the rhetorical reasoning and the actual policy measures relevant actors have made before, during and after EU conditionality is supposed to be effective.

On the EU level, such indicators can be found in the characteristics of the actual policy instruments the EU institutions have used to aid and support the reform processes in post-communist Poland and Croatia. Official statements in EU documents such as the *Europe Agreements*, the European Commission's *Opinions*, the Commission's annual *Progress Reports*, and other official statements made by the variety of EU institutions or representatives can also give indications on the official EU policy-line taken. I will then be able to identify the rationale and consistency in the messages sent to, and instruments used in, Poland and Croatia in the area of anti-discrimination, and might therefore be able to decide the strength of EU democratic conditionality. However, I will also utilize research conducted by other scholars in the field to cross-check these official EU sources.

On the domestic level in Poland and Croatia, the intention and reform willingness will in the first instance be measured by the formal rule implementation: what rules are being implemented and do they coincide with EU norms? However, formal rule implementation is one thing, but the actual compliance with the rules is another concern. The relevant actors' rhetorical conduct during and after rule implementation, such as the government, individual politicians, the Catholic Church, and the population, therefore have to be looked into. The anti-discrimination practice conducted in these two countries therefore also has to be measured: do they support EU policies or not, and what are the potential objections and why? This empirical material can be derived from a variety of sources, such as official governmental documents, speeches, interviews, historical memoirs, expert surveys and press accounts. For more on the selection of data, see chapter 3.5.

3. 4 Research Period

The potential complex causal effects of the EU conditionality demands that I follow Radaelli's advise and decide on a temporally limited research period because "(...)" by using time and temporal causal sequences, a bottom-up approach checks if,

when, and how the EU provides a change in any of the main components of the system of interaction".⁶⁵

This makes sense when one is aware of the research made by Attila Ágh⁶⁶ of the post-communist reform process in Hungary. He separates the Europeanization process into two phases, namely a pre-Europeanization phase and an adaptive Europeanization phase. The first phase starting in the late 1980's consists of a general process of democratization where institution building dominates, in other words a period of democratic transition, but with a future goal of EU-membership. The democracy is in the latter period, from around 1997 and the issuing of the Commission's *Opinions*, supposed to be consolidated and more specific EU regulations introduced, thus initiating a period of Europeanization. These two phases can, however, overlap. The general democratization process may continue even though the Europeanization process has started, and certain specific EU rules may also have been introduced in the former pre-Europeanization phase. The important point here is that the first anticipatory Europeanization process in the non-member states is mainly driven by the desire for general democratization. Even though EU membership may be a future goal for the non-member states, EU conditionality *per se* is not the main driving force for domestic institutional change in this early phase of reform. This influence is only introduced later.

It is therefore important to see the political and economic transition, and reform processes in the post-communist region from 1989 until today as divided into two distinct phases. In the first phase (until 1997 and the presentation of the *acquis*) the EU influence was minimal in Poland, but it still supposedly increased with the establishment of more formal conditions from 1993 and onwards. However, the Croatian case is a rather different case having followed a different temporal trajectory toward the EU (ridden by civil war and nationalism during the 1990's) and was granted candidate status only in 2004 and thus did not start screening chapters of the *acquis* until 2005. Being aware of long time reform processes not necessarily influenced by the EU and the different national reform trajectories in Poland and Croatia is therefore of immense importance.

⁶⁵ Radaelli, "Europeanisation" [note 46], p. 4. I do not necessarily accept the "bottom-up" approach before I have analyzed this research problem, but I will be aware of such a possible causation and take it into account in addition to a potential "top-down" approach. In other words, both approaches will be tested.

⁶⁶ Ágh, "The Reform of State Administration", [note 29], pp. 4-6.

Thus, to be able to analyze the effect of the EU conditionality, I typically have to establish a time sequence starting at the political status quo (t_0) before EU conditionality is set to take effect, and establishing a clear picture of the domestic conditions at t_0 is a prerequisite for being able to assess the impact of the EU conditionality. The research period should therefore also end as close to the present time as possible as Croatia is subject to EU conditionality, whereas Poland is not, but might still give valuable indications on how the Europeanization process is continued after membership is granted.

This definite time period should of course not be the only historical content one should consult. Politico-cultural structures and actors conduct during the accession period can also have been influenced by past historical reasons further back in time as well. Hence, a thorough historical understanding of these countries and the organizations involved should thus be held by the analyst.

3. 5 Collecting Data

The data utilized in a process tracing analysis are in turn derived from a variety of (overwhelmingly) qualitative sources, ranging from official documents, speeches, interviews, historical memoirs, expert surveys and press accounts.⁶⁷ However, there are important considerations regarding the historical method's conduct of collecting such data. Historians have been accused of being too subjective when selecting, collecting and analyzing data, only choosing relevant data of their own discretion, using primary sources such as official documents, letters and diaries, which often tend to favor actors who actually leave such data behind, undermining other relevant actors that are not so readily available.⁶⁸

Historians have on the other hand actually tried to remedy these methodological shortcomings by use of a Rankean *Quellenkritik* and the use of "common sense" as Lord Acton noted, when investigating the historical material at hand. When analyzing qualitative materials it is also important to remember the main tenets of the hermeneutical method. The researcher has to be aware of both the background and the source of the data he/she is collecting. But it is just as important to remember one's own background, the point being that personal, social, political,

⁶⁷ Checkel, "It's the Process Stupid!" [note 58], p. 6.

⁶⁸ Jonathon W. Moses and Torbjørn L. Knutsen, *Ways of Knowing, Competing Methodologies and Methods in Social and Political Research* (Houndmills, Basingstoke and New York: Palgrave Macmillan, 2007), p. 128.

academic etc. background may color the way things get interpreted, which then again may undermine the objectivity of the analysis.⁶⁹

Both quantity and quality are therefore in this research project of immense importance, as to be able to dig as deep into the Europeanization process as possible. Being critical of one's sources (*Quellenkritik*) is therefore important to meet the standards of reliability and relevance. Using primary sources close to the event in question is one way to enhance this reliability, and in my case sources such as speeches by government officials or other relevant actors, official government documents, EU Commission reports etc. are therefore useful. The data can, however, also consist of secondary sources such as research or reports worked out by other scholars or experts in the field, or information collected from media outlets or human rights organizations. Especially these latter sources' objectivity should be subject to closer scrutiny as many such sources may have a certain political, economical or moral motive. The reliability of the content should therefore be assessed against the background of the specific source, and questions should be posed, such as, from where are they published and by whom? This is of course the case for the primary sources too e.g., speeches can be full of rhetorical shadow-play promoting a certain interest and manipulating facts.⁷⁰

A last consideration can also be made of the fact that I do not speak Polish or Croatian, and thus have to rely on Norwegian, English or German literature. Luckily, there is a rich literature in English and German, and data are also readily available in these languages.

⁶⁹ E. H. Carr, "The Historian and His Facts" in R. W. Davies (ed.) *What is History?* The George Macaulay Trevelyan Lectures Delivered in The University Of Cambridge January-March 1961, Second Edition. (London: Penguin Books, 1987).

⁷⁰ Moses and Knutsen, *Ways of Knowing* [note 68], pp. 120-121.

4 The EU Anti-Discrimination Standards

Before presenting the two different EU strategies in relation to the reform processes in post-communist Poland and Croatia and the domestic responses to these, it is necessary to establish exactly which EU anti-discrimination standards that are conditions for EU support and eventual membership.

4. 1 EU Anti-Discrimination Standards in the Founding Treaties

A general anti-discrimination standard securing gender equality and elimination of discrimination based on nationality has been an integral part of the EU norm system and a fundamental principle in the European Community from the outset, but the original EU treaties did not contain any human rights provisions.⁷¹ The founding treaty, the Treaty establishing the European Economic Community (TEEC) from 1957, prohibited any discrimination on basis of nationality by its article 7 (now article 12 in the later TEC version), and by the essential EEC ethos: the freedom of movement of persons, free supply of services, and the right of establishment, irrespective of nationality within the Community, as established by the articles 48-66 in the TEEC (now 39-55 in the TEC).⁷²

The TEEC furthermore established the first uniform gender equality provisions in the European Economic Community (cf. article 119 and 120 in the TEEC, article 141 and 142 in the TEC).⁷³ These gender equality provisions were, however, a means of preventing weakened competitive abilities for countries which had equal pay between the genders, not giving countries with unequal pay between men and women a comparative advantage because of cheaper labor (typically the women) and thus also cheaper goods,⁷⁴ rather than of protecting women's rights. Still, these

⁷¹ Guido Schweltnus, "The Adoption of Nondiscrimination and Minority Protection Rules in Romania, Hungary and Poland" in Schimmelfennig and Sedelmeier (eds.) *The Europeanization of Central and Eastern Europe* [note 2], p. 55.

⁷² Treaty Establishing the European Economic Community, 1957, available at <http://eur-lex.europa.eu/en/treaties/index.htm> (retrieved 27 June 2010); and Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, *Official Journal of the European Union*, C80, 10 March 2001, available at <http://eur-lex.europa.eu/en/treaties/dat/12001C/htm/12001C.html> (retrieved 27 June 2010).

⁷³ Treaty Establishing the European Economic Community [note 72]; and Treaty of Nice [note 72].

⁷⁴ E.g. in 1957, France had a statutory right to equal pay for men and women, while Germany did not. France was afraid that this extra social cost would make it less competitive in the free market, and a compromise was therefore made, and is reflected in these provisions, see Evelyn Ellis, *EU Anti-Discrimination Law* (Oxford: Oxford University Press, 2005), pp. 20-21.

equality norms were later used to promote the “human face” of the European Community and to refute the criticism that it was solely an economic community.⁷⁵

Through their legal authority to provide secondary legislation such as regulations, directives and decisions (cf. the articles 100, 189 and 235 in the TEEC, now articles 94, 249 and 308 in the TEC), the European Parliament, the Council and the Commission have jointly issued several directives on the subject of gender equality since 1957.⁷⁶ The European Court of Justice (ECJ) also acquired competence on human rights and anti-discrimination issues in its case law (these provisions were later codified in the 1992 Maastricht Treaty).⁷⁷ Social policy legislation was therefore further developed over the decades through various directives, ECJ case-law, several EU Action Programs designed to enforce the equality legislation, and the establishment of an Advisory Committee on Equal Opportunities for Women and Men in 1982; but these initiatives were mainly focused on work related contexts.⁷⁸

4. 2 The Maastricht Treaty and beyond

The Maastricht Treaty, however, started something new when it comes to EU anti-discrimination promotion, as it for the first time entrenched special provisions on human rights in EU law.⁷⁹ Among other things, it introduced Article F (now renumbered Article 6) in the Treaty of the European Union (TEU)⁸⁰ which states that

“The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States. (...) The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law”.⁸¹

⁷⁵ Ellis, Anti-Discrimination Law [note 74], pp. 20-21.

⁷⁶ *Ibid.*; Treaty Establishing the European Economic Community [note 72]; and Treaty of Nice [note 72].

⁷⁷ Schweltnus, “The Adoption” [note 71], p. 55.

⁷⁸ Ellis, Anti-Discrimination Law [note 74], pp. 20-23.

⁷⁹ James Hughes and Gwendolyn Sasse, “Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs”, in *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)*, Issue 1/2003, p. 9.

⁸⁰ Schweltnus, “The Adoption” [note 71], p. 55.

⁸¹ Treaty on European Union, *Official Journal of the European Union*, C 191, 29 July 1992, available at <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html> (retrieved 27 June 2010).

The Maastricht Treaty furthermore established in the Article J.1 (2) (now renumbered Article 11 [1]) of the TEU, that the objectives of the EU's external relations, meaning its efforts and activities through the Common Foreign and Security Policy (CFSP) (the second pillar), should be to "(...) develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms".⁸²

The Treaty of Amsterdam also stated in Article 49 of the TEU that "Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union".⁸³ Thus, directly interlocking EU membership with respect for the "(...) principles of liberty, democracy, (...) human rights and fundamental freedoms, and the rule of law"⁸⁴ as stated in the abovementioned Article 6 of the TEU.

These standards are spelled out in the aforementioned European Council declaration, the 1993 Copenhagen Criteria, as prerequisites for EU membership, and thus also made a link between membership in the Council of Europe and membership in the EU. The implementation of, and compliance with, the European Convention for the Protection of Human Rights and Fundamental Freedoms are explicit requirements for membership in the CoE, and thus a *de facto* condition for EU membership.⁸⁵ Membership of the CoE has thus been an important stepping stone for the post-communist countries on their way toward both EU and NATO membership as the CoE has to verify its members' constitutions and laws on human rights before membership can be granted, and these countries have to prove their human rights credentials and desire for further democratization.⁸⁶ The CoE therefore, in practice, acts as a pre-screening institution for potential EU candidates, and even though the CoE court, the European Court of Human Rights, has little power to change national laws, its case-law is being increasingly interwoven with the legal and political practice in the advanced democracies in Europe.⁸⁷

⁸² *Ibid.*

⁸³ Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Treaties, *Official Journal of the European Union*, C 340, 10 November 1997, available at <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html> (retrieved 27 June 2010).

⁸⁴ Treaty on European Union [note 81].

⁸⁵ Gwendolyn Sasse, "EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy", *EUI Working Papers*, RSCAS No. 2005/16, European University Institute, Robert Schuman Centre for Advanced Studies European Forum Series, 2005, p. 1.

⁸⁶ Karen E. Smith, "Western Actors and the Promotion of Democracy" in Jan Zielonka and Alex Pravda (eds.) *Democratic Consolidation in Eastern Europe, Volume 2: International and Transnational Factors* (Oxford: Oxford University Press, 2001), p. 41.

⁸⁷ Hughes and Sasse, "Monitoring the Monitors" [note 79], pp. 9-10.

This *de facto* required CoE membership thus obliges the aspiring EU members and the EU members alike, to respect a broad spectrum of human rights provisions as enshrined in the European Convention on Human Rights (ECHR) as a secondary source to the EU Treaties, potentially enhancing the EU anti-discrimination legislation.⁸⁸

The CoE also developed a complex and legally binding Framework Convention for the Protection of National Minorities (FCNM) in 1995. This instrument should be able to monitor the European countries' conduct within minority issues, thus expanding the democratic criterion of the CoE to include minority protection. This inspired the language of the EU conditionality during the accession negotiations to also include minority rights. In addition, the CSCE/OSCE provided the EU with incentives to promote minority rights out of security reasons in its Paris Charter of 1990. Protection of the ethnic, cultural, linguistic and religious identity of national minorities was seen as a prerequisite for democracy, stability and peace. The EU thus adopted CSCE/OSCE norms as guidelines when it stated that recognition of the Yugoslav and Soviet successor states was conditional on these states demonstrating respect for minority rights as laid down in the CSCE framework.⁸⁹ The minority protection clause therefore also found its way into the Copenhagen Criteria.⁹⁰

The EU anti-discrimination legislation was further elaborated when the 1997 Amsterdam Treaty amended Article 13 (formerly article 6a) in the "Treaty Establishing the European Community" (TEC), and stated that "(...) the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation"⁹¹. This latter amendment was thus a watershed as the Community now could take action to protect against the discrimination against a variety of minorities.⁹² It also addressed new potential victims of discrimination as well as bringing anti-discrimination to the fore on a European level.

⁸⁸ Ellis, *Anti-Discrimination Law* [note 74], p. 19.

⁸⁹ Sasse, "EU Conditionality and Minority Rights" [note 85], pp. 2-3.

⁹⁰ Hughes and Sasse, "Monitoring the Monitors" [note 79], pp. 7-9; and European Council, "Conclusions of the Presidency" [note 23], p. 13.

⁹¹ Treaty of Amsterdam [note 83].

⁹² Claude Moraes, "Challenges for Anti-discrimination Law and Policy for the 2007 Year of Equal Opportunities", *European Anti-Discrimination Law Review*, Issue No. 4. (November 2006), The European Network of Legal Experts in the Non-Discrimination Field, p. 31.

While the Treaty of Amsterdam established certain procedures for the protection of fundamental rights (article 7 in the TEU), and established the possibility to suspend certain rights of a member state in the event of serious violation of fundamental human rights,⁹³ the 2001 Treaty of Nice supplemented this article 7 by developing these procedures, and gave in article 46 of the TEU, the European Court of Justice (ECJ) the power to ensure that these rights are respected.⁹⁴

During the Nice European Council in December 2000 the European Parliament, the Council and the Commission also signed and proclaimed the Charter of Fundamental Rights of the European Union. This marked yet another step in the process of strengthening the EU's human rights and anti-discrimination legal framework. For the first time in the history of the EU, an EU Charter combines "(...) in a single text the civil, political, economic, social and societal rights hitherto laid down in a variety of international, European or national sources".⁹⁵ The European Commission, furthermore, in March 2001, decided that all legal proposals should be checked against their compatibility with the Charter of Fundamental Rights of the European Union, even though this Charter was not legally binding at the time.⁹⁶ To monitor such a requirement the Commission set up a "Group of Commissioners on Fundamental Rights, Anti-Discrimination and Equal Opportunities".⁹⁷

⁹³ Treaty of Amsterdam [note 83].

⁹⁴ Treaty of Nice [note 72]; and European Parliament, "Parliament and European Union, Fundamental Rights", The European Parliament, 2009, available at <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?language=EN&id=137> (retrieved 26 May 2009).

⁹⁵ European Council, "Conclusions of the Presidency". European Council – Nice, 7-10 December 2000, available at http://www.europarl.europa.eu/summits/nice1_en.htm (retrieved 21 June 2009).

⁹⁶ The legal status of the Charter of Fundamental Rights was discussed from the beginning at the Cologne European Council in June 1999, which launched the Charter initiative. The Convention drafting the Charter therefore drew up the Charter with the purpose of its incorporation in the TEU, see European Parliament, "The Charter of Fundamental Rights of the European Union", The European Parliament, 2009, available at http://www.europarl.europa.eu/charter/default_en.htm (retrieved 21 June 2009). It was therefore incorporated into Part II of the Treaty establishing the Constitution for Europe, signed in October 2004. This Treaty failed to be ratified by all EU members in May-June 2005, and was revised in the form of the Treaty of Lisbon, signed December 2007. The Fundamental Rights Charter is now only referred to in an article which states the Charter's legal value, and is thus legally binding for all EU members (except for the UK and Poland which were granted opt-outs). The Treaty of Lisbon, however, failed to be ratified by all member states in June 2008. See Jean-Dominique Giuliani, "Understanding the European Council in Lisbon and the Reform Treaty", *European Issues* No. 76, The Robert Schumann Foundation, 2007, available at http://www.robert-schuman.eu/question_europe.php?num=qe-76 (retrieved 30 May 2009); and *EurActiv* (12 December 2008), at <http://www.euractiv.com/en/future-eu/eu-summit-gives-irish-demands-lisbon-treaty/article-178004> (retrieved 30 May 2009). The Charter therefore then only had the status as a "solemn proclamation" by the EU Parliament, the Council and the Commission.

⁹⁷ European Commission, "Communication from the Commission: Compliance with the Charter of Fundamental Rights in Commission legislative proposals. Methodology for systematic and rigorous monitoring", Commission of the European Communities, COM(2005) 172 final, Brussels, 27. 4. 2005.

The Charter of Fundamental Rights of the European Union eventually got accepted and came into force with the adoption of the Lisbon Treaty on 1 December 2009.⁹⁸

Two European Council Directives were drafted under Article 13 of the Amsterdam Treaty to force the member states to implement anti-discrimination standards into national law. The Race Equality Directive (2000/43/EC) was issued for the purpose of establishing the rights for equal treatment among persons irrespective of race or ethnic origin, and the Employment Equality Directive (2000/78/EC) established a general framework for equal treatment in employment and occupation, securing against discrimination on the grounds of age, disability, religion or belief and sexual orientation.⁹⁹ Still, the Employment Equality Directive (2000/78/EC) recognized that “(...) in very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate”,¹⁰⁰ such as respecting the ethos of religious organizations in certain contexts, or prohibiting people under/over a certain age from requiring jobs where age requirements are strictly necessary.¹⁰¹

A Gender Equality Directive (2004/113/EC) implementing the principle of equal treatment between men and women in access to and supply of goods and services was also passed in 2004 under the auspices of Article 13 in the Amsterdam Treaty.¹⁰² In addition, in July 2006, the European Council agreed to bring together previous directives and the European Court of Justice’s (ECJ) case law related to gender equality at the workplace into one comprehensive directive,¹⁰³ namely the

⁹⁸ *EurActiv* (1 December 2009), at <http://www.euractiv.com/en/future-eu/new-eu-treaty-enters-force-sparking-reform/article-187848> (retrieved 1 December 2009).

⁹⁹ Schweltnus, “The Adoption” [note 71], p. 55; Toggenburg, “A Remaining Share or a New Part?” [note 13], p. 6; European Council, “Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation”, *Official Journal of the European Union*, L 303 , 02/12/2000.

¹⁰⁰ European Council, “Council Directive 2000/78/EC” [note 99].

¹⁰¹ European Commission, “European Law”, The European Commission’s Directorate-General for Employment, Social Affairs and Equal Opportunities, 2009, at <http://ec.europa.eu/social/main.jsp?catId=612&langId=en> (retrieved 25 May 2009).

¹⁰² Toggenburg, “A Remaining Share or a New Part?” [note 13], p. 6.

¹⁰³ The European Council Directive (2006/54/EC) incorporates and recast the EC Directives: (86/378/EEC), (75/117/EEC), (97/80/EC) and (76/207/EC) (amended by [2002/73/EC] by adding a definition of direct and indirect discrimination consistent with the Race Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) mentioned above). See European Council, “Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the

recast European Council Directive (2006/54/EC) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, thereby trying to make these standards clearer to the member states.¹⁰⁴

Furthermore, the Community Action Program to Combat Discrimination (2001-2006) was launched in 2001. This program has had three goals, to “(...) enable the Community to study and evaluate the impact of discrimination in the Member States and the effectiveness of measures to combat it, promote exchanges of experience and good practice between actors in the Member States”, and “(...) allow the Community to raise awareness about the fight for equality at a European level”.¹⁰⁵ An action program related to the Community framework strategy on gender equality (2001-2005) was also initiated the same year.¹⁰⁶

Institutionally, the EU established the European Monitoring Centre on Racism and Xenophobia (EUMC) June 1997,¹⁰⁷ now restructured and renamed (from March 2007) as the European Union Agency for Fundamental Rights (FRA). This institution is a monitoring and consulting entity whose main task is to “(...) provide assistance and expertise to the relevant institutions and authorities of the Community and its Member States in order to support them to take measures or formulate courses of action to fully respect fundamental rights”.¹⁰⁸ The FRA’s emphasis is on fighting racism, xenophobia and other related sources of intolerance and human rights violations, and it

“(...) collects data on fundamental rights, conducts research and analysis, provides independent advice to policy-makers, networks with human rights stakeholders, and

implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Text with EEA relevance)”. *Official Journal of the European Union*, L 269, 5 October 2002; and European Council, “Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)”, *Official Journal of the European Union*, L 204, 26 July 2006.

¹⁰⁴ European Council, “Directive 2006/54/EC” [note 103]

¹⁰⁵ European Commission, “The Fight for Equality - Action by the European Community to combat discrimination”, Information Leaflet Published by the European Commission, Luxembourg: Office for Official Publications of the European Communities, 2001.

¹⁰⁶ Toggenburg, “A Remaining Share or a New Part?” [note 13], p. 6.

¹⁰⁷ However, establishment of such an organ for the purpose of consulting EU during its fight against discrimination in Europe was first proposed already in June 1994 by the Corfu European Council, see Fundamental Rights Agency, “Origins: The EUMC, the Predecessor of FRA”, The European Union Agency for Fundamental Rights, 2009, at http://fra.europa.eu/fraWebsite/about_us/origins/origins_en.htm (retrieved 18 May 2009)

¹⁰⁸ Fundamental Rights Agency, “Origins: The EUMC” [note 107]

finally it develops communication activities to disseminate the results of its work and to raise awareness of fundamental rights".¹⁰⁹

It works closely with both European and international actors, among others the EU institutions such as the European Parliament and the Commission, the Council of Europe (CoE), the OSCE, the UN, and other relevant human rights institutions, the EU countries and their governments, civil society, "(...) and those who can influence the human rights agenda within countries and at the EU level".¹¹⁰

In addition, a variety of efforts have been made to further highlight the problems surrounding anti-discrimination in Europe and to engage the EU members in these causes under this provision. Among other things, the EU has arranged several "European Years" such as "The European Year of People With Disabilities" (2003), "The European Year of Equal Opportunities for All (2007),¹¹¹ and the "European Year of Intercultural Dialogue" (2008) where a variety of different activities at the European, national and local level such as information campaigns, surveys, evaluation studies and so forth are organized.¹¹²

The European Commission has also recently given clear indications that it has realized that the situation in the EU countries on social issues such as anti-discrimination, employment rights, healthcare, fighting poverty, education etc. still leaves room for improvements. The Commission has explained that the Race Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) referred to above prohibit discrimination on the grounds of race and ethnicity across a wide range of situations (the Race Equality Directive), but only secure against age, disability, sexual orientation and religion or belief discrimination in the field of employment (the Employment Equality Directive). A more comprehensive framework

¹⁰⁹ Fundamental Rights Agency. "Activities: Overview of FRA's Activities", The European Union Agency for Fundamental Rights, 2009, at http://fra.europa.eu/fraWebsite/about_us/activities/activities_en.htm (retrieved 18 May 2009).

¹¹⁰ Fundamental Rights Agency, "Cooperation: Networking and Cooperation", The European Union Agency for Fundamental Rights, 2009, at http://fra.europa.eu/fraWebsite/about_us/cooperation/cooperation_en.htm (retrieved 18 May 2009).

¹¹¹ After the European Year of Equal Opportunities for All in 2007 the European Commission set up a government expert group in the field of anti-discrimination in July 2008, with the aim of continue the work of combating discrimination and promote equality at both the EU and the national level. See European Commission, "News: The Non-discrimination Governmental Expert Group - Sustaining a Legacy", The European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities, 18 February 2009, at <http://ec.europa.eu/social/main.jsp?catId=423&langId=en&newsId=458&furtherNews=yes> (retrieved 25 May 2009).

¹¹² Toggengburg, "A Remaining Share or a New Part?" [note 13], p. 7.

of legislation in all EU countries prohibiting discrimination on grounds of sexual orientation, religion and disability outside the workplace as well is therefore needed.¹¹³

A special Eurobarometer survey conducted in February-March 2008 measuring the level of discrimination in the EU has also revealed rather disturbing results as to the number of EU citizens who have been experiencing different forms of discrimination and showed a lack of knowledge among the EU-citizens of their rights when such discrimination does occur.¹¹⁴ In July 2008, the Commission therefore proposed a more comprehensive social agenda package consisting of a large set of initiatives to enhance the EU social policy, including a new comprehensive anti-discrimination directive.¹¹⁵

The Fundamental Rights Agency also recently received a special request from the European Parliament to conduct a comprehensive study on homophobia and discrimination on the grounds of sexual orientation. This study (published in June 2008), assessing both the legal and the social situation in relation to anti-discrimination in the 27 EU countries, found that even though 18 out of the 27 EU countries have implemented anti-discrimination legislation beyond the minimum requirements set by the EU anti-discrimination Directives, Lesbians, Gays, Bisexuals and Transsexuals (LGBTs) are still facing major difficulties in their daily lives. LGBTs are continually being subjected to hate speech and hate crime which thus represents an obstacle to their free movement and to their exercise of other basic human rights. The study concludes that the existing EU directives do not provide enough anti-discrimination legislation: hence, more comprehensive legislation with extended powers and resources for the equality bodies is needed, i.e., one horizontal directive for all discrimination.¹¹⁶

¹¹³ European Commission, "Commission Proposal to Ensure Equal Treatment Beyond the Workplace", The European Commission MEMO/08/461, Brussels, 2 July 2008, Press Release RAPID, 2008.

¹¹⁴ Eurobarometer, "Discrimination in the European Union: Perceptions, Experiences and Attitudes". *Special Eurobarometer 296*. Fieldwork February – March 2008, Publication July 2008, requested by Directorate General Employment, Social Affairs and Equal Opportunities and coordinated by Directorate-General for Communication.

¹¹⁵ European Commission "Commission Proposes Renewed Social Agenda to Empower and Help People in 21st Century Europe", The European Commission IP/08/1070, Brussels, 2 July 2008, Press Release RAPID, 2008.

¹¹⁶ Fundamental Rights Agency, "Q & A Homophobia Report", The European Union Agency for Fundamental Rights Memo, 2008, available at http://fra.europa.eu/fraWebsite/material/pub/comparativestudy/FRA_hdgso-memo_en.pdf (retrieved 19 May 2009); Fundamental Rights Agency, "The Social Situation Concerning Homophobia and Discrimination on Grounds of Sexual Orientation in Poland", The European Union Agency for Fundamental Rights Report, March 2009, available at http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-part2-NR_PL.pdf (retrieved 19 May 2009).

The European Parliament (EP), however, did as early as 1984 pass a non-binding resolution calling for an end to work-related discrimination on the grounds of sexual orientation, and has on several occasions since passed resolutions calling for more emphasis on anti-discrimination among the EU members.¹¹⁷ This was also the case in 2006 when an EP resolution called for the Commission to suggest more anti-discrimination legislation securing gay rights in Eastern Europe.¹¹⁸

In other words, the EU has realized the dire and intolerable situation when it comes to discrimination in the 27 EU countries, and is actively working to remedy this, both by incorporating sufficient provisions into EU law, issuing directives, and by actively promoting anti-discrimination and equality through a variety of promotion campaigns.

The EU anti-discrimination standards are thus a branch of the democratic conditionality imposed by the EU, and are founded on the fundamental liberal democratic principle of tolerance. The EU anti-discrimination standards are therefore supposed to provide legal provisions to legally secure this principle. These provisions are found in the EU Treaty framework as well as in secondary legislation and ECJ case-law. This means that the EU anti-discrimination conditionality is both part of the declaration, the *Copenhagen Criteria* (which is *founded on* EU law, except, as mentioned, for minority protection), and more specifically stated in the *acquis communautaire* (which *is* EU law). For example, in the Croatian Progress Reports anti-discrimination is mentioned in the *acquis* chapter 19. on “Social Policy and Employment” and chapter 23. on “Judiciary and Fundamental Rights”, which demands specific requirements within specific policy areas.¹¹⁹

4. 3 Strength and Weaknesses

As the EU anti-discrimination standards draw on the ideals of the Council of Europe (the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Framework Convention for the Protection of National Minorities), the OSCE (e.g. the Paris Charter) and the UN (e.g. the Universal Declaration of

¹¹⁷ Fundamental Rights Agency, “Homophobia and Discrimination on Grounds of Sexual Discrimination in EU Member States, Part I – Legal Analysis”, The European Union Agency for Fundamental Rights, 2008, available at http://fra.europa.eu/fraWebsite/lgbt-rights/pub_cr_homophobia_0608_en.htm (retrieved 18 May 2009).

¹¹⁸ Solem, “Croatia, Regional Cooperation” [note 13], p. 307.

¹¹⁹ European Commission, “Croatia 2005 Progress Report”, Brussels, 9 November 2005 SEC (2005) 1424 {COM (2005) 561 final}.

Human Rights and the UN Charter),¹²⁰ and is largely congruent with these,¹²¹ these EU standards can not be said to be all “European” *per se*. Still, implementation of these standards is required in all countries which wish to become EU members,¹²² and in all EU member states alike. The EU is therefore promoting a process of Europeanization by demanding a minimum of anti-discrimination legal standards among its members, following a uniform framework set out by the EU.

What is more, EU anti-discrimination standards are therefore also accepted by several human rights authorities, making them legitimate in the context of liberal democratic systems. General anti-discrimination norms are therefore well known and few European states oppose that a minimum of anti-discrimination protection is a prerequisite for a well-functioning liberal democracy.

However, this framework is rather broad and has few specific provisions. A few points of consideration therefore have to be mentioned. A good example in this relation is the fact that even though the Copenhagen Criteria emphasize minority protection as a requirement for all EU members,¹²³ and in spite of the fact that the European Commission after the Amsterdam Treaty declared that respect for minorities would be a prerequisite for EU membership,¹²⁴ the EU does not mention the protection of minorities under the article 49 (which refers to article 6 mentioned above) dealing with conditions for membership. Minority rights are therefore technically not enshrined in EU law. This bias is shown by Gabriel N. Toggenburg’s¹²⁵ remark, that, even though article 6 of the TEU does not mention minorities specifically, the Commission stated in 2002 that “(...) in the Commission’s opinion, the rights of minorities are part of the principle common to the Member States, listed in the first paragraph of Article 6 of the Treaty on European Union.”¹²⁶

There is in other words a discrepancy between EU law and stated goals. Gwendolyn Sasse¹²⁷ highlights that this inconsistency led to confusion during the accession period of the first eastward enlargement. No firm foundation for EU law and benchmarks could be established as no agreement on what defines a national minority exists. Nor have these issues been prioritized internally in the EU among its

¹²⁰ Sasse, “EU Conditionality and Minority Rights” [note 85].

¹²¹ Schweltnus, “The Adoption” [note 71], p. 55.

¹²² Schimmelfennig, Engert, and Knobel, “The Impact of EU Political Conditionality” [note 19].

¹²³ European Council, “Conclusions of the Presidency” [note 23], p. 13.

¹²⁴ Guiraudon, “Anti-Discrimination” [note 42], p. 296.

¹²⁵ Toggenburg, “A Remaining Share or a New Part?” [note 13], p. 5.

¹²⁶ *Ibid.*

¹²⁷ Sasse, “EU Conditionality and Minority Rights” [note 85], p. 5.

existing members, or given prominence in the pre-accession funding. International law and politics are also diffuse on this subject.¹²⁸

The EU has thus promoted a collective minority protection norm, which is not incorporated into formal EU law, while at the same time pushing for the implementation of a general (well established) anti-discrimination standard, including a more general and individualistic minority protection approach.¹²⁹

Two other contested issues are abortion and same-sex marriage for which there exists no EU legislation at all. Nonetheless, the EU, and particularly the European Parliament, have argued heavily for the liberalization in both areas among its member states and for an end to discrimination on the basis of homosexuality or past abortions. The European Parliament did, for example, in July 2002 call on all current and future EU members to legalize abortion, facilitate sexual education, and provide for a more easy access to contraceptives.¹³⁰

¹²⁸ The main center of gravity here is the question of whether to apply a specific minority rights standard or just implement minority rights through the general anti-discrimination standard. Another main concern is the question of accepting more general minority rights, which follow basic human rights (i.e. the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights) and see minority rights only as one right among many human rights, applying to individuals of a minority securing equal rights and full integration into a given society, or adopt a more specific collective minority rights approach, protecting the minorities' uniqueness, thus fostering cultural and religious diversity preventing assimilation (as proposed by the CoE's Recommendation 1201). See Lynn M. Tesser, "The Geopolitics of Tolerance: Minority Rights Under EU Expansion in East-Central Europe", in *East European Politics and Societies*, Vol. 17, No. 3 (Summer 2003), pp. 483-532; and Schweltnus, "The Adoption" [note 71], pp. 54-55.

¹²⁹ Schweltnus, "The Adoption" [note 71], pp. 51-70.

¹³⁰ Ramet, "Thy Will Be Done" [note 12], pp. 137-138.

5 The Catholic Church in International Relations and the EU

This chapter will review how and why the Catholic Church as a religious actor might influence the political processes in post-communist Poland and Croatia.

5. 1 Religion in International Relations

As mentioned in the introduction, religion as an explanatory factor of political processes in political science is largely ignored, even though few political scientists today deny the impact of religion on the political processes one way or another. Since the Iranian revolution of 1979, however, the research field of International Relations (IR) has become more interested than hitherto in religion as a factor contributing to shaping the political agenda.¹³¹

Jonathan Fox¹³² argues that one of the main reasons for the past reluctance to regard religion as an influential factor in explaining political phenomena has to do with the preponderance of modernization theory in political science. Modernization theory, a political paradigm influential in political science during the past decades and influenced by certain ideas generated in the Enlightenment, predicts that the process of modernization, and especially economic modernization leading to urbanization, would undermine the traditional small, homogeneous and closely-knit communities where religion was a relevant social factor. The movement of people, increased literacy, mass education, communication technology and science would all contribute to giving people an opportunity to think freely, gain new knowledge and ultimately get new ideas and worldviews. Religion as the sole provider of this knowledge and identity would rather be replaced by secular scientific and rational methods.

Modernization would therefore eventually help states to replace religion as the foundation of society, introducing in its place modern secular political and social institutions to create a stable and just society. An interest-based agenda providing security and prosperity for its population by respecting the “will of the people”, and primarily defined in survival terms in foreign relations, was seen as more appropriate for the modern state than a state agenda characterized in missionary terms such as “manifest destiny” or “chosen nation”, thus attaching religious attributes to its goals,. In other words, the state would derive its legitimacy from the “will of the people” by promoting rational and scientific methods to gain knowledge and prosperity, rather

¹³¹ Fox and Sandler, *Bringing Religion* [note 3], p. 21.

¹³² Jonathan Fox, *A World Survey of Religion and the State* (Cambridge: Cambridge University Press, 2008), pp. 15-16.

than by claiming divine providence. Religion would not disappear altogether but its influence in the public sphere was predicted to decline and rather move into the private sphere.¹³³

Analyzing religious institutions' influence on society is a complex matter. Sociologists, for example, differentiate among (at least) five dimensions of religion in a given society: belief (the ideology dimension), practice (ritual), feelings (experience), knowledge (intellectual), and effects (the consequential dimension), but these may not be consistent or mutually exclusive.¹³⁴

Emile Durkheim¹³⁵ has offered an oft-cited *definition* of "religion", writing that "(...) a religion is a unified system of beliefs and practices related to sacred things, that is to say, things set apart and forbidden- beliefs and practices which unite into one single moral community called a Church, all those who adhere to them". This represents religion as a belief system that has the potential to determine one's outlook on the world and therefore motivate certain behavior consistent with this creed. In other words, religion has normative force, defining right and wrong, legitimating certain behavior while delegitimizing other behaviors, and basically helping to shape an individual identity which corresponds with the moral guidelines of that person's beliefs, thereby fashioning also a group identity among persons adhering to the same belief system. Consequently, religion has the potential to fundamentally influence one's political attitudes and behavior by providing a moral framework for accepted behavior in the political sphere.¹³⁶

Political behavior motivated by religion can also be used instrumentally by political actors who want to appeal to a certain religious sentiment in the population for the purpose of mobilizing support, thus only respecting religious norms as a means to achieve other goals than religious ones. Similarly, political actors can also construct alternative interpretations of the accepted religion which then can be used to legitimate certain political actions and behaviors. Religiously motivated behavior in these instrumentalist and constructionalist views thus see religion not as a basic

¹³³ Fox and Sandler, *Bringing Religion* [note 3], pp. 9-14.

¹³⁴ Siniša Zrinščak, "Religion and Values" in Ramet and Matić (eds.), *Democratic Transition in Croatia* [note 8], p. 137.

¹³⁵ Emile Durkheim, *The Elementary Forms of Religious Life*, translated by Joseph Ward Swain (New York: Free Press, 1967), p. 47.

¹³⁶ Fox and Sandler, *Bringing Religion* [note 3], pp. 52-54.

force in society, but rather as a manifestation of other more basic social forces (i.e. power and interests).¹³⁷

5. 2 The Catholic Church in International Relations

The Catholic Church has always reserved for itself a privileged role when it comes to its desire to exercise control over individuals' consciences. It has a self-proclaimed universal moral authority and its main issues of interests have been more of an immaterial character such as values, culture, and beliefs.¹³⁸ The freedom to teach and preach is therefore essential for the Catholic Church to be able spread its message to all people irrespective of age, gender, or race, although the Holy See can also be said to exercise a temporal role by virtue of the pope's status as the head of state in the State of the Vatican City (founded through the Lateran Treaty of 1929).¹³⁹

The Catholic Church has furthermore nurtured a missionary self-image. It has seen state boundaries and legal limits as artificial limits to its universal moral authority. The Church institution has therefore often had a relatively restrained relationship with the secular political powers, often threatened by these powers' desires to either dominate it or simply eradicate it altogether. The Catholic Church has thus often found itself as the opposing actor constantly fighting for survival as a pan-European moral authority.¹⁴⁰

When analyzing the Catholic Church's contemporary role in international relations the researcher thus has to be aware of this historical heritage. If, for example, one looks at the Catholic Church during the communist era in Poland and Croatia, such a pariah status can be identified. The Catholic Church was seen as a hazard to the stability of the authoritarian regime, not only because of ideological reasons ("religion is the opiate of the people", as Karl Marx argued), but also because the Church had a strong influence in the society as a "value-generating" and "value-sustaining" institution, to use Paula Franklin Lytle's words. This was a force the communists wanted to utilize. The Church's potential influence as an alternative authority could have had serious political repercussions for the power and influence

¹³⁷ *Ibid.*, pp. 48-49.

¹³⁸ Carolyn M. Warner, *Confessions of an Interest Group: The Catholic Church and Political Parties in Europe* (Princeton, N.J.: Princeton University Press, 2000), p. 8.

¹³⁹ Per Kværne and Kari Vogt, *Religionsleksikon: Religion og religiøse bevegelser i vår tid*, med bidrag av Bente Groth og Per Bjørn Halvorsen (Oslo: Cappelens Akademiske Forlag, 2002), p. 382.

¹⁴⁰ See David Ryall, "The Catholic Church as a Transnational Actor" in Daphné Josselin and William Wallace (eds.) *Non-state Actors in World Politics* (Houndmills, Basingstoke and New York: Palgrave, 2001), pp. 42-43.

of the ruling communist party, and the religious communities thus had to be either controlled or manipulated to serve the communist regime. The alternative was outright abolishment.¹⁴¹ One can therefore look at the Catholic Church's contemporary status from an *historical institutional* approach,¹⁴² as a Church's strength in a post-communist state today is often reinforced if it took a strong stand defending human rights in the communist era, thus now being seen as a legitimate moral authority, although, as Sabrina Ramet has noted, other factors are increasingly overtaking that legacy in importance.¹⁴³ Therefore, in spite of the contemporary *Zeitgeist* where religion seems to lose to other more material and secular values, most countries of post-communist Central-, Eastern, and Southeastern Europe experienced a religious revival in the 1990's.¹⁴⁴ However, this revival followed different national trajectories in each post-communist state, making each of these national religious communities distinctive in relation to the Church's role in society.¹⁴⁵

The Catholic Church's organizational structure is therefore well developed in Poland and Croatia where such a revival occurred, and the Church in Poland has a few structural similarities with the Church in Croatia. In both countries, the Catholic Church's hierarchical structure (the Roman Catholic Church in Poland¹⁴⁶ and the Catholic Church in Croatia) consists of a national Bishops' Conference as the highest Catholic (national) authority, and which include all the bishops within the country. They derive their authority from universal law or particular mandates, and gather to mostly discuss the liturgical norms, but are obliged to maintain the unity under the Pope. The decisions made by the Conference on doctrinal matters are only binding if

¹⁴¹ Paula Franklin Lytle, "Religion and Politics in Eastern Europe" in Sabrina P. Ramet (ed.) *Eastern Europe: Politics, Culture, and Society since 1939* (Bloomington and Indianapolis: Indiana University Press, 1998), pp. 304-305.

¹⁴² Warner, *Confessions* [note 138], p. 5.

¹⁴³ Ramet, "Thy Will Be Done" [note 12]; and Thomas Bremer, "The Catholic Church and its Role in Politics and Society" in Sabrina P. Ramet, Konrad Clewing, and Reneo Lukić (eds.) *Croatia since Independence: War, Politics, Society, Foreign Relations* (München: R. Oldenburg Verlag, 2008).

¹⁴⁴ Katzenstein "Multiple Modernities" [note 14], pp. 7-8; and Yves Lambert, "A Turning Point in Religious Evolution in Europe", *Journal of Contemporary Religion*, Vol. 19, No. 1, 2004.

¹⁴⁵ Zrinščak, "Religion and Values" [note 134], p. 139.

¹⁴⁶ Not to be confused with the break-away Catholic Church, the Polish Catholic Church (The Polish National Catholic Church [PNCC] before 1951) which only consists of around 20.000 members, see Parafia Kościoła Polskokatolickiego pw. św. Ducha w Warszawie, "Polish National Catholic Church in the U.S.A. and Canada 1897 – 2009, Polish Catholic Church in the Republic of Poland, The Holy Spirit Cathedral in Warsaw", Translated by Mariusz Gajkowski, 2009, at http://www.polskokatolicki.pl/swducha/viewpage.php?page_id=19 (retrieved 8 May 2009); and World Council of Churches, "Polish Catholic Church in Poland", The World Council of Churches, 2006, at <http://www.oikoumene.org/en/member-churches/regions/europe/poland/polish-catholic-church-in-poland.html> (retrieved 8 May 2009).

approved by two-thirds of the members of the Conference, and in addition approved by the Pope.¹⁴⁷

Each bishop also exercises supreme ecclesiastical authority within his diocese, which is again subdivided into local parishes led by local priests.¹⁴⁸ A variety of Catholic monastic orders, congregations and organizations, among them the Franciscan order, the Dominican sisters, the Jesuits, the Michaelites, the Carmelites, the Vincentians, and Caritas also conduct religious work on lower levels in the society (and abroad as well), such as running hospices, hospitals, soup kitchens, orphanages, and conducting relief work in relation to war or natural catastrophes throughout the world.¹⁴⁹ Each order is under the authority of a Superior General.

However, in today's Croatia and Poland the Catholic Church is also present in other parts of civil society. For example, the Catholic Church is influential in the educational system in both countries; operating its own kindergartens and schools in Croatia; instructing religious education in the state schools in both countries; having faculties for Catholic theology within state universities in both countries; offering education at ecclesiastical colleges in Croatia; operating Catholic Universities in Zagreb, Croatia and in Lublin, Poland; and running Catholic media outlets, such as radio and newspapers.¹⁵⁰

Thus, it has been in the Catholic Church's interest to be able to gain influence in areas of education and media, and legislation has often figured as a battlefield for influence in these and other policy spheres of interest to the Church. It can therefore be useful for the purpose of this analysis to regard the Catholic Church in some aspects as an *interest group* (and a transnational as such), seeking preferential treatment from the political authorities. It has done so among others by actively lobbying political parties, by giving advice on how to vote to its parishioners, and by voicing its interest in the public media. The Church has thus gained concessions for religious education in schools, financial support for its religious activities and

¹⁴⁷ Timothy A. Byrnes, "Transnational Religion and Europeanization", in Byrnes and Katzenstein (eds.) *Religion in an Expanding Europe* [note 12], pp. 290-291.

¹⁴⁸ *Ibid.*, p. 290.

¹⁴⁹ Bremer, "The Catholic Church and its Role" [note 143]; and Ramet, "Thy Will Be Done" [note 12], pp. 125-126.

¹⁵⁰ Bremer, "The Catholic Church and its Role" [note 143], p. 252; Catholic University of Lublin, "The University", Katolicki Uniwersytet Lubelski Jana Pawła II - The John Paul II Catholic University of Lublin, 2009, at <http://www.kul.lublin.pl/2696.html> (retrieved 26 May 2009); and Ramet, "Thy Will Be Done" [note 12].

preferential tax arrangements, and has managed to influence legislation to help promote its interests.¹⁵¹

However, as an interest group, the Catholic Church is rather different from other interest groups. While other interest groups such as workers' unions and environmental organizations are a means to an end, the Catholic Church is the goal itself by being the ultimate moral authority over human life, and is not primarily created to function as an interest group. Consequently, its claims are mostly non-negotiable and therefore not necessarily compatible with the democratic principle of compromise to which an interest group has to conform.¹⁵² The Catholic Church also promotes the principle of *subsidiarity*, arguing that the state is subsidiary to the social groups that make up civil society as these have an ontological priority over the state. This approach thus seeks to limit the role of the state (the state is supposed to use its powers with self-restraint) in the civil society on behalf of its social groups and the individuals, such as the Church.¹⁵³

Furthermore, as mentioned, the Catholic Church's main interest is to control the human being's conscience, the moral foundation upon which each individual bases his or her conduct and daily life. This is a field which other interest groups have ceded to the state or to the individual's autonomy. Being an old institution which has dealt with secular power for centuries, the Church has also arrogated the responsibility to promote and guard "Western Christianity" exclusively to itself. However, in the process of furthering its interests, it has to take a dual role. On the one side, it sees itself as the divine authority's representative on earth. On the other side, it has to interact with the mundane to further its religious interests. It thus needs to balance between two realities which no secular interest group has to consider important.¹⁵⁴

Still, the Second Vatican Council (Vatican II) (1962-65) established that the Catholic Church's historical urge to be counted as a political actor should be diminished to the benefit of its social role (enshrined in the two documents *Gaudium et Spes* ["The Pastoral Constitution on the Church in the Modern World"] and *Dignitatis Humanae* ["The Declaration on Religious Liberty"]). The Catholic Church

¹⁵¹ Warner, *Confessions* [note 138], pp. 5-9.

¹⁵² *Ibid.*, p. 7.

¹⁵³ Ian Cooper, "The Philosopher Popes: Subsidiarity in the Catholic Social Theory and European Political Practice" (Oslo: ARENA – Centre for European Studies, University of Oslo, 2008).

¹⁵⁴ Warner, *Confessions* [note 138], pp. 7-8.

should still try to obtain preferable concordats,¹⁵⁵ but these should not provide the sole means for the survival of the Church in any given country. The Catholic Church should recognize the secular and sovereign state as legitimate, but this institution should still be accountable to a larger moral order as delineated by the Catholic Church.¹⁵⁶

In the course of the Vatican II Council, the Catholic Church formally declared that the ideals of democracy, human rights, religious freedom, and ecumenism should guide the further work of the Catholic Church. This informed the Catholic response to the communist threat during the Cold War. This was especially evident through the transnational policies of Pope John Paul II's and his special relationship with the opposition in his mother country Poland during the last decade of communism. The pope and the Catholic hierarchy in Poland promoted human rights and thus helped *Solidarity* gain both the confidence and the means to mobilize its opposition in an efficient way.¹⁵⁷

Church-state relations and the Catholic Church's position in international relations are thus not easy to identify as these religious communities are often comprised of complex conglomerates of agents, to borrow a term from Philpott and Shah.¹⁵⁸ In addition, these agents might have divergent or congruent views on certain issues; they might hold different positions in relation to the state or other relevant institutions; and their power capabilities might be unevenly distributed in a given society. Simply stated, the Catholic Church has to be regarded as much more than an interest group, even if it in some instances behaves as one.

5. 3 The Catholic Church and the EU

When it comes to the Catholic Church's relations to the EU, it has long supported the integration project. Already before the World War Two Pope Pius XII stated that the establishment of a European Union would help prevent further military aggression

¹⁵⁵ A concordat is "a pact, with the force of international law, concluded between the ecclesiastical authority and the secular authority on matters of mutual concern; most especially a pact between the pope, as head of the Roman Catholic church, and a temporal head of state for the regulation of ecclesiastical affairs in the territory of the latter", see Encyclopædia Britannica, "Concordat", Encyclopædia Britannica, 2009, at <http://www.britannica.com/EBchecked/topic/131243/concordat> (retrieved 4 May 2009).

¹⁵⁶ J. Bryan Hehir, "The Old Church and the New Europe: Charting the Changes" in Byrnes and Katzenstein (ed.) *Religion in an Expanding Europe* [note 12], p. 108; and Daniel Philpott and Timothy Samuel Shah, "Faith, Freedom, and Federation: the Role of Religious Ideas and Institutions in European Political Convergence" in Byrnes and Katzenstein (eds.), *Religion in an Expanding Europe* [note 12], p. 36.

¹⁵⁷ Philpott and Shah, "Faith, Freedom, and Federation" [note 156], pp. 38-43.

¹⁵⁸ *Ibid.*, p. 35.

among the European states and thus safeguard peace and prosperity on the European continent. In addition, many of the pioneering integration politicians such as Robert Schuman, Konrad Adenauer, and Alcide de Gasperi were leaders of Christian Democratic parties in their respective countries and devoted to the social teaching of Catholicism.¹⁵⁹

However, European integration is in the eyes of Catholic bishops a project where the autonomy of the civil order has to be respected, but is at the same time a project which has to recognize the importance of a divine order as represented through the Catholic Church.¹⁶⁰ The Catholic Church has therefore established a representative body in the EU by means of the Commission of the Bishops' Conferences of the European Community (CBCEC) (launched in 1980) with a permanent secretariat in Brussels. This Commission consists of 24 delegates representing all the national bishops' conferences in the EU, in addition to the bishops' conferences in the candidate country Croatia and non-member country Switzerland, both of which have associate status in the CBCEC. The CBCEC's main tasks are to monitor the political activity in the EU as a whole, inform the Catholic community of these processes, and promote Catholic social teachings in the EU's work for uniting Europe.¹⁶¹

Alarmed by the "silent apostasy" from the true Christian morality in Europe, the late Pope John Paul II envisioned a re-evangelization of the Western Europe through a European integration with the now religiously revitalized post-communist Eastern Europe, and on the basis of these motives promoted further integration. His reflections on this matter came to the fore in his *Ecclesia in Europa* document in 2003. The late Pope warned against the secularization of Europe which undermines the Christian heritage and European culture so important for the welfare of the European people. The Catholic Church and especially the Pope should therefore help reverse this trend by playing a prominent role in the European polities. The Pope wanted a more public role for the Church and religion in the society, but still did not demand the extensive privileges as it had sought in earlier times, not bringing back the confessional state ideal, but rather maintaining a distance between the state

¹⁵⁹ Katzenstein, "Multiple Modernities" [note 14], pp. 32; and Philpott and Shah, "Faith, Freedom, and Federation" [note 156], pp. 51-53.

¹⁶⁰ Philpott and Shah, "Faith, Freedom, and Federation" [note 156], p. 53.

¹⁶¹ Hehir, "The Old Church" [note 156], pp. 106-107; COMECE "Who We Are". Commissio Episcopatum Communitalis Europensis - Commission of the Bishops' Conferences of the European Community, 2009, at http://www.comece.org/comece.taf?_function=who&id=1&language=en (retrieved 17 April 2009).

and the Church.¹⁶² The Catholic Church's interest in the moral foundation of the EU has therefore also been reflected in the much debated European Constitution, where the Vatican demanded that a reference to Christianity should be included in the preamble of the Constitution.¹⁶³

The Catholic Church is thus positive toward the European integration project only as long as it is allowed to play the role as moral guide for the further Europeanization process, securing the moral foundation of the Union. Then again, one should be aware of the distinct interests and characters of each national Catholic Church in relation to this Europeanization process when analyzing the Catholic responses.

¹⁶² Hehir, "The Old Church" [note 156], pp. 107-111.

¹⁶³ Ramet, "Thy Will Be Done" [note 12], p. 140; and José Casanova, "Religion, European Secular Identities, and European Integration" in Timothy A. Byrnes and Peter J. Katzenstein (eds.) *Religion in an Expanding Europe* [note 12], p. 65.

6 Poland

This chapter will present the EU strategy in the democratic reform processes in post-communist Poland and later account for the domestic responses to EU democratic conditionality and the influence of the relevant domestic actors on this process.

6. 1 The EU Strategy for Poland

6. 1. 1 A Hesitant Beginning-The Europe Agreements, 1989-1993

With the fall of communism in the late 1980's, an ambitious project of democratization, institutional and economic reform was initiated in the Central and Eastern Europe (CEE) and the South East European (SEE) countries.¹⁶⁴ Admission into the "Euro-Atlantic" framework with membership in the North Atlantic Treaty Organization (NATO) and the EU, and every other international organization for that matter (e.g. OSCE, Organization for Economic Co-operation and Development (OECD), WTO) thus became the supreme goal of every country in the post-communist region and laid the basis for the reform strategy.¹⁶⁵

All of these countries have at some point in their history been part of the Habsburg, Ottoman Russian, or Soviet empire, and, when it comes to certain policy spheres, such as toleration of gays and lesbians, have tended to dislike the notion of giving up some of their national sovereignty. (During the years 1795-1918, Poland did not exist, since Polish lands had been partitioned about the Habsburg Empire, Hohenzollern Prussia/Germany, and tsarist Russia. Croatia was part of the Habsburg Empire from 1527 until 1918.) Still, the EU was seen as an exception in this regard given its voluntary nature of membership and its institutional structure which enables the member states to have a say in decision-making.¹⁶⁶

Basic *political* and *economic* reasons such as gaining access to the EU marked and economic prosperity; financial help through Western aid for the institutional reforms that was needed; and establishing national political stability were important incentives for engaging with these Western organizations. The *security* dimension also had to be provided for, a task the post-communist countries saw that NATO and the EU could facilitate by initiating close trans-national cooperation

¹⁶⁴ Avery, "The Enlargement Negotiations" [note 7], pp. 35-36.

¹⁶⁵ Frank Schimmelfennig, "Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe", in *International Organization*, Vol. 59, No. 4 (Fall 2005), pp. 827-828.

¹⁶⁶ Heather Grabbe, "The Newcomers" in Cameron (ed.), *The Future of Europe* [note 7], p. 64.

between institutions and policies in the security area. Finally, a *symbolic* reason can also be advanced as many of these post-communist countries initiated a “return to Europe” as a response to the decades of “unjustified” exclusion from the European club by an ideologically driven authoritarian and suppressive force, Soviet hegemony.¹⁶⁷

To help this project of political and economic reform come about the Western powers quickly threw their weight in behind these post-communist states with the help of regional and international organizations such as the EU, NATO, the CSCE/OSCE, Council of Europe (CoE) etc., in addition to a variety of nongovernmental organization (NGOs). They helped to fund, organize, prepare and inspire these countries to make a transition towards the Western ideals of liberal democracy and market economy.¹⁶⁸ There was little doubt among these actors that democratization in these post-communist countries should be supported and promoted; however, the objective behind the Western actors’ desire to see political and economic change in this post-communist region is somewhat unclear. There was no common shared model defining the specific components of democracy and by which means such a transition should come about. The assistance has thus varied from recipient country to recipient country. Several observers of this process have also suspected that this push for reform was just as much a desire for economic reform and market economy, opening up for large scale investments and trade, as democratic reform in itself. Stability has also been seen as a goal for the Western actors as several examples can be expounded that show lenience toward undemocratic governments if urging political change could jeopardize the political stability (e.g. the Yugoslav nationalism spurred by political liberalization).¹⁶⁹

Nonetheless, the EU had come into a peculiarly strong position among these organizational structures as the EU was considered the most viable organizational structure that best could take on the task of promoting the comprehensive political and economic change needed. The EU shortly thereafter found itself as the largest supplier of aid in this region,¹⁷⁰ and normalization of the relationships between the

¹⁶⁷ Avery, “The Enlargement Negotiations” [note 7], pp. 35-36.

¹⁶⁸ Schimmelfennig, “Strategic Calculation and International Socialization” [note 165], pp. 827-828.

¹⁶⁹ Smith, “Western Actors” [note 86], pp. 33-57; and Hughes, Sasse and Gordon, *Europeanization and Regionalization* [note 17], p. 21.

¹⁷⁰ Kubicek, “International Norms, the European Union, and Democratization” [note 21], p. 9. The EU also coordinated aid from the G24 states and other financial institutions such as the World Bank and the International

Western European countries and the post-communist countries by inclusion in the EU political and economic framework soon became one of the main tasks for the EU in post-communist Europe.¹⁷¹

Initially, the EU was cautious in its approach toward the post-communist countries and merely responded to the changing situation in Central and Eastern Europe, and only supported the reform process by offering Trade and Cooperation Agreements (from 1988), a regular economic instruments used by the EU in relation to third parties, and technical and financial assistance through the PHARE (Poland and Hungary: Assistance for Restructuring their Economies) program (from 1989),¹⁷² offering technical and financial assistance for the economic reconstruction of Poland and Hungary.¹⁷³ Still, responding to the external demands from the post-communist countries, such as the Visegrád Group,¹⁷⁴ to deepen the relationship between the EU and the post-communist countries, the EU had to offer these countries more formal institutional ties after a while.¹⁷⁵

The Europe Agreements thus established a relationship of association between the post-communist countries and the EU (signed from 1991 and onwards) which dealt with both economic integration and the political considerations related to this. The economic dimension provided for a progressive movement toward free trade (except for agricultural goods), a gradual realization of free movement of service, capital and labor, and a commitment from the post-communist countries to harmonize national economic laws with EU law. The Europe Agreements established Association Councils and Committees at the ministerial, parliamentary, and other

Monetary Fund (IMF), see Jackie Gower, "EU Policy to Central and Eastern Europe" in Karen Henderson (ed.) *Back to Europe: Central and Eastern Europe and the European Union* [note 7], p. 4.

¹⁷¹ Mustafa Türkes and Göksu Gökğöz, "The European Union's Strategy toward the Western Balkans: Exclusion or Integration?", *East European Politics and Societies*, Vol. 20, No. 4 (November 2006), pp. 665-666.

¹⁷² Initially established in 1989 as an assistance program offering technical and financial support for Poland and Hungary, but was quickly extended to all states in the Central and Eastern Europe, and later redesigned as a pre-accession instrument to prepare these countries for EU accession. See Schimmelfennig and Sedelmeier, "Introduction", [note 5], p. 10; and Avery, "The Enlargement Negotiations" [note 7], p. 35; European Commission, "PHARE", The European Commission, 2009, at http://ec.europa.eu/enlargement/how-does-it-work/financial-assistance/phare/index_en.htm (retrieved 24 February 2009).

¹⁷³ Gower, "EU Policy" [note 170], pp. 3-4.

¹⁷⁴ In 1990, Poland, Czechoslovakia (later the Czech Republic and Slovakia) and Hungary agreed to coordinate their foreign policies for the purpose of collectively joining the European Community and the NATO, and therefore established the Visegrád Group. See Michael Alexander Rupp, "The Pre-Accession Strategy and the Governmental Structures of the Visegrad Countries" in Karen Henderson (ed.) *Back to Europe: Central and Eastern Europe and the European Union* [note 7], p. 89.

¹⁷⁵ Frank Schimmelfennig, Stefan Engert and Heiko Knobel, "The Conditions of Conditionality: The Impact of the EU on Democracy and Human Rights in European Non-Member States", Paper Prepared for Workshop 4, "Enlargement and European Governance", ECPR Joint Session of Workshops, Turin, 22-27 March 2002, pp. 3-4.

official levels to facilitate political dialogue not only on the economic sphere, but also within foreign policy, security, international criminal, and environmental policy areas. But more importantly for the post-communist countries, the Europe Agreements, although falling short of offering full EU membership,¹⁷⁶ nonetheless recognized (e.g., in the case of Poland) "(...) the fact that the final objective of Poland is to become a member of the Community and that this association, in the view of the Parties, will help to achieve this objective".¹⁷⁷

However, this support and these institutional ties have right from the start been made conditional on compliance with Western liberal democratic and human rights standards.¹⁷⁸ Hence, the European Parliament demanded as early as in January 1989 that compliance with human rights standards should be mentioned in the Trade and Cooperation Agreements negotiated between the EU and the countries of the Central and Eastern Europe, and that the Commission should use its mandate to promote such values in further negotiations with these post-communist countries. Guidelines for the EU's main economic assistance program PHARE, approved by the European Council, thus also included provisions which made it contingent on the reform progress in each individual country it aided.¹⁷⁹

These requirements were henceforth further elaborated in 1992 when the European Council stated that not only should the respect for democratic principles and human rights be the basis of all cooperation and association agreements between the EU and its CSCE partners, but these relations should also be subject to suspension if these provisions were not respected.¹⁸⁰ Neither Romania nor Croatia nor Serbia/Montenegro were, for example, granted PHARE assistance in the early 1990's on the grounds that they failed to fulfill these conditions.¹⁸¹

¹⁷⁶ Gower, "EU Policy" [note 170], pp. 5-6.

¹⁷⁷ Official Journal, "Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part", *Official Journal of the European Union*, L 348, 31 December 1993.

¹⁷⁸ The EU has always been an organization for democratic states, and did in fact reject a membership bid from Spain in 1962 on the grounds that this country did not respect democratic practices and fundamental rights and freedoms. Turkey has also met such EU criticism and has thus been denied further associational ties as they have not yet managed to fulfil the political conditionality requirements. However, the conditionality aspect for non-member states was not made explicit until the mid-1970's when the EU engaged in the democratization process in the Southern European countries Spain, Portugal and Greece, and thus offered these membership if they eventually should manage to consolidate their democracies. See Kubicsek, "International Norms, the European Union, and Democratization" [note 21], p. 8.

¹⁷⁹ Schimmelfennig, Engert, and Knobel, "The Impact of EU Political Conditionality" [note 19], p. 30.

¹⁸⁰ *Ibid.*

¹⁸¹ Smith, "Western Actors" [note 86], p. 40.

6. 1. 2 A Watershed-The Copenhagen Criteria, 1993-1997

The reluctance of the EU to consider an eastward enlargement and offer membership to these post-communist countries abated somewhat after the meeting of the Copenhagen European Council in June 1993. Internal EU issues such as the 1992 Maastricht Treaty negotiations and the preparations to include the EFTA (European Free Trade Association) countries Sweden, Finland and Austria in the EU fold in 1995 occupied most of the available attention on the part of the EU at that time,¹⁸² but this did not prevent the European Commission from presenting a report “The Challenge of Enlargement” at the Lisbon European Council in June 1992, declaring that “(...) the integration of these new democracies into the European family represents a historical opportunity”.¹⁸³ This thus helped put a potential EU enlargement further up on the EU agenda and led to the decision of the Copenhagen Council, the year after, to more formally declare the famous *Copenhagen Criteria*:

“(...) the associated countries in Central and Eastern Europe that so desire shall become members of the European Union. Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required”.¹⁸⁴

The Copenhagen Criteria furthermore established on what conditions EU membership can be granted to aspiring countries:

“Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate’s ability to take on the obligations of membership including adherence to the aims of political economic and monetary union. The Union’s capacity to absorb new members, while maintaining the momentum of European integration is also an important consideration in the general interest of both the Union and the candidate countries. The European Council will continue to follow

¹⁸² Avery, “The Enlargement Negotiations” [note 7], pp. 35-36; and Stephen M. Tull, “The European Union and Croatia: Negotiating “Europeanization” Amid National, Regional, and International Interests” in Kubicek (ed.) *The European Union and Democratization* [note 21], p. 136.

¹⁸³ Gower, “EU Policy” [note 170], p. 7.

¹⁸⁴ European Council, “Conclusions of the Presidency” [note 23], p. 13.

closely progress in each associated country towards fulfilling the conditions of accession to the Union and draw the appropriate conclusions".¹⁸⁵

Three conditions were therefore required of an applicant state in order to be granted EU membership, namely a democratic/political condition (stable democracy), an economic condition (functioning market economy) and an administrative condition (the capacity to integrate with the EU).¹⁸⁶ Even though no time table was indicated, the most important thing now for the post-communist countries was that the prospect of EU membership was no longer a question of *if* it would happen, but a question of *when*.¹⁸⁷ However, the EU still made membership conditional on the status of the EU's own internal reform, so to be ready to absorb potential new members, and had as such a pocket veto to turn down applicants if seen necessary.¹⁸⁸

The Essen European Council in December 1994 therefore initiated a coherent pre-accession strategy to prepare the Central and East European countries (CEECs) for membership. The Europe Agreements should be the basis for this strategy where trade liberalization and further economic reform should be promoted; the PHARE program should continue to assist the CEECs; closer political dialogue should be established; and a white paper on the integration of the post-communist countries into the internal market should be prepared by the Commission.¹⁸⁹

Hungary and Poland presented their applications in 1994 (March and April, respectively), and were followed in the next two years by eight additional applications from countries in this region.¹⁹⁰ The formal procedure for accession was therefore now initiated and the Commission was asked to prepare its official *Opinions* on the applicants' reform situation.¹⁹¹ Furthermore, the Madrid European Council in December 1995 indicated a shift of concentration on which conditions that had to be fulfilled to be able to gain EU membership. This was a shift from the normative, but rather vague statement, Copenhagen Criteria, over to the candidate states' more technical capacity to take on the *acquis communautaire* before accession. The normative Copenhagen Criteria did, however, not vanish altogether, and helped

¹⁸⁵ *Ibid.*

¹⁸⁶ Hughes, Sasse and Gordon, *Europeanization and Regionalization* [note 17], p. 61.

¹⁸⁷ Gower, "EU Policy" [note 170], p. 7.

¹⁸⁸ Avery, "The Enlargement Negotiations" [note 7], p. 36; and Dimitrova, "Europeanization and Civil Service Reform" [note 2], p. 75.

¹⁸⁹ Gower, "EU Policy" [note 170], p. 9.

¹⁹⁰ Avery, "The Enlargement Negotiations" [note 7], p. 36.

¹⁹¹ Gower, "EU Policy" [note 170], p. 10.

structure the monitoring efforts by the Commission of the candidate states' reform progress during the accession period.¹⁹²

6. 1. 3 Preparing for Enlargement – The Agenda 2000 Communiqué, 1997-2004

In July 1997, the European Commission issued a communication, the *Agenda 2000 for a Stronger and Wider Europe* action program, "(...) whose main objectives are to strengthen Community policies and to give the European Union a new financial framework for the period 2000-06 with a view to enlargement".¹⁹³ This communication formulated a reinforced pre-accession strategy and provided a set of detailed reports where the Commission gave *Opinions*¹⁹⁴ on the ten applicant countries' reform process achievements in relation to compliance with the *Copenhagen Criteria*. On basis of this assessment, the Commission recommended the launch of accession negotiations with Hungary, Poland, the Czech Republic, Estonia, and Slovenia in 1998,¹⁹⁵ leading to the signing of the first *Accession Partnerships*,¹⁹⁶ and an accession date was tentatively set to 2002.¹⁹⁷

Among the five remaining applicants, Slovakia had not fulfilled the political criterion, while Latvia, Lithuania, Romania, and Bulgaria had not managed to comply with the economic and administrative criteria, but they were all nonetheless offered partnerships with the EU in order to speed up the preparations for membership.¹⁹⁸ The European Council therefore decided to open negotiations with the first group of applicants in Luxembourg in December 1997, and it was thus named the

¹⁹² Hughes, Sasse and Gordon, *Europeanization and Regionalization* [note 17], p. 166.

¹⁹³ European Commission, "Strengthening the Union and Preparing the 2004 Enlargement". The European Commission, 2009, at http://ec.europa.eu/agenda2000/index_en.htm#top (retrieved 23 February 2009).

¹⁹⁴ The *Opinions* were based on several sources: results from questionnaires sent to all the Applicant States, studies and reports prepared by the Member States, independent agencies and international financial institutions such as the World Bank and the European Bank of Reconstruction and Development, and information provided by the Applicants themselves. See Gower, "EU Policy" [note 170], p. 13.

¹⁹⁵ Cyprus was also simultaneously recommended for accession negotiations by the Commission, see Avery, "The Enlargement Negotiations" [note 7], p. 36.

¹⁹⁶ "Accession partnerships are a pre-accession strategy instrument which determines the candidate countries' particular needs on which pre-accession assistance should be targeted and provides a framework for", for the purpose of providing the candidate states with "(...) guidance and encouragement during preparations for membership", see European Union, "Accession Partnership", Europa Glossary, The European Union, 2009, at http://europa.eu/scadplus/glossary/accession_partnership_en.htm (retrieved 21 June 2009).

¹⁹⁷ Avery, "The Enlargement Negotiations" [note 7], p. 45; and European Commission, "Agenda 2000: For a Stronger and Wider Europe", The European Commission, 1997, at <http://ec.europa.eu/agenda2000/overview/en/agenda.htm> (retrieved 23 February 2009); Hughes, Sasse and Gordon, *Europeanization and Regionalization* [note 17], p. 63.

¹⁹⁸ Avery, "The Enlargement Negotiations" [note 7], p. 36-37; and European Commission, "Agenda 2000" [note 197].

“Luxembourg group”. The latter group was finally offered to start negotiations in Helsinki in December 1999, and hence was designated as the “Helsinki group”.¹⁹⁹

The purpose of these negotiations, which are conducted in an intergovernmental bilateral fashion between the EU and the applicant country, is to help to prepare the applicant countries for membership, which, however, was conditional on these countries’ ability to adapt their legislation to EU legislative standards and ideals as stated more specifically in the *acquis communautaire*, which is the main EU body of law, and which consists of over 80,000 pages of legislation²⁰⁰ divided into 31/35 chapters or policy areas.²⁰¹ Implementation of this great bulk of legislation and the massive domestic reform it requires are thus supposed to help continue the democratic consolidation process, furbish up the aspiring member states for market economy, and basically prepare them for eventual full membership.²⁰²

The *screening* process of the *acquis* chapters was started in autumn 1998, and was conducted to ensure that the whole EU body of law and the obligations connected to this was understood by the applicants, and so these countries could present potential considerations or difficulties. Even though transition periods were accepted in certain policy areas, the main body of the *acquis* had to be accepted before membership; however, some chapters were only closed provisionally as each side had reserved the right to reopen one or another chapter if considered necessary. This was a pragmatic way to deal with difficult issues, but it also gave the EU the leverage to delay the process of the applicant country if some considerations arose. This implementation process was also monitored and assessed closely by the

¹⁹⁹ Avery, “The Enlargement Negotiations” [note 7], p. 37.

²⁰⁰ However, Open Europe have estimated the actual size of the *acquis* to be around 170.000 pages dependent on the different languages it is written in, see Open Europe, “Just how big is the *acquis communautaire*?”, Open Europe Briefing Note, 2007, available at <http://www.openeurope.org.uk/research/acquis.pdf> (retrieved 16 February 2009).

²⁰¹ The 31 chapters of the *acquis communautaire*, or the “agreed common values” as it is translated, was established as the conditions for EU membership by the 1997 Treaty of Amsterdam, see Eric O. Hanson, *Religion and Politics in the International System Today* (Cambridge: Cambridge University Press, 2006), p. 143, but was reclassified to include 35 instead of 31 chapters for Turkey and Croatia as a way to better reflect the reality in these countries. The chapters that would cause problems were divided up in further chapters, easy chapters were combined and certain issues moved from one policy area to another, see European Commission, “How Does a Country Join the EU?”, The European Commission, 2009, at http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/negotiations_croatia_turkey/index_en.htm (retrieved 23 February 2009).

²⁰² Avery, “The Enlargement Negotiations” [note 7], pp. 37-38; and Schimmelfennig and Sedelmeier, “Introduction”, [note 5], pp. 1-2.

Commission which annually issued *Progress Reports*²⁰³ and *strategy papers* to the European Council and the European Parliament on the progress made by the aspiring member states.²⁰⁴

As the negotiations continued, the applicant states started to pose questions regarding the time table for completing negotiations and a final date for accession. Many of the states felt they were prepared for membership and thus wanted to speed up the pace. Some realists in the EU, however, did not want to set final dates yet, as that could be seen as a promise to the applicants and thus might have relaxed the pressure for good preparations and hence undermined the EU conditionality. Still, the Commission and the Parliament started to indicate certain end dates. Romano Prodi, the Commission President, declared in September 1999 that he would work hard to achieve the first accessions before the Commission's mandate expired in January 2005. In November 2000 the Commission introduced a "road map" urging the completion of the negotiations by the end of 2002. This was in practice a means to oblige the EU to a time-limited strategy for closing all chapters and forcing settlements of the difficult decision in the *acquis*. This "road-map" did not, however, propose a date for the enlargement.²⁰⁵

At the same time, the EU had to make some difficult decisions on the institutional structure of the EU itself so to prepare it for enlargement. Such an agreement on the needed reforms was reached at the intergovernmental European Council in Nice in December 2000. This agreement was by many seen as not reaching the needed solutions for the difficult institutional reforms, but still opened up for further accession negotiations and the agreement was therefore welcomed by the applicant states, even though these had not participated to any greater extent.²⁰⁶

The pace of the negotiations now increased and the applicants were set under a much greater pressure to take decisions on difficult political questions to keep up in the "regatta" towards accession. Many of the countries in the "Helsinki group" caught

²⁰³ The Progress Reports review the progress made by the candidate country in implementing the *acquis*, and gives opinions on any improvements that have to be made. It draws on several sources of information provided directly by the candidate country, the Council of Europe, the OSCE, International Financial Institutions and NGO's as well as assessments made by the members states themselves. The Reports have, however, been criticized for lacking clear benchmarks in certain policy areas, leading to confusion among the candidate countries as to what standards are valid. See Hughes and Sasse, "Monitoring the Monitors" [note 79], pp. 14-20.

²⁰⁴ Avery, "The Enlargement Negotiations" [note 7], pp. 39-40; and European Commission, "Screening and Monitoring", The European Commission, 2009, at http://ec.europa.eu/enlargement/the-policy/process-of-enlargement/screening-and-monitoring_en.htm (retrieved 23 February 2009).

²⁰⁵ Avery, "The Enlargement Negotiations" [note 7], pp. 44-45.

²⁰⁶ *Ibid.*, p. 47.

up with the “Luxembourg group”, and even members in the latter group, such as Poland, started to lag in the competition among themselves to fulfill the *acquis* requirements. There soon emerged an unofficial ranking of ten potential countries that would lead the first round of eastward enlargement, as both Bulgaria and Romania lagged behind in the pre-accession preparations. These ten countries were formally declared to be (in alphabetical order) Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia at the European Council meeting in Laeken in December 2001, and were thus constituted the “Laeken group”. Negotiations should be ended with these before the end of 2002, and since the Irish finally ratified the Treaty of Nice in September 2002 (they had voted *no* in a referendum in June 2001) the Commission could finally conclude in its regular reports in October 2002 that from the beginning of 2004 the “Laeken group” could be ready for membership.²⁰⁷

Even though the negotiations on the other chapters on many occasions were anything but easy, the even more difficult budgetary issues now came to the fore. These particular chapters dealing with these financial matters could not be negotiated to any further extent without a set deadline for negotiations and thus accession. After long and hard negotiations, all parties accepted a compromise package at the European Council meeting at Copenhagen in December 2002, thus effectively ending the main negotiations.²⁰⁸

A final treaty of accession, putting the results into legal form, was then drafted. The European Parliament approved this draft on the 9th of April 2003 and the 25 contracting parties finally signed it in Athens on the 16th of April the same year. The Treaty of Accession was thus sent out for ratification in the ten applicant countries,²⁰⁹ and EU membership granted to these on 1 May 2004, with Bulgaria and Romania following in 2007.

6. 2 EU Democratic Conditionality and Poland’s Response

6. 2. 1 Church-State Relations prior to 1989

The Catholic Church has traditionally been an important social and political force of influence in Poland. Ever since Poland was included as part of Christian Europe in the year 966 by the Polish ruler Prince Mieszko, Catholicism has been an important

²⁰⁷ *Ibid.*, pp. 51-58.

²⁰⁸ *Ibid.*, pp. 52-58.

²⁰⁹ *Ibid.*, p. 58.

factor in Poland. Catholicism has therefore managed to influence the Polish culture through the centuries, even though Protestantism also was a religious source of influence at times. The Catholic Church's influence has been especially pervasive at times when the political state structures have been weakened. It was a political and cultural opposing force in defiance of the suppressive Tsarist rule when Poland ceased to exist as an independent state for 123 years (1795-1918); it tried to undermine the Nazi regime during World War II; and provided an arena for alternative and deviant thought during the Soviet-dominated communist era after the World War II until independence in 1989,²¹⁰ and now, as a religious revival is sweeping over most of the post-communist countries, by voicing its concerns about the increasing immorality of modern society and the threatening secularization brought on by contemporary European politics and culture.²¹¹

Sabrina Ramet²¹² sees the Catholic Church's contemporary mindset as, in part, an historical consequence of its communist era experiences, and, for the Polish context, she thus divides this experience into four phases: one of *repression* from 1945-56, where the Catholic Church's freedom to teach, preach, publish and assemble was severely restricted and its activities heavily suppressed. Archbishop Stefan Cardinal Wyszyński and Bishop Czesław Kaczmarek were, for example, both arrested and detained for three years for their reluctance to cooperate with the regime; much Church property was also expropriated by the state during this period. A second phase from 1956-70 was marked by *retrenchment* in state policies vis-à-vis the Catholic Church in Poland. Archbishop Wyszyński and Bishop Kaczmarek were released from prison, the Church's rights to publish, teach, and preach were somewhat liberalized, but this was mainly only a strategic move from the communist government led by Władysław Gomułka to mitigate the increasing public resistance against the regime.

From 1970 to 1980 the regime still tried to undermine the Church's social and political power by interfering with the school's choice of curricula and revising such material as to undermine the Polish Catholic Church's historical influence, but the regime headed by the Polish United Workers' Party (Polska Zjednoczona Partia

²¹⁰ Krystyna Daniel, "The Church-State Situation in Poland after the Collapse of Communism", in *Brigham Young University Law Review*, Vol. 1995, No. 2 (1995), pp. 401-419; and Faith Ozbay and Bulent Aras, "Polish-Russian Relations: History, Geography and Geopolitics" in *East European Quarterly*, Vol. XLII, No. 1 (March 2008), p. 29.

²¹¹ Hehir, "The Old Church" [note 156].

²¹² Ramet, "Thy Will Be Done" [note 12], pp. 119-120.

Robotnicza, PZPR) First Secretary Edward Gierek also transferred former Church property back to the Catholic Church. This third phase can therefore be characterized as a period of *stabilization*.²¹³

The last phase lasted from 1980 to 1989, and started with the crumbling of communist power, the excessive use of force and thus de facto military rule on the part of Marshal Wojciech Jaruzelski; the first two years of this period were also marked by the appearance and temporary legalization of the independent trade union *Solidarity*. A phase of *system decay* thus began in 1980. The Catholic Church now changed its prior defensive policies and became more of an action-based religious actor trying to reassert its past role as agitator against the suppressors, supporting human rights seminars, and promoting and sponsoring a diverse set of cultural activities. The Catholic Church, however, conducted such activities in a rather individualistic line only joining forces with *Solidarity* if necessary. The repressive and dysfunctional regime tried to fight back, but the Catholic Church only increased its popular support, and extremely important in this relation was the election of the Polish Karol Cardinal Wojtyła as Pope John Paul II in 1978. The Polish pope showed a special interest in Poland, urging non-violent resistance and the establishment of alternative institutions to counterbalance the regime if crisis should strike again. This thus gave the Catholic Church and the anti-communist movement in Poland an extra impetus. The Communists increasing indulgence since 1956 can thus be explained by the Church's strength and legitimacy in the Polish society.²¹⁴

The Catholic Church's legal position was also strengthened in the last months before the communist collapse when the Parliament in May 1989 approved a set of statutes which regulated state-Church relations. Until then, the Polish Constitution of 1952 had only guaranteed the separation of Church and state, and granted freedom of conscience and creed. With the implementation of these specific statutes the Polish religious communities' legal positions could be more narrowly defined and their rights better secured.²¹⁵ After Church-state relations were normalized the Catholic Church in Poland urged the state to re-establish the diplomatic relations

²¹³ *Ibid.*, pp. 119-120.

²¹⁴ *Ibid.*

²¹⁵ Daniel, "The Church-State Situation" [note 210], pp. 405-407.

between Poland and the Vatican, and such ties were then established in July 1989.²¹⁶

The Church therefore came out of the communist period much stronger and with more legitimacy than any other Polish institution at that point in time, establishing itself as the main moral authority in the Polish society.²¹⁷ Aware of its moral authority, which had been recognized both symbolically and politically by leading figures in Solidarity, the Catholic hierarchy in Poland tried subsequently to guide the post-communist transition to democracy in a direction compatible with Catholic values, investing Christian values of the Universal Church in the new democratic society.²¹⁸

6. 2. 2 Modernization vs. Traditionalism

In the wake of the round-table negotiations Poland initiated a democratization process, and although, like other societies in Central and Southeastern Europe, Poland had a choice between two models of democratization – a European model, incorporating provisions for national health care and provisions against hate speech, (typically) parliamentary rule, and notions of the collective good; and an American model, emphasizing individual freedom, rejecting any national health care system as an infringement upon people’s freedom, and incorporating a presidential model of rule – the announcement a “return to Europe” already gave preference to the choice of a European model. Nonetheless, this did not prevent Poles from accepting American input, for example through the Central and East European Legal Initiative (CEELI). Constitutional amendments thus came about in April 1989 restoring the Senate and the office of the President, annulling the powers of the First Secretary of the Polish Communist Party, adjusting the powers of the Sejm, changing the election legislation, and introducing the National Court Council. Then Poland adopted the Small Constitution in 1992 which regulated the powers and jurisdictions between the branches of government and the local self-government, and removed most of the formal communist formulae in the Constitution. Furthermore, democratic elections

²¹⁶ Mirella W. Eberts, “The Roman Catholic Church and Democracy in Poland”, in *Europe-Asia Studies*, Vol. 50, No. 5. (July 1998), p. 832.

²¹⁷ Daniel, “The Church-State Situation” [note 210], p. 404.

²¹⁸ Ramet, “Thy Will Be Done” [note 12], pp. 122-144.

were held and a severe economic reform process (economic shock therapy) was initiated.²¹⁹

In this early period of the third Polish republic, the Catholic Church in Poland also pushed through several morally symbolic and highly prioritized matters. One of these was to argue for the introduction of a total ban on abortion in Poland. Polish President Lech Wałęsa was clearly the Church's man and his first foreign visit as president was to Rome in order to pay his respects to the pope. The Church could also count on support from the Solidarity dominated Senate, and by September 1990 a bill restricting abortion was passed and forwarded to the lower house (the Sejm) for approval. This bill was finally approved in January 1993 by both houses and established legal provisions criminalizing abortion in Poland.²²⁰ Abortion was now allowed only if the health or life of the woman was seriously threatened, the fetus irreparably damaged, or the pregnancy was a consequence of rape or incest. This strict law on abortion did, however, not fulfill all of the Catholic Church's wishes, and was only "(...) a step in the right direction" as Primate Jozef Cardinal Glemp stated.²²¹

Parallel with this anti-abortion campaign, the Catholic Church promoted the reintroduction of religious instructions in the school system, managing to establish compulsory religion classes for all pupils and restricting sexual education, albeit ethics was also added to the curricula as an alternative to religion class. Furthermore, a new broadcasting law was approved stating that Christian values should be respected in radio and television broadcasts. A commission in which the Church also has its representatives was established to control that this law is respected by the media thus giving the Catholic Church an increased influence over the Polish media.²²²

These aforementioned rights and statutes were more firmly implemented and even expanded in the new Polish Constitution of 1997.²²³ The Catholic Church was

²¹⁹ Dimitrova, "Europeanization and Civil Service Reform" [note 2], p. 74; Rupp, "The Pre-Accession Strategy" [note 174], p. 95; USAID, "USAID Mission to Poland", USAID From the American People, 2002, at <http://www.usaid.gov/pl/private.htm#Central%20and%20East%20European%20Law%20Initiative> (retrieved 4 March 2009).

²²⁰ Ramet, "Thy Will Be Done" [note 12], pp. 122-123.

²²¹ Eberts, "The Roman Catholic Church" [note 216], p. 824.

²²² Ramet, "Thy Will Be Done" [note 12], pp. 122-123; Sabrina P. Ramet, "Reconfiguring the Polis, Reconceptualizing Rights: Individual Rights and the Irony of History in Central and Southeastern Europe", *Perspectives on European Politics and Society*, Vol. 10, No.1. (April 2009), p. 89.

²²³ Ratified by the Polish Parliament in April 1997 and approved by the population in a referendum in May 1997. The Polish Constitution of 1952 had until the new Constitution of 1997 came into effect in October that same

accommodated on several issues related to its vision of the Polish democratic state and the Church's privileged position in it. However, the Constitution of 1997 did not turn Poland into a denominational state.²²⁴ It only refers to the Polish Nation's Christian heritage rather than to Catholicism more specifically, and states that

“(...) all citizens of the Republic, Both those who believe in God as the source of truth, justice, good and beauty, As well as those not sharing such faith but respecting those universal values as arising from other sources” have “(...) Equal in rights and obligations towards the common good – Poland”.²²⁵

The Constitution furthermore also established in Article 25 that the Polish state is ideologically neutral, stating that the state and the different denominations are autonomous and independent alike. Notwithstanding, this distinction may be interpreted as establishing a “soft” division between Church and state as the term “separate” is not used, and there is rather an emphasis on a cooperative environment where all denominations and state work together for the common good.²²⁶ This supposed separation is also clouded by the provision (Para. 4, Article 25) that the relationship between the state and the Catholic Church is also subject to the guidelines established in the international agreement with the Holy See (read: the Concordat) and similar laws. This clearly establishes a privileged position for the Catholic Church as its rights are singled out in this paragraph, specifically.²²⁷ The Constitution also established that marriage is a union between persons of opposite sex, thus discriminating against same sex marriages. The Church was, however, not supported on the issue of protecting human life from conception until birth, i.e., no unconditional anti-abortion policy was established. In addition, participation in religious education is voluntarily as even though the Church managed to influence

year been temporarily supplemented by the “Small Constitution of 1992”. See Eberts, “The Roman Catholic Church” [note 216], p. 834; and Daniel, “The Church-State Situation” [note 210], p. 410.

²²⁴ Eberts, “The Roman Catholic Church” [note 216], p. 834.

²²⁵ Constitution of the Republic of Poland of 2nd April 1997, as published in *Dziennik Ustaw* No. 78, item 483, english translation by Albert Pol, Bureau of Research, and Andrew Caldwell M.A., of the Middle Temple, Barrister, Chancellery of The Sejm, Warsaw 1999, available at <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (retrieved 7 May 2009).

²²⁶ Eberts, “The Roman Catholic Church” [note 216], p. 834.

²²⁷ *Ibid.*, p. 835; and Timothy A. Byrnes, “The Challenge of Pluralism, The Catholic Church in Democratic Poland” in Ted Gerard Jelen and Clyde Wilcox (eds.) *Religion and Politics in Comparative Perspective: The One, the Few, and the Many* (Cambridge: Cambridge University Press, 2002), p. 32.

the implementation of religious education in schools, freedom of conscience and religion is also legally secured.²²⁸

However, the 1997 Constitution also reflects modern concepts, establishing a pluralist democracy with the separation of powers, checks and balances, and respect for the rule of law enshrined in law. Secured by law are also a variety of anti-discrimination protections prohibiting *any* form of discrimination in the political, social, and economic sphere, both in private and public sectors; establishing freedom of conscience and religion, freedom of expression, freedom of association, and the right to public services for all Polish citizens, including members of national and ethnic minorities. Gender equality in the family, society, economic life, education, employment, social benefits etc. is also secured by law.²²⁹

Negotiation on a new concordat between the Catholic Church and state was also started as soon as relations with the Holy See were normalized in 1989,²³⁰ but the initial draft proposed by a Warsaw-based joint governmental-ecclesiastical commission was disregarded by the Vatican, which then issued a revised draft after a long delay. This draft was then quickly accepted by Prime Minister Hanna Suchocka in July 1993 without further revisions and at a time when the Parliament had been dissolved by President Wałęsa. The Concordat also conflicted with several national laws, codices and decrees.²³¹ Ratification in the Parliament did however not come about until the new Constitution of 1997 was approved. The main reason for this was that the left-wing post-communist Democratic Left Alliance (Sojusz Lewicy Demokratycznej, SLD) coalition which was the major party in the governing coalition from 1993 to 1997, had serious reservations regarding the Concordat's legal provisions, and thus opposed ratification of the document. It would take a new political right coalition government consisting of the Electoral Action "Solidarity" (Akcja Wyborcza Solidarność, AWS) and the Union of Freedom (Unia Wolności, UW) for the Concordat to be ratified by the Parliament and for the President Aleksander Kwaśniewski to sign the document in January 1998.²³²

The Concordat's rationale is for the Church to obtain prerogatives in the Polish state, and in so doing the Catholic Church is assured state subsidies for Catholic

²²⁸ Eberts, "The Roman Catholic Church" [note 216], p. 835.

²²⁹ Filipek and Pamula, "Executive Summary Poland" [note 11], p. 2.

²³⁰ Eberts, "The Roman Catholic Church" [note 216], p. 832.

²³¹ Ramet, "Thy Will Be Done" [note 12], p. 123.

²³² Eberts, "The Roman Catholic Church" [note 216], pp. 832-833.

owned and operated educational institutions; the state is also obliged to provide financial support for the maintenance of Church buildings and its works of art; schools and kindergartens are obliged to implement required curricula decided by the Church for religious education if mandated by the state. As in the case of the Constitution, the Church-state separation principle is also rather blurred in the Concordat where it is stated that there is to be cooperation between the Church and state, and the word “separate” is not mentioned.²³³ These provisions have had serious repercussions for the Polish state-Church relationship, as they not only strengthen the position of the Catholic Church vis-à-vis the state, but also introduce a stronger emphasis on Christian values in the axiological base of the Polish legal system.²³⁴

The Catholic Church was also actively involved in the election process in the new Polish democracy. During the first partially free elections in June 1989 the Catholic Church supported all opposition candidates, but the clergy supported Solidarity and its parliamentary candidates more actively than any others. The Church exercised its power to influence the Catholic voters to a large degree by instructing the parishioners how to vote and why; arranged public discussions between Catholic bishops and Solidarity candidates; and provided Church halls for Solidarity meetings and rallies.²³⁵

This political campaigning was largely accepted by the public as this election was seen as a vote for or against the totalitarian regime. The dichotomy “us” (the society) against “them” (the communist authorities) which had been a natural way to divide the Polish state during the communist era, gave the Catholic Church a role as part of the society, and was thus not perceived as an actor in political terms but rather as an actor morally engaged for the cause of establishing freedom and democracy.²³⁶

The Catholic Church continued this strategy during the first presidential elections in 1990 as well. The Episcopate officially declared its neutrality, but in practice the Catholic Church actively supported the two Catholic contenders Lech

²³³ *Ibid.*, p. 833.

²³⁴ Daniel, “The Church-State Situation” [note 210], p. 412.

²³⁵ Eberts, “The Roman Catholic Church” [note 216], p. 826; and Byrnes, “The Challenge of Pluralism” [note 227], pp. 34-35.

²³⁶ Eberts, “The Roman Catholic Church” [note 216], pp. 826-327; and Renata Siemienska, “Poland: Citizens and Democratic Politics” in Hans-Dieter Klingemann, Dieter Fuchs and Jan Zielonka (eds.) *Democracy and Political Culture in Eastern Europe* (London and New York: Routledge, 2006), p. 207.

Wałęsa and Tadeusz Mazowiecki. The individual priests especially campaigned for Wałęsa as the most favorable Catholic alternative being more conservative than Mazowiecki, and urged its parishioners to vote for him; and Wałęsa eventually won.²³⁷

What is more, this presidential election revealed the existence of a deep cleavage between the more reform-minded, liberal-secularist and pro-Europeanist sympathizers, represented by Mazowiecki, who promoted an evolutionary concept of transition, and the more traditional-Catholic, Euro-skeptical sentiment led by Wałęsa which emphasized national and religious values for transitional Poland. This division could also be found in Polish society as a whole,²³⁸ and would characterize the political debates in Poland through the decade.

The parliamentary election in October 1991 was, however, a disappointment for the Catholic Church. The Episcopate had again officially stated the Church's political neutrality before the elections, assuring that the Church would prevent its priests from participating in the election campaign. However, in reality the Church representatives had a hard time staying neutral as abortion became the most important election issue, and a communiqué issued by the Episcopate was distributed among the parishes and the local priests calling on its parishioners to consult a list of Church-preferred parties when casting their ballots.²³⁹

The results of the election led to an extremely fragmented Sejm consisting of 29 political parties and groups²⁴⁰ with no self-evident basis for a majority. The Church-supported Electoral Catholic Action candidates won only 49 seats in the Sejm (out of 460), while the Catholic Church opposed Democratic Union (Unia Demokratyczna, UD), which had been severely attacked by the clergy during the elections, won 62 seats.²⁴¹ Consequently, this led to long and drawn out cabinet negotiations which in the end resulted in a rather short lived coalition government led by Prime Minister Jan Olszewski. The Olszewski government was fiercely anti-communist, denouncing the round-table agreement and any participation of old communists in the public life; it supported limited state interventions in economic

²³⁷ Eberts, "The Roman Catholic Church" [note 216], p. 827.

²³⁸ Marian Grzybowski and Piotr Mikuli, "Poland" in Sten Berglund, Joakim Ekman and Frank H. Aarebrot (eds.) *The Handbook of Political Change in Eastern Europe*, Second Edition (Cheltenham: Edward Elgar Publishing Inc, 2004), pp. 185-187.

²³⁹ Eberts, "The Roman Catholic Church" [note 216], pp. 827-828.

²⁴⁰ Siemienska, "Poland: Citizens" [note 236], p. 207.

²⁴¹ Eberts, "The Roman Catholic Church" [note 216], p. 828.

activities; promoted normalization of relations and cooperation with other European countries, and thus supporting Polish bid for EU membership.²⁴²

Lacking legitimacy in the Polish Parliament, however, the Olszewski government was forced to resign after a vote of no confidence in June 1992. After a short period with Waldemar Pawlak, the leader of the Polish Peasant Party (Polskie Stronnictwo Ludowe, PSL) as caretaker and failed Prime Minister candidate, Hanna Suchocka, a centrist Democratic Union politician, managed to establish a governing coalition. Constitutional reform, abortion and European integration dominated the political agenda, but a souring economic situation started to make it difficult for the government. A wave of strikes in the industry and mining regions of Poland as well as among employees in the public sector and teachers; problems in meeting demands in the agricultural sector; and ministers resigning provoked a new vote of no confidence in May 1993. President Wałęsa thus found it necessary to dissolve the Sejm and the Senate, and called for new elections in September 1993. The Suchocka cabinet served as a caretaker government until the elections.²⁴³

The Catholic Church's active political engagement did in the end damage the its authority, which became especially evident after the parliamentary elections in 1991. A survey conducted by the CBOS (Centrum Badania Opinii Społecznej, the Public Opinion Research Center) in November 1992 indicated that a majority of the Polish population (81.3% of the respondents) opposed the Catholic Church direct engagement in the political sphere.²⁴⁴ It seems, as Timothy Byrnes²⁴⁵ points out, that the Catholic Church's role in the new Polish democracy is by many Poles not seen as a political role. The Polish population might be predominantly of Catholic faith, but a democracy provides the population with a variety of channels to express their views (through opinion polls, elections, organizations etc.), and the Church is no longer needed for this purpose, as it was during the communist era.

6. 2. 3 The Catholic Church and Elections

Making the political sphere even more unfavorable for the Catholic Church, the September 1993 Parliamentary elections led to a victory for the parties and political groups on the left side of the political spectrum. The post-Solidarity centre-right

²⁴² Grzybowski and Mikuli, "Poland" [note 238], p. 192.

²⁴³ *Ibid.*, pp. 192-194.

²⁴⁴ Eberts, "The Roman Catholic Church" [note 216], p. 828.

²⁴⁵ Byrnes, "The Challenges of Pluralism" [note 227].

governments had grown unpopular during the early 1990's (52% of the respondents expressed dissatisfaction with the government in late 1991, and by early 1993 this level of dissatisfaction had risen to 64%). The difficulties experienced in Poland because of the economic transition (and in most countries of the Central and Eastern Europe for that matter), as well as the fragmentation of the post-Solidarity political forces contributed to the Polish political right's temporary downfall.²⁴⁶

The Catholic Church had been much more reluctant to actively engage in the election campaign this time. The Bishops issued yet another communiqué endorsing no special political party or group, but did, however, ask the Catholic electorate to guide their voting by the moral criteria that only representatives respecting Christian values and the Church's teachings could be worthy of their support. Indirectly urging the voters to remember the painful past the communists (i.e. now the Alliance of the Democratic Left) had caused the Catholic Church.²⁴⁷

Still, this did not help. The Alliance of the Democratic Left (SLD) and the Polish Peasant Party (PSL), together holding an absolute majority in the Sejm (37.2% and 28.7% of the seats, respectively), formed a new coalition government with the PSL's Waldemar Pawlak as Prime Minister. This leftist-peasant coalition was, however, programmatically and politically inconsistent. They diverged on important issues such as traditional Catholic values, modernization, European integration, and financial management. Furthermore, the Alliance had its main constituents among the city dwellers, salaried employees and thus net consumers of agricultural products, while the Polish Peasant Party basically was an interest party for food producers, mainly outside the cities and in rural areas. There was therefore a latent tension of interest between the two parties right from the start, which soon should prove destructive for their cooperation.²⁴⁸

The Presidential elections in November 1995 also highlighted the widening division between the conservative right and the liberal left, but also within both blocks.²⁴⁹ The political right had a hard time deciding on a common Presidential candidate because of internal disputes in the bloc. The Catholic Church did even make an unofficial attempt to help consolidate the fragmented political right under the

²⁴⁶ Grzybowski and Mikuli, "Poland" [note 238], pp. 194-199.

²⁴⁷ Eberts, "The Roman Catholic Church" [note 216], p. 828.

²⁴⁸ Byrnes, "The Challenges of Pluralism" [note 227], p. 37; and Grzybowski and Mikuli, "Poland" [note 238], pp. 197-201.

²⁴⁹ Grzybowski and Mikuli, "Poland" [note 238], p. 197.

auspices of the Convent of St Catherine, but with no success. In addition, the Catholic Church once again issued two communiqués again stating its political neutrality in the presidential election campaign, but reminded the Catholic electorate of their moral obligation not to vote for anyone who did not represent the views, values and interests of the believers. The local priests and individual bishops did, however, not adopt such a careful approach, priests and bishops openly endorsed Wałęsa and held masses to pray for his victory.²⁵⁰

Once again this strategy did not have the desired effect. The election was eventually won by the left candidate Aleksander Kwaśniewski (receiving 51.7% of the votes in the second round) by a slim margin to the incumbent President Wałęsa (receiving 48.3% of the votes in the second round).²⁵¹ The Catholic Church's rather badly concealed support for the political forces on the right led to an unfavorable poll conducted by the CBOS in 1996, which again showed that an overwhelming 85.8% of the respondents state that they are opposed to the Church's direct participation in the political life. Still, the Catholic Church claimed that they cared little for the public opinion, and stated that it is not their role to be popular, but rather to pursue its evangelical mission, i.e. save souls.²⁵²

The strict law on abortion from January 1993 was taken into consideration once again by the now left-dominated Parliament as this had been an election promise during the election campaign. Opinion surveys such as the CBOS poll conducted in February 1993 also gave indications that the law on abortion was slightly out of vogue with the public sentiment, as only 33.2% of the respondents supported the Catholic Church's position on abortion, and 58.2% was against the Church's stand.²⁵³ The Parliament thus voted in June 1994 to amend the bill making some allowances for financial difficulties, but this was vetoed by the pro-Church and anti-abortion supporter President, Lech Wałęsa. In August 1996, after the election of Kwaśniewski as President, the Sejm approved the bill once more, and this time succeeded in getting the President's approval.²⁵⁴ The decision was also met with heavy criticism from the Polish Episcopate and was also supported by Pope John Paul II who declared that the "(...) Church in Poland is in mourning because of the

²⁵⁰ Eberts, "The Roman Catholic Church" [note 216], p. 829.

²⁵¹ Grzybowski and Mikuli, "Poland" [note 238], p. 198.

²⁵² Eberts, "The Roman Catholic Church" [note 216], p. 830.

²⁵³ *Ibid.*, p. 825.

²⁵⁴ Ramet, "Thy Will Be Done" [note 12], p. 135.

criminal law approved by the Sejm”.²⁵⁵ The new abortion law was signed in November 1996, and now made it legal to conduct abortions during the first twelve months of pregnancy if the woman was struck by economic hardship or personal problems, it restored subsidization of contraceptives, even though only partially, and allowed for sex education in schools.²⁵⁶

However, the new abortion law was short lived. A group of Senators took the matter to the Constitutional Tribunal in December 1996, which then, in May 1997, ruled that the abortion law was unconstitutional in five of its articles. The Tribunal’s decision was then approved by the Sejm, now dominated by the political right, in December 1997, thus reintroducing the 1993 anti-abortion law.²⁵⁷

6. 2. 4 Poland and the Europe Agreements

In spite of these turbulent times where economic shock therapy and institutional changes in the name of democratic transition had led to such unstable governments and many coalition changes, the Polish political elite saw EU membership as imperative for future economic prosperity and political stability in Poland. The “return to Europe” ethos remained strong and each Polish government since the fall of communism had a pro-EU membership strategy of one kind or another.²⁵⁸ A Trade and Cooperation Agreement had been established in 1989; technical and financial PHARE assistance had been granted since 1989,²⁵⁹ an Association Agreement (Europe Agreement) was signed in December 1991 establishing bilateral trade relations between the EU and Poland;²⁶⁰ and Poland was one of the first post-communist countries to apply for EU membership in April 1994.²⁶¹ Furthermore, the Polish population supported Polish EU membership (77% supported EU membership in 1994, rising to 80% in 1996), even though no real debate on EU membership took place. Public support originated more in the instinctive desire to join the prosperous and politically safe Western Europe so as to draw domestic economic and social benefits.²⁶²

²⁵⁵ Eberts, “The Roman Catholic Church” [note 216], p. 825.

²⁵⁶ Ramet, “Thy Will Be Done” [note 12], p. 135.

²⁵⁷ Eberts, “The Roman Catholic Church” [note 216], p. 826.

²⁵⁸ Schimmelfennig, “Strategic Calculation and International Socialization” [note 165]; and Millard, “Polish Domestic Politics” [note 7], p. 203.

²⁵⁹ European Commission, “PHARE” [note 172].

²⁶⁰ Gower, “EU Policy” [note 170], pp. 4-5.

²⁶¹ Avery, “The Enlargement Negotiations” [note 7], p. 36.

²⁶² Schimmelfennig, “Strategic Calculation and International Socialization” [note 165]; and Millard, “Polish Domestic Politics” [note 7], p. 203.

The new Prime Minister Włodzimierz Cimoszewicz (from February 1996) had also started the long planned reorganization of the Polish central state administration and in this context established the Committee on European Integration in 1996. This was supposed to facilitate inter-ministerial co-ordination to ease the policy-making and harmonize the integration process in Poland. Still, after the establishment of the new Committee, conflict between it and the ministries continued, and especially between the Committee and the Foreign Ministry as there was no clear delimitation of competencies between them, there was a shortage of qualified personnel, and a failure to allocate sufficient funding for organizing EU negotiating teams complicated the process.²⁶³

The relationship between the Polish government and the European Commission had also become quite tense by the summer of 1996. The EU pre-accession strategy (initiated in December 1994) now, among others, emphasized the Europe Agreements as the basic instrument for helping the applicant countries fulfill the EU standards in relation to the economic integration.²⁶⁴ This had thus initiated an EU guided economic transition process in Poland as well. The European Commission, however, was unhappy with the slow pace of the Polish reforms in certain vital policy sectors such as its steel industry, oil refineries and finance, and accused Warsaw for postponing restructuring for political and social reasons. The Polish political elite on their side felt sidestepped on several vital reform issues like agriculture, freedom of movement, and the general opening up of Poland to market economy. In addition, the political elite had for years felt that the Europe Agreements were too narrow for the desired reform process. European integration implied introduction of the four freedoms of trade, capital, labor and service, whereas the Europe Agreements only dealt with trade. The terms on which the Europe Agreements had been established was also seen as unfavorable and as a reflection of the asymmetrical relationship between the EU and post-communist Poland. The Poles argued that the agreement discriminated against Polish interests because the low tariff barriers set by the agreement prevented Poland from utilizing its comparative advantages in some areas of trade. The Polish government thus wanted

²⁶³ Millard, "Polish Domestic Politics" [note 7], pp. 204-205; and Rupp, "The Pre-Accession Strategy" [note 174], pp. 99-100.

²⁶⁴ Gower, "EU Policy" [note 170], p. 9.

a more balanced and comprehensive agreement with the EU embracing all four freedoms.²⁶⁵

Above all, the Polish government felt it needed a legal guarantee that the multiple and detailed reforms would eventually lead to EU membership. The 1993 Copenhagen Criteria had aroused expectations in this respect, and even though short of the desired membership guarantees, this advance in political attitude from the EU made an eastward enlargement seem more realistic to the Poles. Still, the Polish political elite felt that the requirement forced upon them by the EU, and the costs paid for this rather painful reform process, did not match the rewards received from the EU.²⁶⁶

These tensions toward the integration process did also manifest themselves in the governing leftist-peasant coalition. Both the SLD and the PSL was committed to the EU integration project, but did not always agree on the details.²⁶⁷ The process of economic reform and privatization had slowed measurably, and while the agricultural sector actually gained new concessions it was still not enough for the rural voters. It also had to postpone a planned healthcare reform. By March 1995, Pawlak had been replaced by the Social Democrat, Józef Oleksy, as Prime Minister, but Oleksy also had to resign in February 1996 due to allegations that he had spied for the USSR and later for the Russian Federation.²⁶⁸ These points of contention now came to the fore as the reform process demanded more and more concessions from each party. The SLD being rather liberal in terms of economic reform, and thus also European integration, still had a main part of its constituents in the trade unions which were afraid to lose their jobs on the European job market. The SLD also had constituents who valued a Polish welfare state more than greater economic freedom. The Alliance thus had a hard time compensating for the loss in credibility among those who had lost in the transition from plan to market economy, and added to the bleak picture was the historical stigma of its communist roots that few voters would identify with.²⁶⁹

The PSL also had potential EU losers among its constituents in the small peasant holdings, which would find it hard to compete against the larger EU farmers.

²⁶⁵ Millard, "Polish Domestic Politics" [note 7], pp. 203-209.

²⁶⁶ *Ibid.*, p. 208.

²⁶⁷ Schimmelfennig, "Strategic Calculation and International Socialization" [note 165]; and Millard, "Polish Domestic Politics" [note 7], pp. 206-207.

²⁶⁸ Grzybowski and Mikuli, "Poland" [note 238], pp. 199-200; and Millard, "Polish Domestic Politics" [note 7], p. 204.

²⁶⁹ Grzybowski and Mikuli, "Poland" [note 238], p. 199; and Millard, "Polish Domestic Politics" [note 7], p. 206.

The PSL thus managed to gain concession for the agricultural sector while still holding a wary attitude toward the integration project. These concessions were, however, criticized by the EU as deeper agricultural restructuring was required to fulfill the EU standards.²⁷⁰ The coalition partners' divergent interests thus undermined the government's efficiency, leading to both an inconsistent EU strategy and to dissatisfied constituents that had to look for political alternatives elsewhere.²⁷¹

However, in addition to guiding the economic transition in Poland at this time, the Europe Agreements also had impact in the area of anti-discrimination protection. Through the Europe Agreements, Poland had committed to "(...) use its best endeavours to ensure that future legislation is compatible with Community legislation",²⁷² and was therefore obliged to transpose the existing EU Directives in relations to anti-discrimination at the workplace as part of this economic transition. The Polish Labor Code was therefore, in 1996, for the first time amended in an effort to enhance this legislation, securing equal treatment of employees at the workplace after EU standards.²⁷³

6. 2. 5 The Revitalization of the Right-Wing

By the summer of 1997, and the parliamentary election campaign, the political right had consolidated and had established the Election Action "Solidarity" (Akcja Wyborcza Solidarność, AWS) block to counter-balance the leftist alternative. The AWS were a nationalistic anti-European clerical political block which wanted to limit the economic liberalization set in motion by the prior governments, and protect the Polish national interests from the destructive forces of liberal secularism and consumerism. As it was centered on the Solidarity trade union, which was now virtually, as Frances Millard²⁷⁴ argues "(...) a Catholic trade union transmuted from its original incarnation as a mass anti-communist protest movement," the Solidarity leader Marian Krzaklewski, adhering to Catholic social teachings, managed to set a clerical agenda and a conservative ideological tone for the AWS.

²⁷⁰ Millard, "Polish Domestic Politics" [note 7], pp. 206-208.

²⁷¹ Grzybowski and Mikuli, "Poland" [note 238], p. 200.

²⁷² Official Journal, "Europe Agreement" [note 177].

²⁷³ Eleonora Zielinska, "Equal Opportunities for Women and Men: Monitoring Law and Practice in Poland", National Women's Information Centre (OŚKA), Open Society Institute Network Women's Program (2005), p. 7, available at http://www.soros.org/initiatives/women/articles_publications/publications/equal_20050502 (retrieved 27 June 2010).

²⁷⁴ Millard, "Polish Domestic Politics" [note 7], p. 210.

The election campaign therefore revealed that the opposition, even though not directly opposed to European integration, did have serious reservations on the implementation of the measures such reform required. The AWS and the Movement for Rebuilding Poland (Ruch Odbudowy Polski, ROP), which also did rather well on the opinion polls, had strikingly similar economic and social platforms, and often had arguments and agendas which seemed incompatible with European integration, maybe even more so for the ROP's stance. They were both keen on continuing the economic privatization, but wanted to slow down liberalization in terms of restricting foreign ownership of capital and land, give the unions greater power, increase public spending and lower taxes.²⁷⁵ All of these issues were on a collision course with the EU requirements.

During the 1997 parliamentary elections, the Catholic Church continued its traditional strategy of official political neutrality, but contended that the Catholic Church would not be indifferent to parties that did not adhere to Christian values, it would not boycott such parties either.²⁷⁶ The Catholic media had, however, during the leftist-peasant coalition's rule on several occasions attacked the SLD dominated government, lunging out with accusations that it was anti-Catholic and libertarian. The Catholic Radio Maryja was especially fierce in its criticism as it argued that the government's EU-line was a threat to Polish traditions and values, as the Western Europe's values promoted by the SLD through its pro-EU stand was not truly Christian at all.²⁷⁷

This time the preferred Catholic alternative won the parliamentary elections, but as the alternative political right coalition partners did not do so well, the winning AWS (won 33.8% of the votes, obtaining 201 seats in the Sejm, while the SLD got 27.1% and received 164 seats) was forced to negotiate a coalition government with the centre-right Union of Freedom (UW). President Kwaśniewski proposed the AWS politician Jerzy Buzek as Prime Minister which got the difficult job of creating a coalition government. However, cooperation among the AWS-UW coalition partners would soon prove to be difficult.²⁷⁸

²⁷⁵ *Ibid.*, pp. 210-213.

²⁷⁶ Eberts, "The Roman Catholic Church" [note 216], p. 830.

²⁷⁷ Grzybowski and Mikuli, "Poland" [note 238], p. 200; and Millard, "Polish Domestic Politics" [note 7], p. 210.

²⁷⁸ Eberts, "The Roman Catholic Church" [note 216], p. 830; and Millard, "Polish Domestic Politics" [note 7], p. 213.

Relations with the European Commission also kept on deteriorating. In July 1997 the European Commission presented its Agenda 2000 action program²⁷⁹ with its Opinions on the political, economic and social situation in Poland, and the countries' compliance with the Copenhagen Criteria. Negotiations were therefore recommended opened,²⁸⁰ and the EU established a group of experts that would monitor the Polish reform progress through monthly reports on a variety of policy areas of concern. This put an extra pressure on the Polish government, as the reform and restructuring requirements included policy sectors which would have been hard to vindicate for any Polish government, but maybe more so for the AWS-led government. Poland's remaining state enterprises and agriculture had to be restructured, state subsidies to the Polish industry and agriculture had to be reduced, a bank reform had to be carried through, and environmental protection had to be implemented, issues which would hit the AWS constituents hard. Added to this, the AWS party program, promoted in the election campaign, did not correspond with these conditions.²⁸¹

The Buzek government could notwithstanding count on the UW for support as they were committed to further European integration and a rapid accession. A Committee for European Negotiations, chaired by the prime minister, was also established, and functioned as the direct channel of contact between the EU and Poland. With the knowledge and competence of the Committee's secretary, the former Polish ambassador to the EU, Jan Kutakowski Poland now managed to promote its interests in a more effective way.²⁸²

The AWS could also count on a limited support from the Catholic Church in its EU strategy. The Catholic Church in Poland's response to the European integration process and to Poland's return to Europe had from the outset been one of caution, first characterized by skepticism and then later by cautious support. The reason for this is the, already mentioned, secular character of Western Europe being allegedly void of moral values and hence seen by the Church as a threat to Polish values and culture. The turning point, however, came in November 1997 after a delegation of the

²⁷⁹ European Commission, "Strengthening the Union and Preparing the 2004 Enlargement", at http://ec.europa.eu/agenda2000/index_en.htm#top (retrieved 23 February 2009).

²⁸⁰ Avery, "The Enlargement Negotiations" [note 7], p. 45; and European Commission, "Enlargement: 1.4.75. Poland's application to join the European Union". *Bulletin EU* 7/8-1997, at <http://europa.eu/bulletin/en/9707/p104075.htm> (retrieved 28 May 2009).

²⁸¹ Millard, "Polish Domestic Politics" [note 7], pp. 214-215.

²⁸² *Ibid.*, p. 215.

Polish Episcopate had been on an official visit to Brussels. The Polish Bishops had met with a number of EU representatives and discussed the effects that EU membership would have on Polish society. After some serious consideration, the Catholic hierarchy in Poland made a twofold distinction between Western values and their immoral character, on the one hand, and the European Union *per se*, on the other hand, identifying the real problem to be not the Union and the integration, but rather Western Europe as a whole. The Catholic Church concluded that it was the obligation as a Universal Church and protector of Natural Law to secure Europe against Western immorality, and hence to play the role as promoter of Christian values in the EU instead of standing outside it.²⁸³ The Catholic Church's conversion might thus have helped the AWS to vindicate its decision-making, and it might have had a de-stigmatizing effect on the pro-EU lobby outside of parliament as well.

During 1999, however, a series of poorly planned reforms within the healthcare, social security and education sectors led to a widespread dissatisfaction with the Buzek government. Tensions had been brewing for months as severe cooperation problems in the coalition had occurred in several policy areas, and consequently, in May 2000, the coalition cooperation between AWS and UW broke down. The Buzek government was therefore now reduced to a minority government,²⁸⁴ but in 2000, the Conservative People's Party (Stronnictwo Konserwatywno-Ludowe, SKL) left the AWS, and the Minister of Justice Lech Kaczyński formed his own party, the Law and Justice Party (Prawo i Sprawiedliwość, PiS). In the spring of 2001 even the Solidarity trade union movement left the AWS. Yet another government crisis hit the Buzek government in the autumn of 2001 when the budget deficit had risen to an astronomic level of 88 billion złoty, forcing Prime Minister Buzek to fire yet another minister, the minister of finance.²⁸⁵

The AWS and the UW, even though not in government, therefore lost support because of this governmental maltreatment. The voters were tired of constant governmental infighting and scandals, and outside the government the populist parties on the right received more and more attention from the electorate. The Self Defense of the Republic of Poland (Samobrona Rzeczpospolitej Polskiej, SRP) movement and the League of Polish Families (Liga Polskich Rodzin, LPR) both

²⁸³ Ramet, "Thy Will Be Done" [note 12], p. 137; and Eberts, "The Blessed Union" [note 12], pp. 3-4.

²⁸⁴ Grzybowski and Mikuli, "Poland" [note 238], p. 201; and Millard, "Polish Domestic Politics" [note 7], pp. 213-214.

²⁸⁵ Grzybowski and Mikuli, "Poland" [note 238], pp. 201-202.

gained increasing support, the SRP movement being especially popular in rural areas, and the LPR had successfully incorporated the most radical right factions of the AWS, and was supported by the Catholic radical Father Tadeusz Rydzyk and Radio Maryja. The Presidential elections in October 2000 also showed the decreasing popularity of the governing parties, as Kwaśniewski was re-elected (with 53.9% of the votes) while his perceived main contestant and Solidarity leader, Marian Krzaklewski won only 15.6% of the votes.²⁸⁶

The September 2001 Parliamentary elections therefore saw the comeback of the political left, with the Alliance of the Democratic Left (SLD) and the Union of Labor (Unia Pracy, UP) as the winners, receiving 41% of the votes, garnering 75 out of 100 seats in the Senate and 216 of the 460 seats in the Sejm. In October 2001, Leszek Miller was appointed Prime Minister by President Kwaśniewski and since SLD and UP could not create a majority government in its own right they sought partnership with the Polish Peasant Party (PSL) which received 9% (44 seats). However, this election also marked an increased support for the populist anti-EU parties, Self-Defense (SRP) and the League of Polish Families (LPR), which received 10.2% (53 seats) and 7.9% (38 seats) of the total votes respectively. These parties managed to catch many of the Euro-skeptics among the Polish population, and not only in the countryside, but also in the small urban communities as well, thus breaking the historical cleavage between centre and periphery. In addition, the centre-right parties Civic Platform (Platforma Obywatelska, PO) and Law and Justice (PiS), which both initially had an cautious stand in relation to Polish EU membership, also did fairly well, receiving 12.7% (65 seats) and 9.5% (44 seats), respectively. The Euro-skeptics thus now became rather strongly represented in the Sejm.²⁸⁷

The new left-wing government took a pro-Europe approach and sped up negotiations to be able to close the reform progress gap which had manifested itself between Poland and the other candidate countries during the late 1990's. In the policy area of anti-discrimination protection, the Polish Labor Code was again, in 2001 and 2003, amended in an effort to harmonize the national labor rights with the European Council Racial and Employment Equality Directives (2000/43/EC and

²⁸⁶ *Ibid.*

²⁸⁷ Grzybowski and Mikuli, "Poland" [note 238], pp. 203-205; and Søren Riishøj, "Europeanisation and Euro-scepticism. Experiences from Poland and the Czech Republic" in *Central European Political Studies Review* Part 4, Vol. VI (Autumn 2004), p. 20.

2000/78/EC).²⁸⁸ Compromises on the difficult agricultural issues such as subsidies and purchase of land by foreigners were also made by the EU summit in Copenhagen in December 2002, with the results the Poles preferred and to the satisfaction for most of the Polish political parties. The conservative national-populist political oppositional parties Self Defense, the League of Polish Families, and Law and Justice (which now had changed its attitude from one of caution, to one of outright opposition to the Polish EU policy and the negotiations) on the other hand did not agree, and strengthened their anti-EU stand even more.²⁸⁹

The Catholic Church in Poland sent yet another delegation of Polish Bishops for a visit to Brussels in February 2002. They met with the Commission officials, and were urged by the Commissioner responsible for Agriculture and Fisheries, Franz Fischler, to help convert the Polish Euro-skeptic farmers. The Bishops should educate the rural priests on the issue of EU agricultural policy so that they could provide the information to their rural parishioners (i.e. farmers). The Bishops, however, did not unanimously agree with the EU's stand on the Polish agricultural situation, and questioned the proposal that Polish farmers should receive less funding than the other EU farmers. The Polish Bishops also showed interest in the EU's stand on moral issues such as euthanasia, abortion, and homosexuality.²⁹⁰

The Polish Episcopate therefore issued an official document in March 2002 stating the Catholic Church in Poland's official position on the integration process. This document states that "(...) the Catholic Church is supportive of unifying initiatives which respect those fundamental human rights that minister to the integral development of human beings and promote the common good of both nation and country".²⁹¹ But the bishops do not see the European Union exclusively as an economic and political community, but rather primarily as "(...) a historical and cultural community based on the lasting ideas and tradition of Judeo-Christian spiritual values, Roman law and Greek philosophy".²⁹²

Moreover, the Polish Episcopate emphasizes the sovereign right of Poland to preserve its national identity, and reserve for itself the right to be able to determine its

²⁸⁸ Filipek and Pamula, "Executive Summary Poland" [note 11], pp. 2-3.

²⁸⁹ Grzybowski and Mikuli, "Poland" [note 238], p. 206.

²⁹⁰ Eberts, "The Blessed Union" [note 12], p. 4.

²⁹¹ Konferencja Episkopatu Polski, "Polish Bishops on European Integration". English Translation by Katarzyna Łazarz-Górska, Konferencja Episkopatu Polski-The Polish Bishop's Conference, 2002, www.episkopat.pl/?a=dokumentyKEP&doc=biskupi_eng-21032002 (retrieved 23 February 2009).

²⁹² *Ibid.*

own political, cultural, and religious values even when included in the European Union. The Church, however, will not commingle in the process of deciding on specific solutions when it comes to the integration process; this is up to the civil authorities. The Catholic Church will rather help secure the moral aspects of this Europeanization process by preventing the secular culture of materialism, consumer mentality and religious indifference from taking root in Poland, and thus stand guard over the fundamental Christian values of the Polish nation. The Catholic Church's anti-abortion and conservative marriage policies are here especially emphasized, arguing for provisions in the EU Constitution (which was debated at the time) protecting the human life from conception until death, and securing "(...) the right of marriage as a permanent relationship between a man and a woman",²⁹³ thus forbidding same-sex marriage. The hierarchy also demanded that an invocation to God be included in the future EU Constitution. The text also promoted dialogue among the different political divisions in Poland, especially with the actual and potential "losers" of European integration, such as the agricultural groups in the Polish society, thus also meaning the bulk of the Polish society that makes up the Euro-skeptics.²⁹⁴

The SLD seemed to have respected this stand when it resorted to a bargain strategy for securing the support of the Catholic Church in the final stages of the Polish EU accession period. An important election campaign issue in the last election for the SLD had again been the liberalization of the much disputed anti-abortion law. However, this issue soon had to give way for more important policy issues such as the integration process. In this context it was essential for the SLD to gain the support from the Church as a pro-EU information campaign was being launched and a popular referendum on EU membership soon to be held. The Miller government thus did not bring the abortion issue up to debate, and got the help of the Catholic Church to influence the Euro-skeptics among its parishioners, typically peasants in the rural areas. And one can speculate if this was a conscious bargain made by the Miller government. Such a bargain policy between Church and state is, as Mirella Eberts²⁹⁵ argues, nothing new in Poland, and did also happen during the communist era when the regime on different issues saw support from the Church as necessary.

²⁹³ *Ibid.*

²⁹⁴ *Ibid.*; and Eberts, "The Blessed Union" [note 12], p. 5.

²⁹⁵ Eberts, "The Blessed Union" [note 12], p. 5.

This was the case when, for example, the Catholic Church helped the communist regime to resolve a tense situation of workers' revolt in Poznań in 1956 in exchange for concessions from the state. However, when urging the population to support Polish EU-membership even the Catholic Bishops had to endure a stream of anti-Semitic and anti-German propaganda originating from the lower levels of the Church, and mainly from the Radio Maryja.²⁹⁶

Notwithstanding the broad popular support for Polish EU membership,²⁹⁷ a supportive President Kwaśniewski, and the cautious support from the Catholic Church for the European integration project, the Miller government struggled to succeed. It lost popularity steadily, while facing a strong Euro-skeptic opposition in the Sejm which argued for more Polish self-determination in relation to EU-membership. Also within the governing coalition tensions ran high, and the PSL ministers had been dismissed in March 2003 for their reluctance to conform to the collective government stand, and their party pushed out of the coalition. In addition, several failed reform projects, general economic hardship and political scandals ruined the government and the support for it. Prime Minister Miller therefore resigned on 2 May 2004 only one day after Poland had entered the EU.²⁹⁸

6. 2. 6 Poland after Accession

Marek Belka established a new coalition government in June 2004 as Prime Minister after his second try at winning a vote of confidence from the Parliament,²⁹⁹ and governed until the scheduled parliamentary elections in September 2005 took place. Despite an economic upturn and rather successful political steering from the Belka government, the SLD kept losing popularity. The combined parliamentary and presidential election thus saw another comeback by the political right, but more of a populist character this time. Still, the political centre also did well in the elections. The Catholic Radio Maryja supported nationalist and populist Law and Justice (PiS) party became the winner with the most votes (27% of the votes cast), with the pro-Europe Christian-Democratic Civic Platform (PO) receiving 24.1% of the votes cast. The

²⁹⁶ Riishøj, "Europeanisation and Euro-scepticism" [note 287], p. 21.

²⁹⁷ Popular support for EU membership has been steadily decreasing since the early 1990's, and was polled by CBOS to be 77% in support in June 1994; in March 2002, 55% were in support, while 29% were against; but after the EU referendum in June 2003 the results showed that 77.5% of those who voted (only 58.8% of the eligible voters), voted in favor of Polish EU membership. See Eberts, "The Blessed Union" [note 12], p. 6.

²⁹⁸ Grzybowski and Mikuli, "Poland" [note 238], p. 206; and *The New York Times* (3 May 2004), at <http://www.nytimes.com/2004/05/03/world/poland-s-prime-minister-is-replaced.html> (retrieved 22.05.2009).

²⁹⁹ *The New York Times* (12 June 2004), at <http://www.nytimes.com/2004/06/12/world/world-briefing-europe-poland-last-chance-for-rejected-premier.html> (retrieved 22 May 2009).

nationalist Self Defense party got 11.4%.³⁰⁰ The Presidential elections in October also showed a similar trend where the PiS candidate, Lech Kaczyński won with 54% of the votes in the second round, while the PO candidate Donald Tusk received 46% of the votes.³⁰¹ A stable coalition government, however, was hard to achieve among the two largest parties, resulting in a minority coalition government with PiS's Kazimierz Marcinkiewicz as Prime Minister. After a conflict with the PiS party leader Jarosław Kaczyński, twin brother of President Lech Kaczyński, Marcinkiewicz resigned in July 2006 and was then replaced by Jarosław Kaczyński as Prime Minister.³⁰²

This post-EU accession governmental constellation, first with Marcinkiewicz as Prime Minister, then with Jarosław Kaczyński as Prime Minister, displayed to which extreme level the Polish dissatisfaction with its position and role in Europe had reached, showing an unveiled foreign policy conduct which amongst others openly criticized EU-Russian energy relations; badmouthed the EU and some of its individual countries; promoted nationalist and protectionist policies; and caused several internal conflicts in the government coalition.³⁰³ The appointment of Roman Giertych from the conservative-Catholic League of Polish Families party to Minister of National Education in May 2006 makes an interesting example in this respect. After assuming the Minister position, Giertych made a rather taunting and homophobic statement when he announced that "(...) in Polish schools there is place for tolerance but there is and will be no place for homosexual propaganda",³⁰⁴ and announced that a draft legislation punishing the promotion of gay rights in schools was being drafted by the administration. This aroused a lot of protests from other politicians and interest

³⁰⁰ Państwowa Komisja Wyborcza, "Election to the Sejm, The Republic of Poland Voting Results", National Election Commission, 25 September 2005, <http://www.wyborcy2005.pkw.gov.pl/SJM/EN/WYN/W/index.htm> (retrieved 22 May 2009).

³⁰¹ Państwowa Komisja Wyborcza, "Presidential Election, The Republic of Poland Voting Results", National Election Commission, 23. October 2005, available at <http://www.prezydent2005.pkw.gov.pl/PZT/EN/WYN/W/index.htm> (retrieved 22 May 2009).

³⁰² *The New York Times* (10 July 2006), at <http://www.nytimes.com/2006/07/10/world/europe/10poland.html?scp=23&sq=&st=nyt> (retrieved 22 May 2009).

³⁰³ *BBC News* (7 September 2007), at <http://news.bbc.co.uk/2/hi/europe/6984543.stm> (retrieved 22 May 2009).

³⁰⁴ European Network of Legal Experts in the Non-Discrimination Field, *European Anti-Discrimination Law Review* Issue No. 4. (November 2006), p. 74.

groups, but it can be mentioned that this draft law initiative was supported by Prime Minister Kaczyński.³⁰⁵

The European Parliament has responded to this conduct and expressed concerns with the increasing intolerance and homophobia in Poland. The European Parliament has therefore asked all the EU member countries to respect people with a different sexual orientation, implement legislation protecting the fundamental right of such minorities, and to recognize same-sex marriage as equal to marriage between opposite sexes. The European Parliament has also been vocal on the difficult issue of abortion, urging the EU countries to facilitate the appropriate sexual education and to legalize abortions so to prevent high-risk illegal abortions.³⁰⁶ These initiatives have outraged the Polish conservatives and the Catholic Church, and some of the Polish members of the European Parliament even staged an anti-abortion display in the corridors of the European Parliament in December 2005. This display, which linked abortion to Nazi war crimes, was staged by a group of Polish EP members and the League of Polish Families. Maciej Giertych stated, after the display had been abruptly removed by the EP guards, "(...) we want to see Europe based on a Christian ethic (...) We accept the teachings of the Catholic Church on all moral issues. If you want to know our opinions, read the opinions of the Catholic Church."³⁰⁷ Furthermore, during the re-negotiations of the Constitutional Treaty, Poland chose to opt out of the Charter of Fundamental Rights at the Lisbon Summit in October 2007, as the conservative PiS government disagreed on the provisions protecting gay rights and banning death penalty.³⁰⁸ The PiS government also had the Plenipotentiary for Equal Status of Men and Women abolished in November 2005, and formally transferred its competences to the Department of Women, Family, and

³⁰⁵ European Parliament, "European Parliament resolution of 26 April 2007 on homophobia in Europe", The European Parliament, 2007, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0167+0+DOC+XML+V0//EN> (retrieved 25 May 2009).

³⁰⁶ European Parliament, "European Parliament resolution of 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008", The European Parliament, 2009, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0019+0+DOC+XML+V0//EN> (retrieved 23 March 2009).

³⁰⁷ *The New York Times* (4 December 2005), at http://www.nytimes.com/2005/12/04/international/europe/04brussels.html?_r=1&pagewanted=all (retrieved 08 May 2009).

³⁰⁸ *Spiegel Online International* (12 May 2007), at <http://www.spiegel.de/international/europe/0,1518,521499,00.html> (retrieved 10 June 2007); and *EurActiv* (23 October 2007), at <http://www.euractiv.com/en/socialeurope/reform-treaty-leaves-unions-mixed-feelings/article-167784> (retrieved 10 June 2009).

Counteraction Discrimination within the Minister of Labor and Social policy,³⁰⁹ a reconstruction which aroused criticism from the European Monitoring Center for Racism and Xenophobia, stating that this move undermined the anti-discrimination cause in Poland.³¹⁰ In addition, in June 2007, the European Commission issued a formal request to Poland (among 14 other EU countries) urging Poland to implement the Race Equality Directive (2000/43/EC) sufficiently,³¹¹ thus putting pressure on Poland to fall into line.

In the end, however, crisis once again struck the PiS-led government as a representative of the junior partner in the government Self Defense's Andrzej Lepper was now accused of corruption. In September 2007, the Sejm had to face an untenable situation and voted to dissolve itself, and thus called for early parliamentary elections in October the same year,³¹² leading to the PiS government's demise. The Civic Platform (PO) now received 41.5% of the votes, while PiS got 32.1% of the votes, and the PO's Tusk as Prime Minister formed a new government. The PO government has since its election victory tried to mend Poland's relations with the EU and its members, especially Germany, but is still immobilized by the conservative Euro-skeptic forces in Poland on certain issues. Even though it appointed a Government Plenipotentiary for Equal Treatment in April 2008, trying to make up for the former government's faults in the area of anti-discrimination, it has not managed to implement a long delayed Draft Act on Equal Treatment which would have enhanced the legislation in relation to gender equality.³¹³ Poland was thus in May 2009 referred to the European Court of Justice (ECJ) for not having sufficiently implemented the Council Directive (2004/113/EC) on gender equality in access to supply and goods into national law.³¹⁴

³⁰⁹ Artur Czerwinski, "Poland: EU Compliance", Poland National VAW Monitor, 2006, at http://www.stopvaw.org/EU_Compliance2.html (retrieved 28 May 2009).

³¹⁰ Vermeersch, "Ethnic Minority Protection" [note 11], p. 17.

³¹¹ European Network of Legal Experts in the Non-Discrimination Field, *European Anti-Discrimination Law Review* Issue No.6/7. (October 2008), pp. 53-54.

³¹² *BBC News* [note 303].

³¹³ European Network of Legal Experts in the Non-Discrimination Field [note 311], pp. 107-108.

³¹⁴ European Council "Directive 2006/54/EC" [note 103]; European Commission, "Commission Refers Poland to European Court of Justice on Gender Equality Legislation", The European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities, 14/05/2009, at <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=511&furtherNews=yes> (retrieved 19 May 2009).

6. 3 Poland Evaluated

This chapter will analyze the impact of the democratic conditionality of the EU on the implementation of anti-discrimination protection in Poland by tracing the process of Europeanization of anti-discrimination legislation implementation and practice since the fall of communism.

6. 3. 1 Democratization, 1989-1993

In the wake of the round-table negotiations the Poles initiated a democratization process by building a semi-presidential system inspired by both the American model and the European model, holding democratic elections and conducting a severe economic reform process (economic shock therapy).³¹⁵

This urge for reform was quickly supported by the EU with financial assistance, limited institutional ties and vague prospects of a full EU membership. This support, such as the Trade and Cooperation Agreement and the PHARE program from 1989 and the Association Agreements (Europe Agreements) signed in 1991 were, however, made conditional on a certain level of progress in democratic reform and respect for human rights.

It is still hard to talk about an Europeanization process. The EU conditionality, which at this point can be said to be a democratic conditionality, was weak and of a passive character.³¹⁶ No EU expansion was agreed upon, no membership was promised, and little direct EU pressure to adopt specific rules was applied. The EU was more occupied with internal issues and instead resorted to limited support for democratic reform, trade relations and overall regional stability.³¹⁷ Other organizations and countries also played a role during this first phase; the IMF, for example, provided economic assistance and the OSCE and the Council of Europe promoted human rights and democratic principles, with the UN offering verbal support for this agenda.³¹⁸ For example, Poland became a CoE member in 1991, thus early on showing progress in the democratization process.

³¹⁵ Dimitrova, "Europeanization and Civil Service Reform" [note 2], p. 74; Rupp, "The Pre-Accession Strategy" [note 174], p. 95.

³¹⁶ Milada Anna Vachudova, "The Leverage of International Institutions on Democratizing States: Eastern Europe and the European Union", *EUI Working Paper*, RSC No. 2001/33, European University Institute, Robert Schuman Centre for Advanced Studies, 2001, p. 4.

³¹⁷ Dimitrova, "Europeanization and Civil Service Reform" [note 2], p. 75; Hanson, *Religion and Politics* [note 201], p. 142.

³¹⁸ Hughes, Sasse and Gordon, *Europeanization and Regionalization* [note 17], pp. 15-16.

A heavy ideological dispute, however, split the Polish political elite down the middle during the early phase of post-communist democratization, a divide which later on would manifest itself in the political block structure and create a divide between a secular-liberal side, typically the political left, which supported European integration, a market economy and modernization; and a conservative side, the political right, consisting of Catholic-traditionalist groups supporting traditional Polish values, Polish sovereignty and only European integration to a certain extent. This reform process was thus fueled with domestic political conflict as how to best reform post-communist Poland.³¹⁹ The Catholic Church took an active part in this ideological dispute as well, supporting the political conservative side whose policies corresponded with the Church's interests. The Catholic Church managed to use its moral legitimacy and the unstable political situation in the early state building phase to consolidate its legal position in the Polish society. It influenced the educational system by introducing religious instructions in schools, helped the implementation of a strict anti-abortion law, gained influence over the media, and reserved for itself a prominent legal position both through the constitutional framework (formalized in 1997) and a concordat (signed in 1993, but not ratified until 1998).³²⁰

The rule implementation during this period in Poland was therefore mainly domestically self-driven, but the EU might still have exercised a passive influence as the Polish political elite was vigorously pro-EU,³²¹ and had even allied with other CEECs through the Visegrád Group for the purpose of gaining access into the Euro-Atlantic institutional framework.³²² Poland had also committed to respect certain economic norms, democratic principles and human rights to still be able to receive, the above mentioned, EU support.³²³ Weak indications of the possibility of membership were also given on a few occasions, such as the recognition of Poland's objective to become an EU member in the Europe Agreements, and by national leaders in the EU, such as the German Chancellor Helmut Kohl, uttering rather unrealistic accession dates.³²⁴

This might have helped the Poles keep their focus on Europe rather than national issues only, but the EU did not exert enough consistent or direct reform

³¹⁹ Grzybowski and Mikuli, "Poland" [note 238]; Millard, "Polish Domestic Politics" [note 7].

³²⁰ Ramet, "Thy Will Be Done" [note 12]; Eberts, "The Roman Catholic Church" [note 216].

³²¹ Millard, "Polish Domestic Politics" [note 7].

³²² Rupp, "The Pre-Accession Strategy" [note 174], p. 89.

³²³ Schimmelfennig, Engert, and Knobel, "The Impact of EU Political Conditionality" [note 19], p. 30.

³²⁴ Gower, "EU Policy" [note 170], p. 5.

pressure at the time for it to be called a Europeanization process caused by EU democratic conditionality. This period is therefore best understood as a self-initiated lesson-drawing process where the Western democracies were seen as models for institution building, and the EU and NATO as a means for providing economic benefits and military security for the nascent Polish state. The crumbled communist regime had left a domestic political and economic disequilibrium which demanded resolve, and a shattered political and economic system craving reform. This forced the Poles to initiate a state-building process influenced by both foreign ideals and domestic norms such as those promoted by the strongest domestic actor in Poland at that time, the Catholic Church. The period from 1989 to 1993 can therefore be described as a period of democratization rather than Europeanization as the Poles drew lessons from all relevant sources, and not just the EU, to be able to reform the Polish state.

6. 3. 2 Economic Europeanization, 1993-1997

A watershed for EU democratic conditionality came with the 1993 Copenhagen Criteria which formally established that respect for liberal democracy, human rights, market economy, the rule of law, and minority rights were all requirements for any country aspiring EU membership.³²⁵ This declaration now made it clear for the post-communist CEECs what the minimum conditions for EU membership were, and that membership actually was possible to obtain; the question was only when it could come about.

The EU pre-accession strategy agreed upon at the Essen European Council in December 1994, mainly emphasized national economic transition and the building of a viable market economy, and thus initiated a comprehensive economic integration process in Poland. Poland therefore implemented the EU standardized anti-discrimination protection in the Polish Labor Code in 1996 in an effort to fulfill the obligations in the Europe Agreements. This demanded the harmonization of Polish labor law with EU standards, thus transposing the existing Council Directives on anti-discrimination in relation to employment into national law, and securing equal treatment of the employee at the workplace.³²⁶ This is an example of how the two

³²⁵ European Council, "Conclusions of the Presidency" [note 23], p. 13.

³²⁶ Zielinska, "Equal Opportunities" [note 273], p. 7.

versions of EU conditionality – (the broadly defined) democratic and (the specified) acquis- overlap and are not mutually exclusive.

Hughes, Grabbe and Gordon³²⁷ have, however, found that most of the EU aid and reform efforts were channeled to support economic transition rather than political transition, institution building and democratic consolidation in the CEECs. For example, only approximately 1% of the total PHARE funds were allocated to civil society and democratization between 1990 and 1998. Furthermore, as Frances Millard³²⁸ has argued, in several policy areas the EU criteria were not specified to any further extent. The applicants therefore had to base the reform processes in many policy areas on their own discretion. Domestic factors therefore continued to influence the post-communist reform process in Poland, and the main EU influence was in the economic sector.

The Polish political elite, however, had since the early 1990's become increasingly aggravated over this uncertain Poland-EU relationship. They had from the outset, even though rather muted, expressed dissatisfaction with the fact that the Europe Agreements only included one of the four EU freedoms, namely trade, wanting the additional freedoms: capital, labor and services included in the agreement as well. Furthermore, the Poles felt that the later pre-accession arrangements were discriminating against Polish goods and did not show mutual respect for Polish interests. This thus led to long negotiations and a growing tension between the Polish state and the European Commission on, among other things, the reconstruction of the agricultural sector, privatization of the industry, the liberalization of air travel, and combating corruption.³²⁹

This tension was also a consequence of the dysfunctional leftist-peasant government coalition in power at that time which was incapable of making clear-cut decisions in relation to European integration. The Peasant Party was working against economic liberalization (especially in the agriculture sector), while the Social Democrats were for further economic liberalization in all sectors.³³⁰

The democratization process, however, continued and it is evident that the latest Polish Constitution, which came into effect in October 1997, is a compromise between tradition and modernity. The Catholic Church, as the main promoter of

³²⁷ Hughes, Sasse and Gordon, *Europeanization and Regionalization* [note 17], pp. 22-23.

³²⁸ Millard, "Polish Domestic Politics" [note 7], p. 209.

³²⁹ *Ibid.*, pp. 204-209.

³³⁰ *Ibid.*, pp. 206-209.

traditionalist values in Polish society, was not allowed full freedom to influence the state-building process, but a variety of concessions to the Church were still granted. Several references to God are made, as in the preamble when invoking God as the source of "(...) truth, justice, goodness and beauty",³³¹ the relationship between the Catholic Church and state is declared to be regulated by the Concordat; the Constitution recognizes only heterosexual marriages; and even though short of promising protection of life from conception until death, it does declare the protection of life.³³²

However, modernity is also reflected. The Constitution recognizes other sources of truths as well, not just God, and does not make Poland into a denominational state. It furthermore establishes a pluralist democracy with the separation of powers, checks and balances, and the respect for the rule of law,³³³ and it prohibits *any* form of discrimination in the political, social, and economic sphere, both in private and public sectors, except where marriage is concerned. The Constitution also establishes freedom of conscience and religion, freedom of expression, freedom of association, and the right to public services for all Polish citizens, including members of national and ethnic minorities. Gender equality is also secured in the family, society, economic life, education, employment, social benefits etc. Still, the provisions in the Constitution are very broad and do not provide any definitions of the possible forms of discrimination,³³⁴ which may make it difficult to identify certain forms of discrimination. Sexual minorities, for example, are not mentioned in the Constitution at all, and even though it is possible to invoke the provisions in the Constitutions directly, there is no tradition for this in Poland. Traditional patterns of discrimination might therefore go on unrecognized by those not affected, if not pointed out.³³⁵

This Constitution was negotiated at a time when the EU did not exercise much direct influence on the Polish reform process, except for on economic issues, and it is therefore reasonable to look at the implementation of these constitutional anti-discrimination rights as self-initiated. The adoption of a Constitution is after all part,

³³¹ Constitution of the Republic of Poland of 2nd April 1997 [note 225].

³³² Byrnes, "The Challenges of Pluralism" [note 227], pp. 31-32; Daniel, "The Church-State Situation" [note 210]; Eberts, "The Roman Catholic Church" [note 216], p. 835.

³³³ Eberts, "The Roman Catholic Church" [note 216], p. 835; and Byrnes, "The Challenges of Pluralism" [note 227], pp. 31-32.

³³⁴ Filipek and Pamula, "Executive Summary Poland" [note 11], p. 2.

³³⁵ Monika Mazur-Rafal, "Executive Summary: Poland country report on measures to combat discrimination", European Network of Legal Experts in the Non-Discrimination Field, 2007.

and maybe the most important part, of any democratization process. It can therefore be seen as a continuation of the democratization process initiated through the organization of a vigorous civil society from below beginning in 1980 and, in institutional terms, in 1989. Furthermore, a minimum of anti-discrimination protection is a prerequisite for a functioning liberal democracy and thus a natural component of a democratic constitution. But what the anti-discrimination protection should consist of beyond a general anti-discrimination clause might have been hard to define. No uniform set of anti-discrimination norms exists across Europe, as tradition and national demands often guide the construction of these,³³⁶ and the EU anti-discrimination framework at that time only demanded a general respect for fundamental human rights, except for the more specific provisions on gender and racial equality in relation to employment.³³⁷ It is therefore hard to identify if these standards were consulted to any greater extent by the Polish law-makers during the drafting of the Constitution.

The national political impact on this state-building process can also be exemplified by the battle over the strict abortion law which was thrown back and forth according to which type (secular-left/traditional-right) of government was in power. The leftist-peasant government delayed the final ratification of the Concordat as it was skeptical about its legal provisions, and it was not until a new right-wing government came into power that it was accepted.³³⁸ An ideological battle between a modernist group and a traditionalist group was thus being fought in the Polish political arena.

The modern values in post-communist Poland were thus not a consequence of a direct pressure by the EU, as the democratic conditionality of the EU did not have much direct effect on the democratization process in this period. These general provisions would most certainly have come about without the little EU pressure that existed at the time, as the democratization process was initiated by the Poles themselves after 1980/89, and even though it might have been inspired by foreign ideals, it was mainly influenced by their own preferences and internal ideological battles. However, the Labor Code amendments in 1996 are exempted from this trend

³³⁶ Guiraudon, "Anti-Discrimination" [note 42].

³³⁷ Treaty on European Union [note 81].

³³⁸ Eberts, "The Roman Catholic Church" [note 216], pp. 832-833.

as the anti-discrimination provisions implemented here were a direct response to the requirements in the Europe Agreements, and thus a process of Europeanization.

6. 3. 3 Adapting to the Acquis, 1997-2004

Later, in July 1997 with the Agenda 2000 communiqué, a more detailed EU strategy for enlargement was established.³³⁹ This communiqué initiated what can be said to be the theoretically strongest period of EU conditionality, especially in relation to the *acquis* conditionality. The prospect of membership was made contingent on the implementation of the whole body of EU law, the *acquis communautaire*; accession partnerships were established; the list of policy sectors which needed reform was expanded enormously; the states applying for membership in the EU were put in different categories on basis of the Commission's *Opinions* on who was ready to negotiate and not (the "Luxembourg" and "Helsinki" groups); a merit based "regatta" approach pitting the applicants against each other was adopted; and the Commission started to closely monitor the reform process in each applicant country by means of the annual Progress Reports to be able to put pressure on the right policy areas.³⁴⁰ The EU now had more means available to pressure the post-communist countries.

It was also after 1997 that anti-discrimination came to the fore on the European Union agenda. A watershed in this respect was the 1997 Amsterdam Treaty which established provisions addressing new potential victims of discrimination, and gave EU institutions the power to enforce compliance with these provisions among the EU members.³⁴¹ This led to subsequent Council Directives being issued, thus further strengthening the EU legal framework, and gave rise to a variety of anti-discrimination promotion campaigns from around 2000, where the EU institutions tried to increase the awareness of discrimination in Europe, especially discrimination on grounds of gender and sexual orientation.³⁴² EU democratic conditionality in relation to anti-discrimination therefore continued parallel with the *acquis* conditionality, and also interlocked on certain specific anti-discrimination provisions which are included in the *acquis* chapters, for example in the social policy and employment chapter.

³³⁹ Gower, "EU Policy" [note 170], p. 12.

³⁴⁰ Avery, "The Enlargement Negotiations" [note 7], pp. 36-37; and Gower, "EU Policy" [note 170], pp. 13-14.

³⁴¹ Moraes, "Challenges" [note 92], p. 31; and Treaty of Amsterdam [note 83].

³⁴² Toggenburg, "A Remaining Share or a New Part?" [note 13], pp. 6-7; and European Council, "Council Directive 2000/78/EC" [note 99].

When the accession negotiations with Poland began in 1998, the centre-right Buzek government in power had a hard time maneuvering in such a way as to satisfy both the coalition partners, the right-wing and EU cautious AWS, and the centre-right and pro-EU UW, in addition to complying with the increasingly complex EU demands.³⁴³ This internal ideological struggle, pitting national interests against EU demands, consequently tore the Buzek government apart, and the subsequent leftist Miller government also ran into similar troubles, not managing to push through several important reforms and alienating its voters. This again led to an increase of popularity for the now rising populist and anti-EU parties on the political right.³⁴⁴ Such a turbulent political climate was thus rather unfavorable for the Polish European integration project.

It furthermore became clear that the emphasis during the negotiations would continue to center around the policy areas that had to be reformed to be able to cope with the European single market, such as restructuring the agricultural sector, combating corruption, negotiation the terms for allowing foreign ownership, and not so much on anti-discrimination issues.³⁴⁵ It is evident that Poland had managed to improve its legal provisions for anti-discrimination protection since the fall of communism. As already mentioned, both the 1997 Constitution and the Labor Code provide for anti-discrimination protection. The Labor Code, which was amended again in 2001 and 2003, for example, now protects against discrimination on the grounds of sex, age, disability, race, religion and sexual orientation. The Penal Code also has provisions to protect against discrimination on grounds of race, religion and ideology. The European Council Race and Employment Directives (2000/43/EC and 2000/78/EC) are therefore to a large degree provided for and go way past the material scope of these, as the Constitution encompasses political, social and economic life, both in the public and private sphere. But what is characteristic for the Polish legal system as a whole is that it has few specific provisions, designating specific types of discrimination, it has no specific definition of “victimization” or “victim of discrimination”. These provisions are in other words rather broad and open for interpretation. In addition, the Polish Labor Law has an “escape clause” which enables the employer under certain conditions to take discriminatory actions if

³⁴³ Millard, “Polish Domestic Politics” [note 7], p. 213.

³⁴⁴ Grzybowski and Mikuli, “Poland” [note 238], pp. 202-206; and *The New York Times* [note 299].

³⁴⁵ Avery, “The Enlargement Negotiations” [note 7]; and Millard, “Polish Domestic Politics” [note 7].

necessary, a clause which is defined in much broader terms in Polish labor law than in EU law.³⁴⁶

Institutionally, Poland had at this point not established any authoritative body responsible for all forms of discrimination, but had several smaller institutions that had a partial mandate to deal with specific cases of discrimination, such as the Commissioner of Citizens' Rights, the Ombudsman (established in 1987), the Government's Plenipotentiary for Disabled Persons, the National Labor Inspector,³⁴⁷ and a Plenipotentiary for Equal Status of Men and Women which was established in October 2001 as a specialized monitoring body designed to address cases of gender discrimination.³⁴⁸ In addition, to fulfill the requirement of the Race Equality Directive (2000/43/EC), which demands the establishment of a monitoring body,³⁴⁹ this Plenipotentiary later acquired the competence to deal with discrimination on grounds of race, ethnic origin, religion, age, and sexual orientation as well.³⁵⁰ However, in practice, these above mentioned provisions have tended not to prevent the discrimination of groups in Poland which traditionally have been discriminated against, such as, for example, women and homosexuals.

Poland's efforts to protect minorities, an issue specially pointed out in the Copenhagen Criteria, have also lacked vigor. For example, Poland signed the Framework Convention for the Protection of National Minorities in 1995, but did not ratify it until December 2000, making Poland one of the last EU applicant countries to do so.³⁵¹ Poland also failed to implement a much disputed Act on Minorities and Ethnic Minorities and on Regional Language during the accession period, finally adopting this measure only in May 2005, and rather belatedly providing protection for national and ethnic minorities within the borders of Poland.³⁵² Peter Vermeersch³⁵³ points out, that this may have had to do with the fact that the Polish politicians had a hard time agreeing with the minorities in question³⁵⁴ on the technicalities of the legislation which should be applied in a rather ethnically homogenous Polish state,

³⁴⁶ Filipek and Pamula, "Executive Summary Poland" [note 11], pp. 2-3; Mazur-Rafal, "Executive Summary" [note 335]; and Vermeersch, "Ethnic Minority Protection" [note 11], p. 15.

³⁴⁷ Filipek and Pamula, "Executive Summary Poland" [note 10], p. 5.

³⁴⁸ Czerwinski, "Poland: EU Compliance" [note 309].

³⁴⁹ Vermeersch, "Ethnic Minority Protection" [note 11], p. 17.

³⁵⁰ Filipek and Pamula, "Executive Summary Poland" [note 11], p. 5.

³⁵¹ Schwellnus, "The Adoption" [note 71], p. 61.

³⁵² Filipek and Pamula, "Executive Summary Poland" [note 11], p. 2.

³⁵³ Vermeersch, "Ethnic Minority Protection" [note 11], pp. 8-9.

³⁵⁴ These were mainly activists from Ukrainian and Romani minorities, see Vermeersch, "Ethnic Minority Protection" [note 11].

and that it was not just a case of political reluctance to deal with this, even though this certainly played a role too. The forces arguing for change were also rather few and weak.

The paradox in this context is that even though the traditional discrimination continued to occur and the anti-discrimination protection available obviously was insufficient after EU standards, any active EU pressure other than on the implementation of the technical *acquis* was almost non-existent when it came to anti-discrimination rights in Poland during the accession process. When reviewing the Commission's annual Progress Reports on Poland from 1998 until 2003 little was mentioned about anti-discrimination legislation, nor practice, except for some short remarks in relation to the Labor Code,³⁵⁵ which Poland responded to. But I might add that all the countries included in the accession negotiations had by the Commission's *Opinions* in 1997 been declared to fulfill the democratic Copenhagen Criteria, and that each of them presented "(...) the characteristics of a democracy, with stable institutions guaranteeing the rule of law, human rights and respect for and protection of minorities".³⁵⁶ The Commission may therefore have assumed that since the necessary democratic apparatus for the protection of the fundamental rights had been implemented, little monitoring effort was needed in this sector.

In addition to the weak EU pressure, there was in Polish society no obvious disequilibrium of anti-discrimination legislation that the Poles themselves felt needed to be fixed. It was rather the liberal EU legislation that upset the domestic equilibrium consisting of discriminatory practices inspired by traditional values and secured legally by the Constitution and other secondary legislation. I therefore conclude that most Poles themselves seemed not to have had any problems with this Polish anti-discrimination legislation as it stood with the broad definitions in the 1997 Constitution and other legislation. They did at least not express such opposition.

³⁵⁵ European Commission, "Regular Report from the Commission on Poland's Progress Towards Accession", The European Commission, 1998; European Commission, "1999 Regular Report from the Commission on Poland's Progress Towards Accession", The European Commission, 1999; European Commission, "2000 Regular Report from the Commission on Poland's Progress Towards Accession", The European Commission, 8 November 2000; European Commission, "2001 Regular Report from the Commission on Poland's Progress Towards Accession", The European Commission, Brussels, 13.11.2001, SEC(2001) 1752, 2001; European Commission, "2002 Regular Report from the Commission on Poland's Progress Towards Accession", The European Commission, Brussels, 9 October 2002, SEC(2002) 1408, 2002; European Commission, "Comprehensive Monitoring Report on Poland's Preparations for Membership", The European Commission, 2003.

³⁵⁶ European Commission, "Enlargement: 1.4.75. Poland's application to join the European Union", *Bulletin EU* 7/8-1997, at <http://europa.eu/bulletin/en/9707/p104075.htm> (retrieved 28 May 2009).

Renata Siemienka³⁵⁷ found, for example, that 70.6% of the Polish respondents in a World Value Survey from 1997 were of the opinion that homosexuality could not be justified, while 56.8% opposed the right to divorce, and 38.6% rejected abortion, thus suggesting a rather high level of traditionalist sentiment in the Polish population. However, even though these levels of traditionalism have decreased somewhat since 1997, Poles are still highly traditionalist. According to Irena Borowik,³⁵⁸ a large majority of the Poles today, 65-75%, are traditionalists in virtue of being Catholics, but are not very religious. This is a mixed group of people, but they are mostly situated in the rural areas of Poland, but more importantly, the Catholic values are more a matter of tradition to them than a matter of religious piety. Adding to this large group are the 15-20% of the Poles who are conservative Catholics following a strict moral ethos and wanting a more expansive Catholic Church in the Polish society. At the other end of the scale is a small group, 10-15%, of the Poles who are Catholics, but are progressive when it comes to values and norms. These people are typically younger people with high income, are well educated, and are predominantly men. In addition, 58.9% of all Poles are regular Church goers.

This indicates that a large majority of the Poles are traditionalist and might be opposed to certain forms of anti-discrimination rights that do not correspond with these values, and that the Catholic Church might influence this attitude by virtue of preaching to a majority of these people. But it also indicates that a large majority of Poles do not necessarily obey every move the Catholic Church is making even though they are Catholics. Added to this, surveys have shown that an increasing number of Poles are wary that there might be too much Church intervention in Polish politics. In 1996, for example, 85.8%% of Poles surveyed were opposed to the Catholic Church's involvement in Polish politics.³⁵⁹ These findings might therefore explain the failure of the Catholic Church to influence the voting patterns of the Poles during elections. It is therefore not necessarily the Catholic Church alone that directly influences the population's ignorance about certain forms of discrimination; traditional Polish values, associated with villages and small towns, have an independent force of their own.

³⁵⁷ Siemienka, "Poland: Citizens" [note 236], p. 216.

³⁵⁸ Irena Borowik, "Religion in Poland after 1989", oral presentation for the Program on East European Culture and Society (PEECS) Research Seminar at NTNU, Trondheim, 24 April 2009.

³⁵⁹ Eberts, "The Roman Catholic Church" [note 216], p. 830.

What is more, when it comes to the motives for supporting Polish EU membership, most Poles are interested in getting their European dream fulfilled (or their American dream for that matter), meaning that the material benefits and the freedom the EU can provide them, such as economic prosperity, the right to work and travel abroad, and being secured from political oppression, all benefits which the communist regime deprived them of. However, there had been no real popular debate in Poland on the actual effects of an EU-membership.³⁶⁰ Frank Schimmelfennig³⁶¹ has, for example, argued that the voting patterns of the populations in the CEECs were mainly informed by their immediate concerns for personal security and welfare rather than the governments' compliance with Western norms. The Polish electorate has therefore indirectly punished the Polish governments' EU strategies as these economic and political issues in reality were directly influenced by the European integration process and the inconsistent political conduct of the Polish governments in relation to this. Any additional EU standardized anti-discrimination legislation might therefore not have been seen as necessary, or simply irrelevant for this greater goal of material prosperity. Certain EU anti-discrimination norms are simply not congruent with the Polish national identity or needs.

Certain human rights organizations and interests groups such as the Women's Rights Centre in Warsaw, the Campaign Against Homophobia, Human Rights Watch, Amnesty International and the Open Society Institute have, however, criticized the increasing intolerance in Polish society and the lack of sufficient anti-discrimination legislation, but a great problem in this relation is that the Polish civil society still is rather weak with a low level of political participation or civic engagement,³⁶² and cannot compete with the Catholic Church's strong hold on people's conscience and allegiance. These organizations get little attention from the governmental institutions as the Polish pro-EU politicians fear they will lose support by debating such sensitive issues,³⁶³ and certain conservative politicians have also promoted straight out homophobic and chauvinistic values. In addition, many lesbians, gays and bisexuals are silent about their sexual orientation and about being discriminated against in fear

³⁶⁰ Millard, "Polish Domestic Politics" [note 7].

³⁶¹ Schimmelfennig, "Strategic Calculation and International Socialization" [note 165], p. 834.

³⁶² Siemienska, "Poland: Citizens" [note 236].

³⁶³ Ronald L. Holzhaecker, "National and Transnational Strategies of Civil Society Organizations: Modes of Interaction in Western and Eastern Europe for Equality and Non-Discrimination", Conference Paper for the American Political Science Association annual meeting, Boston, 27—31 August 2008. Draft Version 1.4, p. 22.

of being shunned by society, thus undermining these groups' leverage in society even further.³⁶⁴

Furthermore, the public debate in Poland on EU issues was, as already mentioned, during the accession period almost non-existent. The European Commission bargained with the governing political elite in an intergovernmental fashion and did little to include the population as a whole; nor did the Polish governments. The population's voice was needed only when the accession treaties had to be ratified after the negotiations were done.³⁶⁵ The EU has thus failed to induce *resonance*³⁶⁶ in the area of anti-discrimination among the Poles given their exclusion from the EU-debate, which consequently has sustained the high level of traditionalism and intolerance toward certain types of people in Poland. This has therefore undermined a potential Europeanization or liberalization within the Polish population when it comes to anti-discrimination. When looking at the general reluctance or difficulty of the Polish governments themselves to comply with EU demands during this period, and their emphasis on all other policy areas than human rights and anti-discrimination, a more active strategy of EU pursuance directed toward the Polish people would have helped induce such a resonance in the Polish population.

The Catholic Church, on the other hand, as the main promoter of these traditionalist values, is much better organized and has the potential of influencing the Poles at all levels of society through its rights established by the Constitution and the Concordat, such as providing religious instruction in schools, promoting its causes through the Catholic media, and preaching in the parishes. Charity work is also an important aspect of the Catholic Church's activities in Poland, and contributes to the Church's credibility in Polish society.³⁶⁷ In addition, the Catholic Church has at times had strong political allies such as the political parties, the League of Polish Families and the Law and Justice Party, and has also had sympathizers in the Solidarity bloc. The teaching and preaching of the Catholic Church's traditional values are thus constitutionally secured and its channels of potential influence numerous. Therefore,

³⁶⁴ Fundamental Rights Agency, "The Social Situation" [note 116].

³⁶⁵ Hughes, Sasse and Gordon, *Europeanization and Regionalization* [note 17], pp. 141-145.

³⁶⁶ Recounting the definition of resonance in Chapter 2. 3. 2: EU standardized anti-discrimination rules are more likely to be accepted by the non-member if the rules coincide with the political culture and due process in the policy area the rules are supposed to regulate, and if there are no existing rules which can compromise the proposed rules. In other words, the EU norms have to find a certain level of domestic resonance to be accepted and implemented into national law. See Schimmelfennig and Sedelmeier, "Introduction", [note 5], p. 20.

³⁶⁷ Eberts, "The Blessed Union" [note 12]; Ramet, "Thy Will Be Done" [note 12], pp. 125-126.

the Catholic Church assumed the role of veto player in Polish politics and sought protection of its interests supporting law and legal institutions. Its impact during elections, however, was evidently not as strong as it had hoped, the Poles instead voting in a retrospective manner, as Byrnes³⁶⁸ states, by punishing the former government's dirty deeds, voting for a different party alternative the next time, and therefore not necessarily out of ideological or religious reasons.

Still, much governmental prestige was at play when the Polish people finally voted on the question of Polish EU membership in 2003. This might explain the Miller government's decision to drop its liberal abortion legislation campaign in an attempt to gain the Catholic Church's support in the EU referendum. Even though an increasing number of Poles are opposed to the Catholic Church's direct involvement in politics, the Catholic Church still has some leverage over its parishioners and has the potential to influence their choices when it comes to political participation. The Miller government might therefore have been afraid that its decreasing popularity would affect the EU referendum and sought the Church's support to help influence the EU-skeptics. In addition, it is important to recognize that, while some bishops may be counted as Euroskeptics, some of the Catholic Bishops have been supportive of the integration project since 1997, even though this has been a cautious support. It is mostly individual Catholic priests and Catholic groups such as the Radio Maryja Family (a popular movement built around Radio Maryja) in the lower levels of the Church hierarchy that have been opposed to Polish EU membership altogether. These have furthermore supported the anti-EU traditionalist political parties and groups, such as the League of Polish Families.³⁶⁹ It is therefore important not to treat the Catholic opposition to the EU as representative for the Catholic Church in Poland as a whole, as there are moderate sentiments there as well.

The relatively weak civil society in Poland, the Catholic Church's strong societal position, the unstable governmental coalitions, the authorities' reluctance to recognize discrimination in the Polish society, the deep ideological divide, and the EU's failure to push more vigorously for anti-discrimination protection, are therefore all influential factors which leads to the Polish indifference to anti-discrimination

³⁶⁸ Byrnes, "The Challenges of Pluralism" [note 227], pp. 34-41.

³⁶⁹ Eberts, "The Blessed Union" [note 12], p. 6; and Riishøj, "Europeanisation and Euro-scepticism" [note 287], p. 21.

during the accession period. One can therefore suspect Poland of only ratifying the Framework Convention for the Protection of National Minorities in December 2000 as imperative for the purpose of fulfilling the EU requirements, and not necessarily to meet domestic demands. This goes for the last amendment of the Polish Labor Code in November 2003 as well, which came into effect in January 2004, only months before EU accession.³⁷⁰

This gives support to an *external incentive model*, as the governments had to continuously balance between domestic demands and EU requirements, and no government was strong enough to push through a consistent EU-policy without making concessions to the other coalition partners. In other words, the conservative national-oriented and traditionalist forces sabotaged the liberal-secular pro-EU efforts. However, as economic and administrative issues occupied the agenda for both sides, little was thus done in the anti-discrimination sector. This policy sector might just have been a bi-product of the greater plan to become an EU member. The EU anti-discrimination legislation did not have much value in itself for the Poles it was just a means to fulfill EU's conditions for membership and reap the other benefits of this, and the provisions were consequently poorly implemented.

6. 3. 4 Regress? 2004-present

Poland was finally accepted into the European club by being granted EU membership in May 2004, and was then supposed to have harmonized its national legislation with EU-law in most policy areas. After accession, EU conditionality should in theory lose its power, and it is thus after a country's EU accession that the legislative framework transposed from the *acquis* is really put to the test. But given the more extensive powers given to the EU institutions to pursue EU members that do not comply with the EU anti-discrimination legislation as enshrined in the 1997 Amsterdam Treaty, the EU should still have some powers to see to it that these provisions are respected among its member countries. EU democratic conditionality in relation to anti-discrimination might thus still be influential in certain aspects of national anti-discrimination protection, the sanctions now being legal rather than denial of membership. The EU has also been promoting anti-discrimination among its members and potential members more vigorously than ever since 2004, and especially as a response to the increasing discrimination in Eastern Europe during

³⁷⁰ SchwelInus, "The Adoption" [note 71], p. 61.

past few years. Legal actions against EU members have also been used increasingly the past few years.³⁷¹ The EU will, in other words, still have a say on these matters after accession as well. The European Commission therefore just recently (July 2008) proposed a more comprehensive social package improving EU provisions in several policy areas, such as employment rights, health care, fighting poverty, education, including a horizontal Directive protecting against all forms for discrimination everywhere in the EU.³⁷²

However, the conservative PiS-led coalition government which came to power in September 2005 promoted values that many liberal critics insisted were little more than open intolerance and xenophobia. Both domestically and internationally it carried out policies quite contrary to EU ideals. This government had an official line which discriminated against gays and lesbians, strongly condemned abortion, closely consulted the Catholic social teachings, and turned more toward the USA than the EU in its foreign policy. It thus drew a substantial amount of criticism from several organizations, governments and interests groups throughout Europe for this uncompromising political conduct, the EU institutions included. When it came to anti-discrimination legislation, it abolished the position of the Plenipotentiary for Equal Status of Men and Women in November 2005; it proposed legislation discriminating against gays; and kept on dragging its feet in relation to a long delayed Gender Equality Act.³⁷³

However, the new pro-Europe center-right government led by the Civil Platform (PO) (elected in October 2007) appointed a Government Plenipotentiary for Equal Treatment in April 2008. This new position can be seen as a response to the heavy criticism Poland received for abolishing the Plenipotentiary for Equal Status of Men and Women as it is supposed to take most of the same responsibilities of the latter Plenipotentiary. However, the new Plenipotentiary for Equal Treatment cannot take individual complaints, it is not independent and does not have an office of its

³⁷¹ European Commission, "Commission Refers Poland to European Court of Justice on Gender Equality Legislation", The European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities, 14/05/2009, at <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=511&furtherNews=yes> (retrieved 19 May 2009).

³⁷² European Commission, "Commission Proposes Renewed Social Agenda to Empower and Help People in 21st Century Europe", The European Commission IP/08/1070, Brussels, 2 July 2008, Press Release RAPID.

³⁷³ European Network of Legal Experts in the Non-Discrimination Field [note 311], pp. 107-108; Agnieszka Mrozik, "Equal Opportunities for Women and Men Act Rejected by Polish Parliament", National VAW Monitor, 2008, at <http://www.stopvaw.org/1Jul20053.html> (retrieved 8 May 2009); and Zielinska, "Equal Opportunities" [note 273].

own (it uses the office of the Prime Minister). The European Network of Legal Experts in the Non-Discrimination Field thus pointed out that it does not fulfill the role of equality body as demanded by the Race Equality Directive (2000/43/EC).³⁷⁴ Poland was also among those EU countries to be referred to the European Court of Justice in May 2009 for not having sufficiently implemented the Council Directive (2004/113/EC) in national law, thus having failed to lock in safeguards prohibiting gender discrimination in access to and supply of goods and services.³⁷⁵

The accession of Poland into the EU shows that a country can half-heartedly implement EU provisions which are vital for the liberal democratic ideal so strongly promoted by the EU, and still be granted EU membership. However, anti-discrimination protection is a difficult area to regulate, and the EU legal framework for anti-discrimination is quite broad with few specific provisions. The only place it prohibits against all types of discrimination is in the area of employment and training. Sexual orientation as a cause of discrimination, for example, is not specified as such in other areas than employment and training,³⁷⁶ even though it is a fundamental right enshrined in Article 13 of the Amsterdam Treaty.³⁷⁷ The rights to obtain an abortion and contract same-sex marriage are not legally secure anywhere in EU law either, even though the implementation of provisions protecting against discrimination has been urged by the EU. Such moral grey areas thus invite a country to create legislation at its own discretion. However, the EU anti-discrimination legislation is supported by the CoE's Human Rights Conventions on several of these issues, and even though this Convention also prohibits all form of discrimination it does not guarantee the right to contract same-sex marriage or obtain abortions. Therefore, even though as robust as the anti-discrimination norms in Europe are, some forms of discrimination are not mentioned in either conventions or organizational frameworks.

The democratic conditionality imposed by the EU in relation to anti-discrimination in Poland may thus not have been *determinate* enough and might have been stated in too diffuse a manner, demanding legal protection for causes of discrimination which has no legal basis in EU law or are poorly defined. This might leave much up to the candidate country's own discretion when creating anti-

³⁷⁴ European Network of Legal Experts in the Non-Discrimination Field [note 311], pp. 107-108.

³⁷⁵ European Commission, "Commission Refers Poland to European Court of Justice" [note 371].

³⁷⁶ European Commission, "Commission Proposal to Ensure Equal Treatment Beyond the Workplace", The European Commission MEMO/08/461, Brussels, 2 July 2008, Press Release RAPID.

³⁷⁷ Treaty of Amsterdam [note 83].

discrimination legislation, and therefore not managing to control for traditional patterns of discrimination still occurring. In addition, when the need for rule implementation is not stressed hard enough by the EU, and the country is still rewarded with EU membership, even if the rules in question are not implemented sufficiently, the incentives for compliance diminishes and undermines the *credibility* of the democratic conditionality. Thus, making the democratic conditionality imposed by the EU in relation to anti-discrimination lose value for the candidate country and not seen as important for the further reform progress. Vermeersch³⁷⁸ has furthermore pointed to the fact that the great emphasis on the external anti-discrimination issues such as minority protection in the CEE and SEE during the 1990's resulted in little emphasis on the internal anti-discrimination situation among the EU countries themselves. Many EU members therefore do not obey the EU anti-discrimination norms themselves; Germany and Spain, for example, had not fulfilled the European Council Race Directive (2000/43/EC) by 2002, showing little progress in that area.³⁷⁹ In view of the fact that the EU has only just recently (since 1997) begun to develop a more comprehensive legal framework for anti-discrimination in the EU, the "old" EU members have also had to implement the same Council Directives as the candidate countries. When some of these in addition have failed to implement the Directives sufficiently, the new members or candidates might look upon these norms as rather irrelevant or open for interpretation. One can therefore question the strength of this strand of EU conditionality. Not only did the EU not have a comprehensive anti-discrimination framework with specific provisions for every type of discrimination available, the member countries themselves did not, and still do not, obey the requirements set by the Treaty of Amsterdam and the following Council Directives.

The domestic forces in Poland which have managed to influence the national anti-discrimination protection can to a great degree be said to be a result of the Catholic social teachings. Most Poles are Catholic and follow traditional cultural patterns even though many disagree with the Catholic Church on certain issues. The parties on the political right in Poland are also often promoting Catholic issues such as anti-abortion and opposition toward gay rights, which are claimed to be traditional

³⁷⁸ Vermeersch, "Ethnic Minority Protection" [note 11].

³⁷⁹ Open Society Institute, "Monitoring the EU Accession Process: Minority Protection", EU Accession Monitoring Program, Open Society Institute (OSI), 2002, p. 41, available at http://www.soros.org/resources/articles_publications/publications/euminority_20021125 (retrieved 27 June 2010).

Polish values. Some parties are Catholic parties, such as the League of Polish Families which also was briefly in a governmental coalition, and many of the Polish politicians (on both side of the political spectrum) are self-declared Catholics. It is thus reasonable to assume that at least some politicians are informed by their faith when taking difficult political decisions as, for example, in relation to discrimination issues. This might therefore apply to both the “traditionalist” right and the “secular” left, as mentioned earlier, religion and identity are closely linked, and it is hard to believe that no Polish politician is influenced by the Catholic teachings when knowing that this is so deeply integrated in the Polish identity. However, to what degree the political actions of the Polish people and political elite are informed by their religious creed demands a different research design as, for example, several in-depth interviews of the relevant politicians and their motives more clearly revealed. Still, it is reasonable to assume that secular European values as promoted by the EU within the anti-discrimination policy area will be met with resistance if these values do not correspond with the policy-makers’ personal beliefs.

The external incentive model can therefore also explain the Polish post-accession conduct even though EU conditionality now should be even weaker. While the PiS government denounced the EU norms as immoral and contradictory to the government’s Catholic values during its short tenure in power, the more pro-Europe, but Christian-democratic Civic Platform (PO) government has shown a more cooperative attitude toward the EU. The costs of staying outside this community may have been seen as much greater than the rewards of continued membership. The current Polish government might therefore have changed Poland’s political course out of a cost-benefit rationale to prevent further shunning by the EU, and thus prevent further damage to Poland’s status in Europe. But this government is still dependent on conservative forces both inside its government and in the Sejm which thus influence the Polish EU-policies.

7 Croatia

This chapter will present the EU strategy in the democratic reform processes in post-communist Croatia and later account for the domestic responses to EU democratic conditionality and the influence of the relevant domestic actors on this process.

7. 1 The EU Strategy for Croatia

7. 1. 1 Treading Water-Humanitarian Aid, 1990-1996

Post-Cold War Europe thus also revealed a dangerous potential for interethnic conflict in the Western Balkans, which for decades had been suppressed by the communist regime in the Socialist Federal Republic of Yugoslavia (SFRY). This had created an illusion of solidarity among the different ethnic and religious groups, but as the communists' power weakened these tensions came to the fore, and were manifested in the most extreme ways during the 1990's as Croatia, Bosnia-Herzegovina, and Serbia slid into a war over state boundaries. The results were the most devastating for Bosnia-Herzegovina and Croatia, although the war also drained the Serbian economy.³⁸⁰

The EU's approach toward this region has therefore been radically different from its policies for the post-communist countries of the Luxembourg and Helsinki groups. The EU (and other organizations for that matter) had little leverage to prevent the Yugoslav conflict. First of all, although there had been warnings of civil war as early as 1983-84³⁸¹ and predictions of approaching war as early as 1989-90,³⁸² policy makers refused to believe these warnings and predictions. Furthermore, the EU was concerned with its own internal reforms (the Maastricht Treaty) taking up much of its capacity. It was thus not able to establish and conduct any common foreign and security policy (as this was one of the main issues negotiated in the Maastricht Treaty or the "Treaty of the European Union" and thus not yet settled on when the war broke out). The EU was also marked by indecision because of an internal difference of opinion between the member states on the question of recognition of

³⁸⁰ Hughes and Sasse, "Monitoring the Monitors" [note 79], p. 4; Tull, "The European Union and Croatia" [note 182], p. 139; Türkes and Gökğöz, "The European Union's Strategy" [note 171], p. 672.

³⁸¹ Pedro Ramet, "Yugoslavia and the Threat of Internal and External Discontent", in *Orbis*, Vol. 28, No. 1 (Spring 1984), p. 114.

³⁸² Pedro Ramet, "Yugoslavia's Troubled Times", in *Global Affairs*, Vol. 5, No. 1 (Winter 1990).

the seceding republics. International law principles on self-determination were pitted against the territorial integrity of the existing states.³⁸³

On the other side, it may be doubted that the EU actually could have made anything different since the Serbian leadership of Slobodan Milošević had begun arming and training Serb militias within Croatia and Bosnia-Herzegovina as early as 1990 and was, by the beginning of 1991, committed to launching a war in order to expand the boundaries of Serbia. The Serbian regime of Slobodan Milošević had also artificially created resentments and stoked up rage against non-Serbs among the Serbs, so that, as the months went by, it was becoming increasingly difficult to restrain the more agitated Serbs. In addition, many of Croatia's Serbs had also taken up arms against the Croatian state and had been trying, since March 1991, to establish a Serbian state embracing at least 30% of Croatia's territory, even though the Serbs constituted only 12% of the population of Croatia, and they had been offered cultural autonomy and the vice presidency by Croatian President Franjo Tuđman.³⁸⁴

However, leaving this question for others to discuss elsewhere, the fact remains that as long as the Serbian regime was bent on war, little advance in integration could be made. The EU had, however, tried to take a diplomatic role already from March-June in 1991, by first supporting the right of self-determination for the Yugoslav republics and provinces, but arguing against any unilateral declarations of independence. Then, as the conflict escalated the EU in association with the USA tried to reach a compromise solution between the Croatia/Slovenian side and the Serbian side, and in June of 1991 the EU and the USA both stated that they would only recognize a peaceful agreements between the conflicting parts. The EU additionally tried to offer the SFRY an association agreement and additional financial assistance. However, because of the direct threat posed by Serbia (which the European Community downplayed), these approaches did not prevent Slovenia and Croatia from declaring independence from the SFRY later that same month.³⁸⁵

The EC in connection with the CSCE and UN tried to contain the conflict through the summer and fall of 1991. The EU also established a Conference of Yugoslavia for managing the dissolution of Yugoslavia and seeking a peaceful

³⁸³ Tull, "The European Union and Croatia" [note 182], pp. 136-143.

³⁸⁴ Ramet, *Balkan Babel* [note 8], pp. 51-76; and Sabrina P. Ramet, *Serbia, Croatia and Slovenia at Peace and at War, Selected Writings, 1983-2007* (Münster and Wien: LIT Verlag, 2008).

³⁸⁵ Tull, "The European Union and Croatia" [note 182], p. 139.

settlement which all parties could accept. When the Conference's Badinter Commission urged the conflicting parts to issue applications for recognition it was reluctant to grant Croatia independence as Tadjman's regime had insufficiently provided protection for its minorities. The EU thus pressured the Croatian government to adopt a draft "Constitutional Law on Human Rights and Liberties, and on the Rights of Ethnic and National Communities or Minorities" in November 1991. However, this draft law was only adopted under the provision that it could only come into effect after a full and lasting peace was obtained in Croatia.³⁸⁶

Furthermore, during the early winter months of November and December 1991 as the atrocities continued the EC finally decided to collectively recognize (after German pressure) the independence of the Yugoslav successor states in mid-December, and thus undermining the Badinter Commission's recommendations. A ceasefire was signed in January 1992 (the Vance Plan) allowing the deployment of UN peacekeeping forces (UNPROFOR) in Croatia, but not in Bosnia-Herzegovina, since, at that time, there was no fighting in that latter republic. The conflict spread to Bosnia-Herzegovina in March 1992 and continued both there and in Croatia until the Dayton agreement in late 1995.³⁸⁷

7. 1. 2 The Regional Approach, 1996-2000

The EU reoriented its efforts after Dayton by taking a much more regional approach to try to stabilize the Western Balkans. The *Royaumont Process* launched in December 1995 by the European Council, was meant to support the implementation of the Dayton Accords and promote regional cooperation among the warring states by facilitating regional projects, dialogue and democracy promotion.³⁸⁸ However, in the *Regional Approach* (adopted by the EU in February 1996), the EU General Affairs Council agreed in April 1997 that further bilateral agreements between the EU and the five Western Balkan countries should be made conditional upon the same political and economic premises as the other post-communist countries of the CEE and SEE had been subject to (the *Copenhagen Criteria*). In addition, a greater emphasis was put on minority protection and regional cooperation, but the process of establishing relations with the EU shall follow a *graduated approach* with different

³⁸⁶ *Ibid.*, pp. 140-141.

³⁸⁷ Søberg, "Croatia since 1989" [note 8], p. 43; and Tull, "The European Union and Croatia" [note 182], pp. 140-141.

³⁸⁸ Dr. Panaghiotis Roumeliotis, "The Royaumont Process: An Initiative for Stability and Good Neighbourliness in South-Eastern Europe", *A Journal of Foreign Policy Issues*, Hellenic Resource Network, 1998.

levels of conditions after different types of rewards (ranging from autonomous trade preferences, to PHARE and contractual relations). There was, however, no mention of any prospect for future EU membership for these countries. The rewards for compliance should rather be incentives enough.³⁸⁹

The EU had allocated great sums for emergency and recovery assistance to the Western Balkans during the 1990's, mainly as humanitarian assistance through the European Community Humanitarian Office (ECHO), and in partnership with other international organizations and NGOs. The Regional Approach, however, launched the European Community Initiative for the Rehabilitation and Reconstruction of Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, and the Former Yugoslav Republic of Macedonia (OBNOVA), a financial program for the reconstruction and technical assistance, with a special emphasis on relieving the suffering of displaced persons and facilitate for their return during the 1990's.³⁹⁰

The period after 1997 was also marked by EU's increasing use of *negative* conditionality, where certain countries were excluded from the Association Agreements, limited contractual relations and outright sanctions. The Kosovo crisis in 1999 furthermore bore evidence of the fragility of the situation and led to yet another initiative from the EU, namely the establishment of the EU Commission-initiated the *Stability Pact* (SP) for South Eastern Europe. The SP was thus launched at the same time as the UN Resolution 1244 for Kosovo and had broad support from the other organizations active in the region.³⁹¹

The Stability Pact is, however, not a new organization, but rather a political declaration committing a variety of countries, international-, and regional

³⁸⁹ European Council, "Council conclusions on the Principle of Conditionality Governing the Development of the European Union's Relations with Certain Countries of South-East Europe", *Bulletin of the European Communities* no. 4/1997; General Affairs Council, "Conclusions of the General Affairs Council of 26 February 1996", The European Council, 1996, available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/gena/028a0001.htm (retrieved 26 June 2010); General Affairs Council, "Conclusions of the General Affairs Council of 29 April 1997", The European Council, 1997, available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/gena/028a0057.htm (retrieved 26 June 2010); Türkes and Gökgöz, "The European Union's Strategy" [note 171], pp. 675-676.

³⁹⁰ European Commission, "European Commission Country Strategy Paper for Croatia 2002-2006 CARDS", 2001, available at http://ec.europa.eu/enlargement/pdf/financial_assistance/cards/publications/croatia_strategy_paper_en.pdf (retrieved 9 July 2010); Tull, "The European Union and Croatia" [note 182], pp. 136-137; and Türkes and Gökgöz, "The European Union's Strategy" [note 171], p. 676.

³⁹¹ Türkes and Gökgöz, "The European Union's Strategy" [note 171], p. 676.

organizations to “(...) develop a shared strategy among all partners for stability and growth in South Eastern Europe”,³⁹² and which further stated that

“(...) conflict prevention and peace building can be successful only if they start in parallel in three key sectors: the creation of a secure environment, the promotion of sustainable democratic systems, and the promotion of economic and social well being. Progress in all three sectors is necessary for sustainable peace and democracy”.³⁹³

Apart from being a noble and an important collective initiative of preventive diplomacy in itself, the Stability Pact now in fact indicated that

“(...) moving toward European structures includes the possibility of full membership of the EU. Countries wishing to be admitted must, however, first meet the conditions defined by the EU Council in 1993 concerning democratic, economic and institutional reforms (Copenhagen criteria)”.³⁹⁴

7. 1. 3 A New Era-The Stabilization and Association Process, 2000-present

As a contribution of the Stability Pact the EU therefore initiated a Stabilization and Association Process (SAP) for the countries of the South-Eastern Europe.³⁹⁵ The SAP is part of the EU's common strategy toward the Western Balkan and includes a variety of measures to help the political and economic reform process in the region with respect for each individual country's conditions and abilities, and thus at the country's own pace. One such mechanism is “(...) a tailor-made category of contractual relations: Stabilization and Association Agreements (SAAs)”, which furthermore “(...) will take into account the specific and evolving situation of each country and will be gradually introduced in light of the ability of each country to meet reciprocal, contractual obligations, as well as of its effective contribution to regional cooperation”.³⁹⁶ However, these agreements, which are similar to the *Europe*

³⁹² Regional Cooperation Council, “About”. The Stability Pact for the South Eastern Europe, 2009, at <http://www.stabilitypact.org/about/default.asp> (retrieved 18 March 2009).

³⁹³ *Ibid.*

³⁹⁴ *Ibid.*

³⁹⁵ The SAP was approved by all West Balkan countries at the Zagreb Summit in November 2000. See European Commission, “The Western Balkan Countries on the Road to the European Union”, 2009, at http://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/history_en.htm#sap_agreement (retrieved 18 March 2009).

³⁹⁶ General Affairs Council, “Conclusions of the General Affairs Council of 21/22 June 1999”, The European Council, 1999, available at

Agreements, are only granted on the condition that the non-member country complies with the political and economic criteria as stated in EU's *Regional Approach* of 1997, and the Commission will issue regular reports on the compliance with this conditionality.³⁹⁷

In 2000, a new assistance mechanism was initiated as a replacement for the OBNOVA and PHARE programs,³⁹⁸ namely the Community Assistance for Association, Democratization and Stabilization (CARDS). CARDS fits into the overall SAP and sets out to help finance the reform process in post-conflict societies with tasks such as reconstruction, democratization, institutional and legislative development, return of refugees, regional cooperation, and sustainable economic and social development, but gives the recipient little room for input.³⁹⁹

Macedonia was the first to fulfill the SAP conditions and sign an SAA in April 2001, but Croatia followed suit in October the same year. However, even though the SAP establishes the prospect of future EU membership, the SAP countries are only *potential candidates* for EU membership until sufficient progress is made on the SAA, which can thus only then lead to a *candidate* status.⁴⁰⁰

The commitment of the EU to the development of Western Balkans was further stated at the EU-Western Balkan Summit in Thessalonica in June 2003. The EU then confirmed the countries of the Western Balkan's importance to the future EU framework by stating that the Balkans is an integral part of a unified Europe. However, the EU made it clear that it is now up to the Western Balkan countries themselves to show that they can fulfill the conditions required by the EU,⁴⁰¹ thus prove their abilities to respect the principles of liberal democracy and market economy.

In an effort to streamline the complex set of external aid programs, rationalize the available resources, and facilitate for better results, the Commission proposed in September 2004 six new instruments for the EU external relations activities in the

http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/gena/09008.EN9.htm (retrieved 26 June 2010).

³⁹⁷ *Ibid.*

³⁹⁸ The PHARE program was from 1997 redesigned to primarily provide pre-accession assistance to acceding and candidate countries only, see Hughes, Sasse and Gordon, *Europeanization and Regionalization* [note 17], p. 12.

³⁹⁹ European Commission, "CARDS", The European Commission, 2009, at http://ec.europa.eu/enlargement/how-does-it-work/financial-assistance/cards/index_en.htm (retrieved 18 March 2003); and Fisher, *Political Change* [note 8], p. 192.

⁴⁰⁰ Türkes and Gökgöz, "The European Union's Strategy" [note 171], p. 679.

⁴⁰¹ Geoffrey Harris, "The Wider Europe" in Cameron (ed.) *The Future of Europe* [note 7], p. 107.

Financial Perspectives (2007-2013) period. Among them is a new single Instrument for Pre-Accession Assistance (IPA) which replaces the prior (2000-2006) pre-accession instruments. The IPA will be offered to potential and candidate countries alike and help prepare these for a future EU membership.⁴⁰²

Even though many of these countries have shown great progress, further EU enlargement has for the time being been put on hold, except where Croatia is concerned.⁴⁰³

7. 2 EU Democratic Conditionality and Croatia's Response

7. 2. 1 Church-State Relations prior to 1991 and the first Multiparty Elections

During the Yugoslav era (both under the Kingdom from 1918 to 1941 and under the Socialist Federation from 1945 to 1991) the Croatian Catholic Church was forced to hold an inferior position as a "minority" Church in Yugoslav society (even though it numbered more active members than the "majority" Orthodox Church). It was powerless to obtain a concordat in the Kingdom of Yugoslavia where the Serbian Orthodox Church held the dominant position. Some of its leading clerics were accused by the socialist regime of having collaborated with the fascist Ustaša government during the Second World War – in the case of Archbishop Alojzije Stepinac unfairly – and was generally attacked more vigorously than the Serbian Orthodox and Islamic religious societies in Yugoslavia.⁴⁰⁴

The Croatian Catholic Church was thus for decades treated in a discriminatory fashion by the state authorities – oppressed from 1945 to about 1964 (albeit with some easing after 1953), but still a victim of discrimination from 1964 until the end of

⁴⁰² The other five instruments are: the pre-accession financial instrument PHARE, Instrument for Structural Policies for Pre-Accession (ISPA), Special Accession Programme for Agriculture & Rural Development (SAPARD), the Turkish pre-accession instrument, and the financial instrument for the Western Balkans CARDS. See Delegation of the European Commission in the Republic of Croatia. "IPA - Instrument for Pre-accession Assistance". Delegation of the European Commission in the Republic of Croatia, 4 March 2008, at <http://delhrv.ec.europa.eu/?lang=en&content=109> (retrieved 1 July 2009); and Delegation of the European Commission in the Republic of Croatia. "Overview of Financial Assistance". Delegation of the European Commission in the Republic of Croatia, 4 March 2008, at <http://delhrv.ec.europa.eu/?lang=en&content=68> (retrieved 1 July 2009).

⁴⁰³ Nacional Number 763 (29 June 2010), at <http://www.nacional.hr/en/clanak/50495/merkel-eu-will-accept-croatia-and-no-one-else> (retrieved 12 July 2010). Further enlargement was for a long time halted by the failure of some EU countries to ratify the Lisbon Treaty (eventually adopted on 1 December 2009). The Lisbon Treaty will revise the existing EU treaties and make the EU institutions and decision-making more compatible with further EU enlargement. Some EU state leaders thus argued that further EU enlargement is prohibited and impossible without a new revised Treaty framework. See Tuhina, "Croatia Makes Progress" [note 9]; Giuliani, "Understanding the European Council in Lisbon" [note 96]; and *EurActiv* [note 96 and 98]. However, even though The Lisbon Treaty is now ratified by all EU members, further enlargement other than to Croatia is still a contested issue among the EU countries.

⁴⁰⁴ Ramet, *Serbia, Croatia and Slovenia at Peace and at War* [note 384], pp. 175-176.

communist rule.⁴⁰⁵ Although the Church cooperated in specific areas with the socialist regime, it took an active role in society showing how it opposed the suppressive political system and the ideology altogether, by publishing books and journals, voicing its concerns in public, and organizing public events. The Church therefore gained a reputation for being the only organization not susceptible to any major influence from the socialist party or the ruling political elites and was thus regarded as a truly “Croat” organization during the socialist era.⁴⁰⁶

This long-term opposition heightened the expectations for the Croatian Catholic Church to continue its role as a symbol of Croatian unity and it was thus expected to help promote Croatian national sovereignty as the Yugoslav federation disintegrated in the years 1986-1991. Hence, as the League of Communists lost its grip on power, the Church came into a rather strong position domestically in Croatian society since it was seen as a legitimate, anti-Yugoslav and pro-Croatian organization.⁴⁰⁷ And given that a 1991 census showed that 76.5% of the Croatian people declared themselves Catholic,⁴⁰⁸ its potential for influence and thus power base was rather substantial.⁴⁰⁹

In the political arena, the new leadership of the League of Communists in Croatia (Savez Komunističke Hrvatske, SKH), led by Ivica Račan started to challenge the chauvinistic nationalism promoted by the regime of Serbian President Slobodan Milošević in late 1989 by supporting Slovenes’ initiatives for national self determination and reform of the Yugoslav Federation. Thus, inspired by the Slovenians’ reform willingness and the fall of communist governments around CEE and SEE, in addition as means to undermine the increasing destabilizing Serbian pressure on the Socialist Federation, the SKH allowed for political and economic reforms as well as the introduction of political pluralism. The first multi-party elections were scheduled and took place in April 1990.⁴¹⁰

At the communists’ Fourteenth Extraordinary Congress in Belgrade in January 1990 the Croatian delegation followed the Slovenian example and withdrew

⁴⁰⁵ See Ramet, *Balkan Babel* [note 8], pp. 91-98.

⁴⁰⁶ Bremer, “The Catholic Church and its Role” [note 143], p. 251.

⁴⁰⁷ *Ibid.*

⁴⁰⁸ This percentage rose to 87.8% in the 2001 census, see Zrinščak, “Religion and Values” [note 134], p. 140; and CIA The World Fact Book [note 64].

⁴⁰⁹ Zrinščak, “Religion and Values” [note 134], p. 140.

⁴¹⁰ Fisher, *Political Change* [note 8], p. 29; and Nenad Zakošek and Goran Čular, “Croatia” in Sten Berglund, Joakim Ekman and Frank H. Aarebrot (eds.) *The Handbook of Political Change in Eastern Europe* [note 238], p. 452.

from the Congress and from the League of Communists after a series of reform initiatives proposed by the Slovenes had been voted down at the congress.⁴¹¹ Subsequently, Croatia held its first multiparty elections in April 1990, but, although there existed a collective urge to democratize across party lines and a desire to move beyond one-party communist rule, the future status of the Yugoslavia federation was not yet agreed upon.⁴¹²

This liberalization and democratization process was therefore initiated even before the Yugoslav federation was dissolved, and hence began within a communist framework. The communists now reformed and renamed their party by adding the suffix Party of Democratic Change (Stranka Demokratskih Promjena, SDP) to its name, transforming it into the SKH-SDP,⁴¹³ and saw democratic elections as a means to be able to reshape and reform Yugoslavia in one way or another, but still within a framework of the federation. The other main contestant in the elections, the Coalition of Popular Agreement (Koalicija Narodnog Sporazuma, KNS) was not opposed to a Yugoslav federation altogether either, but did not rule out the possibility of Croatian independence if the future Yugoslavia was not built on democracy, pluralism, market economy and equal rights. Both the SKH-SDP and KNS thus thought in terms of working within a Yugoslav framework, even though Serbia's Milošević was actively working to destroy that framework.⁴¹⁴

Although not officially expressing separatist goals for a future Croatia in its initial party programs, the rhetoric and later party documents of the Croatian Democratic Union (Hrvatska Demokratska Zajednica, HDZ) led by Dr. Franjo Tuđman gradually became more nationalist in sentiment as an increasing Serbian aggression manifested itself in Serbian leader Slobodan Milošević's rhetoric and actions. The HDZ therefore took a stronger stand against the dangers of Serbian expansionism than its rivals on the Croatian political landscape and emphasized the sovereign right of the Croatian people to consolidate its nation within its historical and legally established borders. The Croatian political elite were thus polarized between those who wanted to continue the federation and those who argued for sovereignty and independence.⁴¹⁵

⁴¹¹ Fisher, *Political Change* [note 8], p. 30.

⁴¹² Søberg, "Croatia since 1989" [note 8], pp. 31-32.

⁴¹³ Fisher, *Political Change* [note 8], p. 29.

⁴¹⁴ *Ibid.*, p. 45; and Søberg, "Croatia since 1989" [note 8], pp. 32-41.

⁴¹⁵ Fisher, *Political Change* [note 8], pp. 32-39.

Even though Tudjman and his HDZ may have tried to attract as many followers as possible by not being clear cut about their vision of the future of Yugoslavia,⁴¹⁶ the HDZ campaign strategy nonetheless sought allies in institutions which had been marginalized in the SFRY, such as the Catholic Church and the overseas diaspora, and sent strong signals of a desire to establish a Croatian movement-like opposition to the Serbian regime. The HDZ's goal was ultimately to remove the communist regime and establish an independent Croatian state by encouraging a "national reconciliation" reconciling the ideological descendants of all political orientations, including but not limited to the communist Partisans and the fascist Ustaše, and those who looked back to the Croatian Peasant Party of the interwar era. This strategy was meant as a means to enhance a pan-Croatian solidarity and create a national movement which would undermine the preponderant position held by the Serbs in the Croatian republic.⁴¹⁷

The main contribution from the Croatian Catholic Church was thus that it was strongly identified as a "Croatian" institution and would provide legitimacy to the HDZ's bid for power as part of a national movement, while the Croats in diaspora would provide campaign funding.⁴¹⁸ These two institutions also joined forces at an early stage of the campaign where the Catholic Church conducted missions abroad in the Diaspora communities both rallying support and raising funds for the HDZ.

The Croatian Catholic Church also engaged in the general discussions on the future of Croatia as the communist regime disintegrated and lost its force, and the Catholic bishops issued a statement on the eve of the 1990 Parliamentary elections stating that they supported democracy but would not be caught up in party politics.⁴¹⁹ However, in the statement the bishops furthermore expressed concern lest the parties on the left win the election, hoping rather that a HDZ victory would bring some advantages for the Church.⁴²⁰ The official weekly church paper *Glas koncila* (Voice of the [Second Vatican] Council) also openly supported the HDZ, and certain parish priests campaigned for the HDZ and encouraged their parishioners to vote for the

⁴¹⁶ *Ibid.*, p. 44.

⁴¹⁷ Søberg, "Croatia since 1989" [note 8], pp. 35-40.

⁴¹⁸ Tudjman among others made use of his connections with the Croatian émigré communities he established when he visited North America in 1987. A series of HDZ émigré organizations was thus founded in 1989 in a number of countries around the world, and contributed with most of the HDZ campaign funding for the 1990 Parliamentary elections. See Fisher, *Political Change* [note 8], pp. 31-41; and Søberg, "Croatia since 1989" [note 8], pp. 39-40.

⁴¹⁹ Søberg, "Croatia since 1989" [note 8], pp. 38-39.

⁴²⁰ Ramet, *Serbia, Croatia and Slovenia at Peace and at War* [note 384], p. 177.

HDZ during religious services and festivals. These were points not missed by the HDZ as it already had claimed that it had the full support of the Croatian Catholic Church, and continued to use this rhetorically during the campaign, even against protests from other parts of the Croatian Catholic Church.⁴²¹

In addition to promoting national political and cultural unity, and in spite of Yugoslav efforts to establish free market reforms, the HDZ argued for a market economy. It stated that Croatia as the second most developed economy in Yugoslavia after Slovenia should not continue to transfer as much money to the poorer Yugoslav countries as it had been doing. One of HDZ's campaign slogans also stated "Sovereignty, prosperity, Europe", which indicated that "the return to Europe" so often stated by its northern post-communist neighbors also applied here. Europe was thus synonymous with further democratization, independence and prosperity.⁴²²

In the elections, contested by 33 different political parties, the HDZ won 205 out of the 256 seats in the Croatian parliament, the *Sabor*, and Tudjman was elected President of the Republic. Amongst the Croatian nationalist euphoria that followed the election victory the HDZ now initiated a grand-scale nationalization program which in large part set out to limit the influence of the Croatian Serbs in the republic, among other things by amending the Croatian Constitution in December 1990 in which Croatia was described as the homeland of Croats, rather than, as previously, as the homeland of Croats and Serbs. A semi-presidential political system was also established giving President Tudjman extensive powers and influence in a semi-democratic regime. In addition, the Constitution amended the election system, changing it from a majority voting system to a mixed system that tended to produce a more fragmented opposition, and thus was a lesser threat to the incumbent government.⁴²³ Furthermore, in spring 1990, local police (ethnic Serbs) in Knin ceased to take their orders from the government of Zagreb, which was paying their salaries and, on the contrary, joined the incipient Serb rebellion which was being launched in coordination to Milošević. Under these circumstances, the government

⁴²¹ Søberg, "Croatia since 1989" [note 8], p. 39.

⁴²² Fisher, *Political Change* [note 8], pp. 47-48.

⁴²³ *Ibid.*, pp. 56-58; and Zakošek and Čular, "Croatia" [note 410], p. 453.

removed those police who were in rebellion from the payroll.⁴²⁴ Despite the nationalist rhetoric during the election campaign Tudjman also tried to make amends with the Croat Serbs, by for example offering his election contestant Jovan Rašković the post as Vice President, but Rašković consulted with Milošević, who urged Rašković to decline the offer. Tudjman was instead threatened with boycott by Rašković's party in the Sabor.⁴²⁵

Concessions were also at this point granted to the Catholic Church as religious instruction was introduced in the state schools in autumn of 1990. This religious instruction was, as Sabrina Ramet⁴²⁶ states, technically optional as it was not obligatory and needed the assent of parents, but it was still socially enforced by peer pressure and pressure from teachers, and thus rather hard for anyone to refuse.

Both ethnic and ideological lines divided the Croatian multiparty democracy after the elections, where many, but not all, Croatian Serbs supported continued federal ties with Serbia or simply a greater Serbian state, while most Croats were for national independence. The political right side tended to support claims for an independent Croatian state, but the Serbian threat induced a more or less all-party consensus that Croatian state building and self-determination was desired. A referendum in May 1991 thus endorsed Croatian independence and led the *Sabor* to proclaim Croatia's independence on 25 June 1991, on the same day as Slovenia declared her independence.⁴²⁷ However, from now on, the democratization process in Croatia was halted to some extent, emphasizing the creation of an independent and ethnic homogenous state rather than establishing a liberal democratic and pluralist political system.⁴²⁸

7. 2. 2 The HDZ-reign

The situation now deteriorated even further as the Serbian-controlled federal Yugoslav People's Army (Jugoslovenska Narodna Armija, JNA) intervened more openly in parts of Croatia with local Serbs population. As early as July 1990, Croatian

⁴²⁴ Sabrina P. Ramet, *The Three Yugoslavias: State-Building and Legitimation, 1918–2005*. 2nd printing (Washington D.C. and Bloomington: Woodrow Wilson Center Press and Indiana University Press, 2006), p. 585.

⁴²⁵ Ramet, *Balkan Babel* [note 8], p. 57.

⁴²⁶ Ramet, *Serbia, Croatia and Slovenia at Peace and at War* [note 384], pp. 177-178.

⁴²⁷ Søberg, "Croatia since 1989" [note 8], pp. 41-42; Ton Zwaan, "On the Outlines of the Crisis of Yugoslavia, 1985-1995", Center for Holocaust and Genocide Studies, University of Amsterdam/Royal Netherlands Academy of Arts and Sciences, published by the Helsinki Committee for Human Rights in Serbia, 2009; and Zakošek and Čular, "Croatia" [note 410], p. 453.

⁴²⁸ Søberg, "Croatia since 1989" [note 8], pp. 40-49.

Serbs led by Serbian nationalists had set up an illegal Serbian National Council "(...)" with the explicit purpose of working for Serbian territorial autonomy within Croatia or, in the event that the SFRY should dissolve, the secession of Serb-inhabited regions from Croatia".⁴²⁹ In October 1990, Serbs in Croatia raided gun shops and police stations in Croatia in order to arm themselves, and felled trees in order to set up barricades across some roads in Croatia.⁴³⁰ The JNA also began to ship arms to newly established, illegal Serb militias which began operating in Croatia. By August 1991, the Serb rebellion against the Croatian authorities in the Croatian Krajina was in full swing, with the Croatian Serbs now supported by the heavy armed JNA. The violence between the newly established Croatian Army and the JNA thus followed with a devastating effect inside Croatia. The fighting ended in December 1991, and in January 1992 a UN brokered ceasefire agreement (the Vance peace plan) was accepted by the two sides. Croatia's independence was recognized by the EC the same month, but by now the Serbs had occupied one third of Croatian territory.⁴³¹

Parliamentary and President Elections were then held in August 1992 and secured both the HDZ (receiving 44.7% of the votes, and occupied 61.6% of the seats in the Sabor) and Tudjman (56.7% of the votes) their positions.⁴³² The Croatian nationalization project could thus continue with a broad mandate. Still, in March/April 1992 the war moved to Bosnia-Herzegovina, an ethnic and religious mosaic, and did not end until the Dayton agreement was agreed in November 1995. Massive atrocities had during these three and a half years led to the most severe crimes against humanity in Europe since the Second World War, with between 110,000 and 240,000 deaths, 2.7 million refugees,⁴³³ and massive property damage in Croatia and Bosnia-Herzegovina. There were also accusations of ethnic cleansing voiced by all sides against all sides.⁴³⁴

The reform process and modernization of the society which had followed the end of the socialist federation and the massive violent upheaval in relation to this process made the situation difficult for the Croatian Catholic Church. Interest in Church matters was high during the first years of Croatian independence, and the media willingly reported about the Catholic Church's activities. To choose a firm

⁴²⁹ Ramet, *Balkan Babel* [note 8], p. 58.

⁴³⁰ *Ibid.*

⁴³¹ Søberg, "Croatia since 1989" [note 8], p. 43.

⁴³² *Ibid.*; and Zakošek and Čular, "Croatia" [note 410], p. 477.

⁴³³ Ramet, *Balkan Babel* [note 8], pp. 239-240.

⁴³⁴ Zwaan, "On the Outlines" [note 427].

policy on national matters and to adapt to the turbulent national situation was for a rather unprepared and formerly disadvantaged religious organization such as the Catholic Church relatively hard. The Church thus struggled a long time with how to adapt to the expectations and often communicated divergent opinions on a variety of issues. In addition to *Glas Koncila*, the members of the new Croatian Bishops' Conference (established in April 1992 to replace the Bishops' Conference of Yugoslavia) therefore understood that they had to establish a new information agency which could provide information on Church matters. The Catholic Information Agency (Informativna Katolička Agencija) was established in May 1993.⁴³⁵

The Croatian Catholic Church supported the Croatian demand for independence and defended Croatia's rights to leave the Yugoslav federation and maintain the national borders as established for the republic in the socialist Yugoslav federation. Its political views thus corresponded with those of the Croatian government during the War of Yugoslav Succession.⁴³⁶ The war, however, had a disastrous impact on the religious communities in the region as all three sides of the conflict systematically targeted churches and other sacral objects during their ravages, ruining buildings and forcing parishioners to flee.⁴³⁷

The Croatian Catholic Church thus tried during the war to establish diplomatic relations with the Serbian Orthodox Church, a task that was very difficult to accomplish as the Serbian Orthodox Church was also nationally oriented and shared its government's ethno-nationalistic claims. Still, official contacts were established and Serbian Orthodox Patriarch Pavle and the Roman Catholic Archbishop of Zagreb, Franjo Cardinal Kuharić, met twice in 1991, leading to the joint issuing of a communiqué regretting the tensions between the two states, and encouraging the use of non-violent means to end the conflict. The first Catholic-Orthodox summit also took place in Geneva in September 1992, issuing another statement demanding among other things an end to the destruction of both Christian and Muslim sanctuaries and an end to ethnic cleansing. However, there were still huge differences of opinion about the origins of the war, and the apportionment of responsibility and guilt, and distrust ran deep on all sides (Croatian Catholic, Serbian Orthodox, Bosnian Muslim). Still, these interfaith relations were nurtured during the

⁴³⁵ Bremer, "The Catholic Church and its Role" [note 143], p. 255.

⁴³⁶ *Ibid.*, pp. 252-253.

⁴³⁷ Ramet, *Serbia, Croatia and Slovenia at Peace and at War* [note 384], pp. 182-183.

war and even expanded to other religious communities as well.⁴³⁸ The Croatian Catholic Church also actively engaged in a variety of actions trying to relieve the suffering caused by the war atrocities by helping the thousands of refugees and displaced persons with food, shelter and intensive care (mostly through Caritas), and organized religious services for exiled parishes.⁴³⁹

Maybe even more important was the support the Croatian Catholic Church received from the Holy See, first by recognizing the independence of the Croatian state in January 1992, but also by its continuing political support during the war years, as well as an official visit by the pope to Croatia in September 1994. However, the Vatican stressed that its support for Croatia was not made to undermine the Serbian state or the Serbian people or to vindicate Croatian violent conduct in any way. The pope also expressed his view, in his sermons during his 1994 visit, that a peaceful coexistence between the neighboring states in the Western Balkans was a matter of necessity.⁴⁴⁰

The Croatian Catholic Church also criticized the Tujman government for violations of human rights and demanded religious and ethnic tolerance during the war as well. The dispute between the state and the Church especially caught wind in the summer of 1993 after Cardinal Kuharić, backed by the Archbishop of Sarajevo Vinko Puljić, denounced the Croatian partition policy conducted by Tujman and Mate Boban, the leader of the Bosnian Croats during the Croat-Muslim war in Bosnia Herzegovina. The bishops argued for the preservation of the territorial borders of Bosnia-Herzegovina and an end to the destruction of Serbian churches in Croatia, and encouraged more cooperation with the Muslim communities. This effort to distance the Church from the Croatian authorities' policies was also supported by the lower clergy at that time.⁴⁴¹

As mentioned earlier, the international community had failed in its diplomatic engagement to try to stop the war, and protests from the Western governments and international institutions against the atrocities conducted during the war were generally just ignored by the HDZ regime.⁴⁴² For example, there was EU pressure to implement provisions securing legal rights for minorities in Croatia as the

⁴³⁸ Bremer, "The Catholic Church and its Role" [note 143], p. 253; and Ramet, *Serbia, Croatia and Slovenia at Peace and at War* [note 384], pp. 183-184.

⁴³⁹ Bremer, "The Catholic Church and its Role" [note 143], pp. 253-254.

⁴⁴⁰ *Ibid.*, pp. 254-255.

⁴⁴¹ *Ibid.*, p. 256; and Ramet, *Serbia, Croatia and Slovenia at Peace and at War* [note 384], p. 181.

⁴⁴² Fisher, *Political Change* [note 8], p. 19.

“Constitutional Law on Human Rights and Liberties, and on the Rights of Ethnic and National Communities or Minorities” which, although adopted in November 1991, was not respected in practice.⁴⁴³ Still, the EU initiated efforts to rein in the warring states by offering financial aid, even though this was mainly of a humanitarian character before 1995. Croatia thus joined the PHARE program in 1995 and started negotiating a cooperation agreement with the EU. But when Croatian troops recaptured the Krajina region from Serbian forces in Operation Storm in August 1995, Croatia was abruptly removed from the PHARE program and negotiations with the EU were frozen.⁴⁴⁴

The pro-Croatian sentiment in the Catholic Church now manifested itself. The Croatian bishops and cardinals celebrated Croatian achievements in Krajina, but at the same time urged the Croatian Serbs not to flee. *Glas koncila* which had, on a weekly basis, presented the opinions of the Croatian Catholic Church during the war now published statements rejecting Western criticism of this military strike, arguing for the offensive’s legitimate and humanitarian character as an act of liberation. The war was generally seen as just in the eyes of many of the bishops, and war crimes could not occur in just wars. Croatia was the liberator exercising its sovereign right to emancipate occupied territories and the details of the war did therefore not matter as the war itself was legitimate. Cardinal Kuharić on the other side was not of this opinion. After first defending the Croatian government, which had denied that any atrocities toward civilians had taken place in Kajina, the Cardinal later renounced his former stand and addressed the government in harsh terms condemning the troops’ brutal and inhuman actions during Operation Storm.⁴⁴⁵

The Croatian state’s responses to the Church’s actions during the war were, however, a mixed bag. Initially, some in the Croatian government wanted a minimal Catholic Church restricting itself to performing Church services, administering the sacraments, performing benedictions, and engaging in Biblical exercises, while others envisaged the Catholic Church in more extensive Caesaropapist terms. Tudjman and his government tried, however, as already mentioned, to ally themselves with the Catholic Church for strategic reasons. The parliament even proposed to rehabilitate Cardinal Stepanić who had been wrongly accused and

⁴⁴³ Tull, “The European Union and Croatia” [note 182], pp. 140-141.

⁴⁴⁴ Fisher, *Political Change* [note 8], p. 191.

⁴⁴⁵ Ramet, *Serbia, Croatia and Slovenia at Peace and at War* [note 384], p. 183.

unjustly convicted on trumped-up charges of having collaborated with the Ustaša during the Second World War.⁴⁴⁶ His real “crime” had been that he had refused to collaborate with the new communist authorities in 1945; during the war years, he had been a fierce critic of the Pavelić regime and had spoken out against Ustaša atrocities.⁴⁴⁷ On the other hand, Tujman criticized the Church when he felt that the bishops were adopting positions which undermined his policies. Among other things, the Tujman regime attacked the government’s critics within the Church and called *Glas koncila* pro-Yugoslav. The government also frowned upon the ecumenical activities among the religious communities in the region, where the Catholic Church was one of the main instigators. The relationship deteriorated so badly toward the end of the war, that in May 1995 the Croatian deputy Prime Minister Jure Radić and (then) bishop of Krk Josip Bozanić had to be summoned by the Holy See for talks on future Church-state relations in Croatia. The Vatican officials thus promoted a harmonious relationship and wanted to encourage further negotiations on such matters.⁴⁴⁸

The HDZ therefore started to alienate the Croatian Catholic Church and the Vatican during the war. Consequently, the Church, which still was internally divided on this issue, could not support the regime 100%. The Church also started demanding concessions from the state at the end of the war, as a more formal and legally binding agreement regulating the relationship between the Catholic Church and the Croatian state was desired. After long negotiations in 1996-1997 a series of individual treaties were signed. These established legal provisions on the relationship between the Catholic Church and state recognizing each other as independent; cooperation between the Catholic Church and state in the area of education regarding ecclesiastic schools and academic institutions; regulated spiritual care in the armed forces and police; and committing the state to provide financial contributions for the Catholic Church’s activities, life expenses of the clergy, salaries for teachers of religion in schools, salaries for professors of theology, financial support for Catholic kindergartens etc, fund the rebuilding of war damaged Church property and return or compensate property confiscated by the communist regime.⁴⁴⁹

⁴⁴⁶ *Ibid.*, pp. 179-184.

⁴⁴⁷ Ramet, *Balkan Babel* [note 8], pp. 83-85.

⁴⁴⁸ Ramet, *Serbia, Croatia and Slovenia at Peace and at War* [note 384], p. 181.

⁴⁴⁹ Bremer, “The Catholic Church and its Role” [note 143], pp. 259-260.

However, the *Sabor* would not, without further examination, pass all these treaties (only two were accepted right away) and a debate on the Church's position in the Croat society vis-à-vis the state followed. These treaties were finally approved by Radić, Božanić and the Holy See in a ceremony in the Vatican exchanging charters, and were then, in effect, treated as the equivalent of a concordat between the Croatian state and the Catholic Church.⁴⁵⁰ This put the Catholic Church in a favorable position in comparison to other religious communities.⁴⁵¹

In October 1995, Parliamentary elections were held again; according to Marius Sørberg,⁴⁵² the timing of the elections was set in order to capitalize on the successful military strike in Krajina (Operation Storm), only six weeks earlier. This election was again won by the HDZ which received 45.2% of the votes (occupying 59.1% of the seats in the Sabor).⁴⁵³ In peacetime Croatia, after the Dayton Agreement, it was expected by many that a change in political course would come about and lead to democratization, market economic reform, and European integration rather than nationalistic isolation. An internal battle between moderate and hard-line nationalist forces thus occurred in the HDZ, but the nationalist sentiment eventually won.⁴⁵⁴ The EU, which now had halted all negotiations on institutional ties with Croatia and only provided limited humanitarian aid for the purpose of facilitating the return of refugees and displaced persons, thus continued to criticize the Tudjman regime's nationalistic policies after 1995. In the context of the EU's Regional Approach (established in 1996), which required compliance with the Copenhagen Criteria, a greater emphasis on minority protection and promotion of regional cooperation, the Commission issued regular reports criticizing Croatia's discriminatory human rights regime, failure to facilitate the return of refugees, deficiency in cooperation with the International Criminal Tribunal of Yugoslavia (ICTY) in Hague, alleged torpor in fostering regional cooperation, and alleged failure to comply with the Dayton agreement. These issues violated the political conditions enshrined in the Regional Approach, and the EU thus

⁴⁵⁰ *Ibid.*, p. 260; and Zrinščak, "Religion and Values" [note 134], p. 140.

⁴⁵¹ See Dragutin Hedl, "Croatia: Clerics Attack Government", Institute for Women's Policy Research (IWPR), 2 November 2001, The Centre for Peace in the Balkans, at

<http://www.balkanpeace.org/index.php?index=article&articleid=13917> (retrieved 19 March 2009). Similar church-state regulations for other religious communities were not offered until the reform-minded centre-left Račan government passed the "Law on the Status of Religious Communities" in 2000, see Zrinščak, "Religion and Values" [note 134], p. 140.

⁴⁵² Sørberg, "Croatia since 1989" [note 8], p. 46.

⁴⁵³ Zakošek and Čular, "Croatia" [note 410], p. 478.

⁴⁵⁴ Sørberg, "Croatia since 1989" [note 8], p. 47.

felt that it could not vindicate any further upgrading of bilateral or contractual relations with Croatia.⁴⁵⁵

Tudjman on the other hand rejected this criticism and attacked Europe for not helping Croatia during its wars, and for their indecision on Croatia's independence. Dejan Jović⁴⁵⁶ argues that Tudjman saw the Regional Approach as an attempt to re-establish a "neo-Yugoslavia", and shrugged off the conditions for support as unfair demands.

Critique of the Tudjman regime now also came from the Catholic hierarchy. Appointed Archbishop of Zagreb in October 1997 to succeed Cardinal Kuharić, Josip Bozanić set out to undermine the nationalist and pro-government image of the Catholic Church. Bozanić thus spoke out against the discriminatory glorification of the Croatian nation, criticized the general negative attitudes toward "Europe" conducted by Croatia, and in addition tried to further ecumenical relations with the Serbian Orthodox Church.⁴⁵⁷ In addition, Bozanić criticized the increasing socio-economic differences in Croatia owing to failed government policies that did not serve the public good. He even criticized President Tudjman on the occasion of his state funeral in December 1999 "(...) for those things that were less worthy and sinful".⁴⁵⁸

Bozanić was not always supported by his fellow bishops or other Church representatives. *Glas Končlia* devoted several pages to celebrate Tudjman's achievements. The Bishops' Conference also often made statements quite contradictory to Bozanić's stance. In the autumn of 2000, the Conference dissented from the view of criminalizing Croatia's defense in the War of Yugoslav Succession and stated that Croatian history did not need to be rewritten. They also later defended Croatian war crimes indictees and requested their immediate release by the ICTY as their actions was not seen as criminal.⁴⁵⁹

However, a statement was issued by the Conference before the Parliamentary elections in January 2000 requesting that the electorate consider how they could best make their vote lead to furthering democratization, social justice, and the general welfare for the people of Croatia. This was thus both seen as a call for change in

⁴⁵⁵ European Commission, "Report from the Commission: On the Feasibility of Negotiating a Stabilisation and Association Agreement with the Republic of Croatia", Commission of the European Union, Brussels, 24.05.2000 COM(2000) 311 final, 2000.

⁴⁵⁶ Dejan Jović, "Croatia and the European Union: A Long Delayed Journey", in *Journal of Balkan and Near Eastern Studies*, Vol. 8, Issue 1 (April 2006), p. 2.

⁴⁵⁷ Bremer, "The Catholic Church and its Role" [note 143], pp. 258-263.

⁴⁵⁸ Ramet, *Serbia, Croatia and Slovenia at Peace and at War* [note 384], p. 186.

⁴⁵⁹ *Ibid.*, p. 185; and Bremer, "The Catholic Church and its Role" [note 143], pp. 261-262.

government and a critique of the HDZ.⁴⁶⁰ This stance also reflected an increasing oppositional sentiment among the Croatian population. Tudjman's ambitions in Bosnia-Herzegovina and slowness to remand war crimes indictees to the ICTY had impeded any invitation to the NATO and the EU; the regime's reckless economic policy had allowed corrupt "tycoons"⁴⁶¹ to prosper at the expense of the rest of the nation; and the regime had failed to diminish the increasing unemployment rates and thus decreased the standard of living in Croatia. The Croatian population was growing tired of its government's inability to deal with Croatia's seemingly everlasting economic and social problems and international isolation.⁴⁶²

When it comes to value formation, as already mentioned, the Catholic Church had a prominent role in Croatian society promoting traditionalist values and partly supporting the HDZ regime. The Tudjman regime, in addition, heavily promoted a traditionalist "Kinder, Küche, Kirche" family pattern, and tried to re-traditionalize Croatian society by establishing stereotype gender roles designating the women to the private family sphere, excluding them from politics and promoting gender inequality.⁴⁶³ Little advance was thus made in the anti-discrimination area in this period.

7. 2. 3 A New Era

Although initially ideologically divided, suppressed by the HDZ regime, and supported financially and morally by the international community, a broad front of NGOs engaged in a pre-election *get-out-the-vote* campaign before the 2000 Parliamentary elections. This was an effort to try to inspire the disillusioned Croats, and especially the young and first-time voters to cast their votes, on Election Day. Even though it is hard to measure the actual influence of such efforts in practice, there is no doubt that this mobilization helped the election turnout to reach 75% only two days after New Year's.⁴⁶⁴

The parliamentary election was won by a coalition led by Ivica Račan of the Social Democratic Party (SDP) – the successor to the SKH-SDP – which then formed a new centre-left coalition government occupying 62.9% of the seats in the Sabor

⁴⁶⁰ Ramet, *Serbia, Croatia and Slovenia at Peace and at War* [note 384], p. 186.

⁴⁶¹ A term used to designate the new politically biased capitalist class that prospered economically on its close relations with the political elite, see Fisher, *Political Change* [note 8], p. 83.

⁴⁶² Fisher, *Political Change* [note 8], pp. 125-128.

⁴⁶³ Biljana Bijelić, "Women on the Edge of Gender Equality" in Ramet and Matić (eds.) *Democratic Transition in Croatia* [note 8], pp. 277-286.

⁴⁶⁴ Fisher, *Political Change* [note 8].

(the HDZ was still the largest party, but did alone only occupy 30.5% of the seats), and which chose Račan as Prime Minister.⁴⁶⁵ This election marked a historical shift in post-Yugoslav Croatia's transition to democracy, and international and European integration. Račan and the newly elected President Stipe Mesić now started a huge reform program. The Constitution was amended in November 2000 and April 2001 changing the political system from a semi-presidential system to a unicameral parliamentary system by abolishing the Upper House, thus giving the power back to the *Sabor*, but also giving the government more power vis-à-vis the President. The new Constitution also enhanced Croatia's anti-discrimination legislation by now also specifically recognizing gender equality, rather than just generally securing to all Croats their fundamental rights.⁴⁶⁶

The new government also placed the highest priority on Croatia's integration into the European Union and NATO.⁴⁶⁷ A new confidence could be detected among the political elite which now hoped that the election results alone would be sufficient to pace up the integration process so long delayed by domestic issues. President Mesić was thus among those who argued that Croatia could become an EU member by the end of his tenure in early 2005.⁴⁶⁸

Croatia, which did not have any contractual agreements with either NATO or the EU, was accepted in the NATO Partnership for Peace program in May 2000. Negotiations on a Stabilization and Association Agreement (SAA) with the EU were also initiated in November 2000 after the positive Feasibility Report issued by the Commission in May 2000 on the possibilities of the initiation of negotiations with Croatia was adopted by the European Council in June 2000.⁴⁶⁹ However, even though EU was delighted to see a shift in the political regime in Croatia, it demanded that further institutional ties and financial support had to be conditional on cooperation with the ICTY, thus demanding the arrest of Croatian war crimes indictees, termination of support for Croatian political structures in Bosnia-

⁴⁶⁵ Zakošek and Čular, "Croatia" [note 410], p. 482.

⁴⁶⁶ Constitution of the Republic of Croatia, the consolidated text published in *Narodne Novine*, No. 41/01 of May 7, 2001 together with its corrections published in *Narodne Novine* No. 55 of June 15, 2001, English Translation, Ustavni Sud Republike Hrvatske-The Constitutional Court of Republic of Croatia (Zabreb 2001), available at http://www.usud.hr/default.aspx?Show=ustav_republike_hrvatske&Lang=en (retrieved 15 June 2009).

⁴⁶⁷ Søberg, "Croatia since 1989" [note 8], p. 50.

⁴⁶⁸ Fisher, *Political Change* [note 8], p. 193.

⁴⁶⁹ MEI, "Chronology of Relations Between the Republic of Croatia and the European Union", Ministry of Foreign Relations and European Integration, Republic of Croatia, 2005, at <http://www.mvpei.hr/ei/default.asp?ru=378&sid=&akcija=&jezik=2> (retrieved 25 March 2009).

Herzegovina, de facto (and not just de jure) recognition of Bosnia-Herzegovina as an independent state, and facilitation of a peaceful return of those Croatian Serbs who had fled during the war and wished to return. The EU thought that a Croatian bid for EU membership could serve as a positive example for the other post-Yugoslav countries, and also emphasized the important aspect of the Croatian role in initiating regional cooperation among the Balkan countries (one of the main tenets of the Stability and Association Process). Notwithstanding these tough demands an SAA was signed with the EU in October 2001.⁴⁷⁰ Furthermore, financial assistance was provided through the CARDS program, an equivalent to PHARE, by the end of the same year as part of the Commission's country strategy toward Croatia (2002-2006).⁴⁷¹

The reform process initiated by the Račan government nonetheless met with difficulties. At the same time, as it was trying to comply with international demands, the government had to balance its policies against the still rather powerful nationalistic sentiments at home, and especially the HDZ opposition in the *Sabor*. The fierce resistance from the HDZ thus led to reform compromises and extensive concessions by letting these still hold significant positions in the judiciary, the military and the intelligence service.⁴⁷² Archbishop Bozanić also worked against the new liberal government, criticizing its failure to battle corruption in any sufficient way. The EU even had to intervene in late 2001 urging the Vatican to restrain the Croatian Catholic Church's fierce opposition to the Račan government and its overt support for the Croatian nationalists. Some sections of the Catholic hierarchy were afraid that the new center-left government would alter some of the favorable concessions enshrined in the Concordat accepted under Tudjman, and called the government "(...) anti-Croatian, traitorous and communist".⁴⁷³ The EU feared that the Church should manage to influence the population to such an extent that the nationalist sentiments in society could prevail and obstruct Croatia's cooperation with the ICTY and the further positive political and economic development that had started with the death of Tudjman.⁴⁷⁴

⁴⁷⁰ Fisher, *Political Change* [note 8], pp. 193-194.

⁴⁷¹ *EurActiv* (16 June 2008), at <http://www.euractiv.com/en/enlargement/eu-croatia-relations/article-129605> (retrieved 21 March 2009).

⁴⁷² Søberg, "Croatia since 1989" [note 8], p. 51.

⁴⁷³ Hedl, "Croatia" [note 451].

⁴⁷⁴ *Ibid.*

Even though Croatia was the first Balkan country to launch a campaign to apprehend war criminals, domestic conditions made cooperation with the ICTY hard. The veterans' movement allied with the HDZ in opposition to the Račan government's cooperation with the ICTY. The veterans felt that the government's strategy of cooperation with the international community had led to an undermining of these soldiers noble achievements for the Croatian nation during the war, thus depriving them of their elevated social status gained during the Tadjman regime. They thus managed to influence the drafting of a Declaration on the Homeland War, which was approved in the Parliament (dominated by government parties) in October 2000. It stated that the war was "(...) just and legitimate, defensive and liberating and not aggressive or conquering".⁴⁷⁵ The Račan government furthermore refused to extradite the gravely ill General Janko Bobetko to the ICTY in September 2002 (he died in April 2003) which led Great Britain and the Netherlands to suspend ratification of the SAA with Croatia.⁴⁷⁶

The legislative reform process which had been initiated was also meant to advance minority rights by establishing a Constitutional Law on Minorities, but this law was only approved in December 2002 after much delay. The number of returned Serbs was still low given an unwelcoming atmosphere both by the government's reluctance to make any gestures toward the Serbs, and by administrative obstruction on the local level.⁴⁷⁷ But at least as important were two other factors: first, that many homes had been destroyed during the war and, after Serbs fled from the Krajina, homeless Croatian refugees had been allowed to take up residence in the houses vacated by the fleeing Serbs; and second, the war had created deep-seated animosities between the two nationalities, so that the reintegration of Serb refugees into Croatian society involved much more than simply administrative decisions and overcoming the housing shortage.⁴⁷⁸ Croatia still submitted its EU application in February 2003, even though this was frowned upon by certain EU members.⁴⁷⁹

However, in spite of these national political difficulties Croatia kept making progress in the anti-discrimination sector in 2003, by implementing a new Law on

⁴⁷⁵ Fisher, *Political Change* [note 8], p. 181.

⁴⁷⁶ Ibid., p. 194; and *The New York Times* (30 April 2003), at <http://www.nytimes.com/2003/04/30/world/janko-bobetko-84-is-dead-fought-to-free-croatians.html> (retrieved 6 May 2009).

⁴⁷⁷ Fisher, *Political Change* [note 8], p. 194.

⁴⁷⁸ Carolin Leutloff-Grandits, "Croatia's Serbs Ten Years after the End of the War" in Ramet, Clewing, and Lukić (eds.), *Croatia since Independence* [note 143], pp. 151-158.

⁴⁷⁹ Fisher, *Political Change* [note 8], p. 194.

gender equality, and also and Act on Same-Sex Union, recognizing so-called unregistered co-habitation rights for same-sex couples. Thus, even though short of granting equal marriage rights for heterosexual and homosexual couples, it allows same-sex couples of three years the same rights as unmarried co-habiting partners of opposite sexes (homosexuality has been legal since 1977 in Croatia).⁴⁸⁰

7. 2. 4 A Reformed HDZ-regime

Dissatisfaction with the government and especially with its economic policies increased and resulted in a HDZ victory in the parliamentary elections held in November 2003, receiving 33.9% of the votes and occupying 66 of the 151 seats in the Sabor (43.7% of the seats). A reformed HDZ which now had moved toward the political center and pushed out its far-right radicals formed a minority coalition government led by Ivo Sanader as Prime Minister. The new HDZ government now declared its intention to depart from policies pursued during the Tudjman era. The new HDZ government urged Croatian Serbs who had fled during the war to return, facilitating housing and returning confiscated property. The government also offered an official apology to all who had suffered under the HDZ rule in the 1990's. The new government started to improve its relations with the ICTY from 2004 by handing in several ICTY indicted Croatian war criminals. Croatia then gained EU candidate status in April 2004 as the Commission's *Opinion*, declared that the Copenhagen Criteria was fulfilled, and recommended that accession negotiations could be opened. Croatia was thus now eligible for PHARE funds helping accession countries toward membership. Great Britain and the Netherlands therefore finally ratified Croatia's SAA which became effective in February 2005.⁴⁸¹

However, the European Council postponed further accession negotiations with Croatia in March 2005 as Croatia once again showed an inability to cooperate sufficiently with the ICTY. The sore spot was now General Ante Gotovina whom

⁴⁸⁰ European Commission, "Croatia 2005 Progress Report", Brussels, 9 November 2005 SEC (2005) 1424 {COM (2005) 561 final}, p. 89; European Parliament, "Conclusions by the Chairperson", The European Parliament, Committee on Women's Rights and Gender Equality, Delegation to Zagreb, Croatia, 20 - 21 April 2006, at http://www.europarl.europa.eu/comparl/femm/news/2006/20060420_delegation_croatia_en.pdf (retrieved 27 June 2010); IGLHRC, "Croatia: Same Sex Civil Union Law and Anti-Discrimination Protections Passed", International Gay and Lesbian Human Rights Commission (IGLHRC), 2003, at <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/globalactionalerts/582.html> (retrieved 15 June 2009); and United Nations Information Service, "Committee to Eliminate Discrimination Against Women Considers Reports of Croatia", United Nations Information Service WOM/1478 Vienna 19. January 2005, at <http://www.unis.unvienna.org/unis/pressrels/2005/wom1478.html> (retrieved 5 March 2009).

⁴⁸¹ Søberg, "Croatia since 1989" [note 8], p. 52; Fisher, *Political Change* [note 8], pp. 185-195.

Croatia had failed to apprehend. Further accession talks were by many EU members made conditional on his arrest. Even the Catholic Church was now accused by the ICTY of hiding the General in a Franciscan monastery with the government's knowledge. The Croatian Bishop's Conference naturally dismissed these groundless claims made by the ICTY Chief Prosecutor, Carla del Ponte, and Sanader repeatedly denied any knowledge of the general's whereabouts. The Croatian government had drawn up an action plan to try to crack down on Gotovina's network and worked intensively to find the suspect. So when Gotovina finally was arrested in December 2005 on Tenerife in Spain, because of information provided by the Sanader government, the last obstacle toward EU membership seemed erased. Carla del Ponte had also given her approval of the Croatian efforts of cooperation during the European Council in October 2005. The initial screening of the acquis chapters thus began later that same month,⁴⁸² and finished exactly a year later.⁴⁸³

However, the way the EU dealt with ICTY issues in Croatia has left many Croats disillusioned. The EU has, on one side, put pressure on Croatia to comply with EU demands for cooperation, but the EU has also been internally divided on how to assess Croatia's cooperation, as EU-countries like Austria, Hungary, and Slovakia supported resuming negotiation talks without Gotovina's arrest, while other EU-countries like Britain, Germany, Sweden, Finland and Denmark were, for the time being, opposed to the idea of granting any concessions. Added to this, was the fact that the EU had declared that Croatia had fulfilled all the requirements in the Copenhagen Criteria, which then should have sufficed for the initiation of accession talks with the EU.⁴⁸⁴

The indictment of Gotovina was in itself also problematic for many Croats as they believed that the ICTY was treating him as the Croatian equivalent of Serbian war crimes indictees Ratko Mladić and Radovan Karadžić. The latter did in fact conduct atrocities with the purpose of revising the Serbian borders, while Gotovina led a military campaign meant to liberate Croatian territory from the hands of Croatian Serb insurgents. The Croats thus feel discriminated against by being measured against standards other than those applied to other EU candidates, and feared that its EU integration process was being delayed in order that its accession

⁴⁸² Fisher, *Political Change* [note 8], pp. 195-198.

⁴⁸³ *EurActiv* [note 471].

⁴⁸⁴ Sabrina P. Ramet and Marius Søberg, "Challenges Facing Croatia Since Independence (An Introduction)" in Sabrina P. Ramet, Konrad Clewing, and Reneo Lukić (eds.) *Croatia since Independence* [note 143], pp. 12-13.

should coincide with that of Serbia, which meant because of another state's human rights violations. Even more, reports have shown that the EU did in fact consider admitting Serbia & Montenegro even without the arrest of Mladić. Public surveys conducted thus showed a decreasing interest in EU membership in Croatia during the mid-2000s.⁴⁸⁵ The Ministry of European Integration polled a period of EU-optimism during the early 2000 with support for EU integration ranging from 72% to 79% among the Croatian people (with 8-20% of the population opposed), this period was however succeeded by an downward trend around 2004/2005 with only 51% supporting EU integration, while 39% opposed it. After the EU negotiations with Croatia began, *Novi list* observed an upturn in EU support among Croats, so by late 2005 54% supported EU integration while 25% opposed it.⁴⁸⁶

Other problems were also still looming. Several considerations and issues with room for improvements in relations to a future EU membership, regarding the rule of law, judicial reform, refugee return and cooperation with the ICTY were addressed by the EU Enlargement Minister Olli Rehn in late 2005.⁴⁸⁷ Many Croatian Serbs had not been satisfied with the treatment the government had promised them and human rights organizations such as Human Rights Watch declared that their living conditions had not improved under the Sanader government. Further corruption scandals, budget deficits and increasing foreign debt have not made the conditions any easier. Internal opposition to the HDZ's pro-EU strategy has also made things difficult for the government, and has also alienated some of the core HDZ voters as the government has failed to solve pressing domestic issues. The Parliamentary elections in November 2007 thus were a close race, where no party managed to capture enough seats to form a majority government on its own, but Sanader and the HDZ which once again gained 66 seats (43.1% of the seats), well ahead of the second-place SDP (which won 56 seats in the *Sabor*), and formed a coalition government with the Croatian Peasant Party (Hrvatska Seljačka Stranka, HSS) and the Croatian Social Liberal Party (Hrvatska Socijalno Liberalna Stranka, HSLS).⁴⁸⁸

⁴⁸⁵ *Ibid.*, pp. 13-14.

⁴⁸⁶ As cited in Visnja Samardžija, "EU Relations with Croatia in 2005", *Mediterranean Politics Turkey-Balkans*, 2006, pp. 138-140.

⁴⁸⁷ Fisher, *Political Change* [note 8], p. 197.

⁴⁸⁸ Ramet, *Serbia, Croatia and Slovenia at Peace and at War* [note 384], pp. 213-214; Economist, "Country Briefings: Croatia, Political Forces", *The Economist*, 2007, at <http://www.economist.com/countries/Croatia/profile.cfm?folder=Profile-Political%20Forces> (retrieved 16 June 2009).

The first chapters of the *acquis* had, however, been opened in December 2006 and by the end of June 2010, all 35 chapters of the *acquis* had been opened, of which 20 had been closed.⁴⁸⁹ On 16 June 2010, the Croatian *Sabor* adopted amendments to the constitution in order to meet specific EU requirements and the Croatian government expressed optimism that it could wrap up technical negotiations with the European Union by the end of 2010 and see Croatia join the EU by 2012.⁴⁹⁰

In addition to the aforementioned progress in the anti-discrimination area, Croatia has made several other advances as well, among them, the Croatian Criminal Code had been amended in 2006 to cover also sexual orientation; the Labor Code had been amended to protect against discrimination of grounds of gender and sexual orientation; and several institutions have been established for the purpose of combating discrimination, such as an Ombudsman for the equality between women and men.⁴⁹¹ Even though civil society is still in the development phase in Croatia,⁴⁹² human rights NGO's are reported to have a favorable working situation in general, being allowed to investigate and report human rights issues without the government's interference. Some NGOs involved with promoting gender equality have, however, questioned the government's policy of allocating funds for the NGO's action programs, noting that this policy lacks transparency.⁴⁹³

In practice, the situation is still dire for certain groups of people. Women are still discriminated against, among other things in salaries, and sexual harassment both at work and at home is widespread. According to the NGO, Women's Room, rape and sexual harassment remains unreported because women lack knowledge of their legal rights, are subject to social stigmatization and show a lack of faith in the legal system supposed to protect them. Roma and ethnic Serbs are also groups

⁴⁸⁹ Sabrina P. Ramet, "Croatia and Serbia since 1991: An assessment of their similarities and differences", paper under review.

⁴⁹⁰ *Ibid.*

⁴⁹¹ European Parliament, "Conclusions" [note 480]; IGLHRC, "Croatia" [note 480]; OSCE, "Croatia: Hate Crimes, Law on Amendments to the Criminal Code", Legislationline, OSCE Office for Democratic Institutions and Human Rights, 2009, at <http://www.legislationline.org/topics/topic/4/country/37> (retrieved 15 June 2009).

⁴⁹² Anne-Marie Sigmund, "Draft Opinion of the Section for External Relations on Croatia on the Road to Accession", REX/237 Croatia on the Road to Accession, European Economic and Social Committee, Brussels 24. September 2007.

⁴⁹³ Bureau of Democracy, Human Rights, and Labor, "2008 Human Rights Report: Croatia", 2008 Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, 2009, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119073.htm> (retrieved 5 March 2009).

which are still reported to be discriminated against, and homosexuals are also subject to attacks and general societal discrimination.⁴⁹⁴

The progress reports published by the Commission on Croatia have also since 2005 urged for Croatia to adopt a more comprehensive anti-discrimination framework to meet this discrimination, especially in relations to ethnic minority and sexual minority rights.⁴⁹⁵ An Anti-Discrimination Act was therefore passed by a large majority in the *Sabor* in the late summer of 2008,⁴⁹⁶ thus implementing anti-discrimination legislation for the purpose of meeting EU demands.⁴⁹⁷

The Catholic Church, however, has repeatedly called for actions to stop the implementation of this Anti-Discrimination Act, and criticized it for being too liberal when it comes to the issue of abortion and sexuality. The Croatian weekly *Nacional* therefore wrote in July 2008 that from the end of 2007 until July 2008 the Sanader government had on four occasions defied the Catholic Church's demands for certain concessions. The government refused to ban abortion altogether during the HDZ election campaign; it denied the Church the right to introduce one hour extra of religious instruction in primary and secondary school; it has delayed the introduction of shopping-free Sundays, let alone work-free Sundays as proposed by the Church; and ignored protests from the Church in the work to implement the aforementioned Anti-Discrimination Act.⁴⁹⁸

Still, there is some dispute internally in the HDZ over these issues both for moral reasons, and out of a strategic reluctance to risk the support of the Catholic Church. The Church will, through the Anti-Discrimination Act, still be allowed to deny the sacraments to practicing homosexuals, and will also be able to refuse to ordain women, even though other organizations which conduct such a discriminatory policy would get fined. The Act does not mention any rights to same-sex marriage let alone for same-sex couples to adopt children. In addition, the Ombudsman Institution is

⁴⁹⁴ *Ibid.*

⁴⁹⁵ The European Commission Against Racism and Intolerance (an CoE monitoring body) has also issued reports on Croatia (1999, 2001 and 2005) promoting the same anti-discrimination rights as the EU, see European Commission Against Racism and Intolerance, "Country Monitoring Work: Croatia", The Council Of Europe, 2009, at http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Croatia/Croatia_CBC_en.asp (retrieved 16 June 2009).

⁴⁹⁶ Swedish Helsinki Committee, "Anti-Discrimination Law Adopted by the Parliament", The Swedish Helsinki Committee for Human Rights, Croatia, 2008, at <http://www.shc.se/en/4/124/1313/> (retrieved 19 March 2009).

⁴⁹⁷ *EUbusiness* (2 July 2008), at <http://www.eubusiness.com/news-eu/1215616623.9/> (retrieved 13 June 2009).

⁴⁹⁸ Robert Bajruši, "Sanader's Watershed: Church's Opinion No Longer Sought", *Nacional* Number 660 (8 July 2008), at <http://www.nacional.hr/en/clanak/47201/sanaders-watershed-churchs-opinion-no-longer-sought> (retrieved 19 March 2009).

obliged to consult the Catholic Church and other NGOs before it publishes reports on discrimination. These exceptions show the still prominent role of the Church in the Croatian Catholic Church-state relationship,⁴⁹⁹ and these new provisions thus do not threaten the existing rights of the Catholic Church to any extreme extent, but may still limit its influence in some parts of society and on some occasions.

What is more, Prime Minister Jadranka Kosor, who succeeded Ivo Sanader in office in July 2009, has also succeeded in resolving the country's two-decade-old border dispute with Slovenia, which had been holding up Croatia's accession to the EU.⁵⁰⁰

7. 3 Croatia Evaluated

This chapter will, as in the Polish case, analyze the democratic conditionality of the EU's impact on the implementation of anti-discrimination protection in Croatia, thus tracing the process of Europeanization of anti-discrimination legislation implementation and practice since the fall of communism.

7. 3. 1 A Halted Democratization Process, 1990-2000

When tracing the post-communist reform processes in Croatia, it is evident that national reforms were initiated by the Croatian communists themselves even before they lost their power, and were seen as means to challenge the nationalist policy promoted by the Serbian President Slobodan Milošević. The external threat which the destabilizing Serbian force posed to the Yugoslav Socialist Federation did make political and economic reforms necessary countermeasures for the conservation of the Federation. The SKH thus withdrew from the League of Communists in January 1990 and allowed for multiparty elections soon thereafter.

The communists, however, lost the elections and even though the victorious HDZ at the outset promoted a Europe friendly policy linking the further Croatian prosperity to self-determination and a "return to Europe", away from the yoke of the Yugoslav federation,⁵⁰¹ a more hardened nationalist rhetoric later manifested itself as the Serbian pressure increased. The HDZ regime ultimately halted the democratization process by emphasizing building an ethnic homogenous state,

⁴⁹⁹ *Ibid.*

⁵⁰⁰ Jaka Bartolj, "Arbitration referendum: The Yeas Have It", *The Slovenia Times* (2 July 2010), at <http://www.sloveniatimes.com/en/inside.cp2?uid=D2C106E5-30B0-88A2-C172-4D2DEA796DF1&linkid=news&cid=BEAF1BF5-A047-2FFA-3BC2-D2EA2CC627CE> (retrieved 12 July 2010).

⁵⁰¹ Fisher, *Political Change* [note 8], pp. 47-48.

revitalizing traditional values and consolidating the power of the government rather than increasing the democratic pluralism.⁵⁰² A semi-presidential political system was thus established giving President Tudjman extensive powers and influence in a semi-democratic regime. An inter-political consensus between the different political parties in Croatia did initially come about as the Serbian threat had to be met with a collective effort. However, given the amended election law, the Parliamentary elections produced a rather fragmented opposition, and gave a disproportional amount of the seats in the Sabor to the election winner. This, thus, gave the HDZ regime greater leverage to play out their nationalist strategy.⁵⁰³

The EU therefore had even less passive leverage in the Western Balkan region during this period than it had in the CEECs at the same time. The nationalistic sentiment that manifested itself in Croatia as the Serbian pressure increased, combined with the EU's own indecision on the matter, undermined the initial attempts for knitting diplomatic ties with western actors. The EU still tried to offer aid and support during the early 1990's, but to no avail, the conflict could not be prevented, and the support was therefore soon limited to humanitarian assistance.⁵⁰⁴ In 1995, the EU also tried to include Croatia in the PHARE program, but the Croats were refused this assistance after Operation Storm in August the same year.⁵⁰⁵ The HDZ government also felt misunderstood by the Western actors, and showed disappointment over Europe's tepid support for Croatian independence.⁵⁰⁶ Not until 1996 and the Regional Approach did the EU manage to present a coherent plan for supporting democratic reforms in the Western Balkans. This was an approach whose goal was to stabilize the region by promoting regional cooperation and protection of minorities. But further EU support was still contingent on compliance with the Copenhagen Criteria, and no membership prospects were offered at this stage.⁵⁰⁷ However, the EU did not manage to influence any profound domestic change in Croatia or establish any closer bilateral ties as Croatia continued to ignore the

⁵⁰² Vlasta Ilišin, "Political Values and Attitudes" in Ramet and Matić (eds.), *Democratic Transition in Croatia* [note 8], p. 110.

⁵⁰³ Søberg, "Croatia since 1989" [note 8]; and Zakošek and Čular, "Croatia" [note 410], p. 453.

⁵⁰⁴ Türkeş and Gökgöz, "The European Union's Strategy" [note 171], p. 676; and Tull, "The European Union and Croatia" [note 182], pp. 136-137.

⁵⁰⁵ Fisher, *Political Change* [note 8], p. 191.

⁵⁰⁶ Jović, "Croatia and the European Union" [note 456].

⁵⁰⁷ European Council, "Council Conclusions" [note 389]; General Affairs Council, "Conclusions of the General Affairs Council" [note 389]; General Affairs Council, "Conclusions of the General Affairs Council" [note 389]; Türkeş and Gökgöz, "The European Union's Strategy" [note 171], pp. 675-676.

conditions entailed in the Regional Approach, and showed little faith in the European initiatives. The EU could, however, not accept the nationalistic and undemocratic policies conducted by the Tudjman regime, discriminating against minorities, failing to facilitate the return of refugees, dragging its feet in cooperation with the ICTY and showing little progress on regional cooperation, and therefore continued to criticize Croatia by issuing regular reports through the latter part of the 1990's.⁵⁰⁸ The EU efforts in Croatia during this later period were therefore also mainly of a humanitarian character, providing aid for facilitating the return of refugees and displaced persons, as all other ties were frozen.

The period between 1990 until the initiation of the Stability Pact in 1999 were thus characterized by a weak EU democratic conditionality where little reform was initiated as a response to EU pressure in Croatia. During this period, similar to the Polish case from 1989 until 1997, domestic actors rather than international actors actively influenced the construction of the new state, the Catholic Church in Croatia being one of the strongest and most vocal. The first part of this period fits into a lesson-drawing model, as Croatia from late 1989 initiated a democratization process on basis of the external Serbian threats mentioned. However, this phase was soon replaced by a period of lesson-avoidance, to use Vachudova's⁵⁰⁹ words, as the democratization process was hampered by the war in 1991 and delayed until President Tudjman's death in 1999 and his party's loss in the 2000 parliamentary elections. The Tudjman regime had become somewhat immune to external influence from Western actors, especially when it came to democratic reform and minority rights, choosing to build an independent Croatian state.

7. 3. 2 Turning Toward Europe, 2000-present

The Croatian population's dissatisfaction with the isolationistic foreign policy conducted by the HDZ regime, the increased unemployment rates and the hardened the economic difficulties, eventually enabled a coalition of opposition parties to muster enough popular support. With the help of a broad front of NGOs engaged in a

⁵⁰⁸ European Commission, "Report from the Commission: On the Feasibility of Negotiating a Stabilisation and Association Agreement with the Republic of Croatia", Commission of the European Union, Brussels, 24.05.2000 COM(2000) 311 final, available at <http://www.mvpei.hr/ei/download/2001/08/02/Feasibility1.pdf> (retrieved 6 May 2010)

⁵⁰⁹ Vachudova, "The Leverage of International Institutions" [note 316].

pre-election *get-out-to-vote* campaign, they managed to overthrow the HDZ government in the Parliamentary elections in January 2000.⁵¹⁰

The more reform friendly and pro-Europe Račan government immediately initiated a grand scale reform program continuing the democratization process so abruptly halted by the war and the Tudjman era. A unicameral parliamentary system was established, minority rights were being debated, gender equality was added to the Constitution, and it began to reverse the isolationistic foreign policy course which had precluded both EU and NATO membership.⁵¹¹ These thus became essential goals as Croats craved political stability, economic prosperity and the opportunity to travel freely in Europe. These first reform initiatives therefore came voluntarily from a Croatia that was dissatisfied with the nationalistic and economic policies its previous government had conducted. But the EU was now more prepared to meet the challenges in Croatia and offered institutional ties through the Stabilization and Association Agreements (SAA) and financial assistance through the CARDS program, in addition to offering prospects of full EU membership. The EU also thought that Croatia's bid for EU membership could serve as a good example for the other countries in the region as well, and could help stabilize the region by engaging in regional cooperation.⁵¹²

The support received from this initiative was again made contingent on the compliance with the Copenhagen Criteria, and each country would be granted candidate status as soon as these requirements were fulfilled, independent of the other SEE countries reform progress. Negotiations on an SAA with Croatia was therefore initiated in November 2000 resulting in several tough demands from the EU of which the most important was that further institutional ties and financial support had to be conditional on cooperation with the ICTY, thus demanding the arrest of Croatian war crimes indictees; termination of support for Croatian political structures in Bosnia-Herzegovina, de facto (and not just de jure) recognition of Bosnia-Herzegovina as an independent state; facilitating a peaceful return of the Croatian Serbs who had fled during the war; and initiate regional cooperation. Despite these tough demands, the SAA was signed in October 2001.⁵¹³

⁵¹⁰ Fisher, *Political Change* [note 8], pp. 123-128; and Zakošek and Čular, "Croatia" [note 410], p. 455.

⁵¹¹ Søberg, "Croatia since 1989" [note 8], p. 50; and Constitution of the Republic of Croatia [note 466].

⁵¹² *EurActiv* (16 June 2010), at <http://www.euractiv.com/en/enlargement/eu-croatia-relations/article-129605> (retrieved 9 July 2010); and Fisher, *Political Change* [note 8], pp. 192-194.

⁵¹³ Fisher, *Political Change* [note 8], pp. 192-194.

Even though it was domestic issues such as economic hardship, increasing unemployment and international isolation that made the tides turn in the Croatian political landscape, the changes leading up to the election in January 2000 may also have been inspired by the prospects of a future EU membership and the benefits such an arrangement could bring about for the Croats. This might have inspired the mobilization of liberal forces in Croatia. When adding the steady flow of EU criticism on specific issues such as human rights violations and the failure to facilitate for regional cooperation during the latter years of the Tudjman regime, in addition to the financial and moral support the democratic actors in Croatia got from a variety of sources abroad, this might also have helped give the opposition the legitimacy it needed to argue for change. The weak EU democratic conditionality during the late Tudjman-era therefore might have had some effect on Croatia, but it was only one among several factors leading to change, domestic dissatisfaction with the Tudjman-regime as the most prominent of these.

The post-Tudjman reform processes in Croatia did, however, not proceed without troubles. As in the Polish case, the Račan government did not manage to balance the demands from an EU which more actively than ever monitored and criticized Croatian non-compliance, against the domestic opposition, mainly from the HDZ officials still in power and the repeatedly verbal attacks from the Catholic Church. The sorest spots in this context were the demand for the apprehension of war criminal indictees, the establishment of a Constitutional Law on Minorities, the organization of safe return for Serb refugees, and the inability to push through the promised national reforms. This consequently led to the government's demise in November 2003 as such wavering political conduct alienated the core SDP voters, and signaled the comeback of the now reformed HDZ which assured the voters that it was a credible alternative to the Račan government and would not jeopardize the democratization process. Still, even though the new HDZ government also has had problems meeting these demands, it has had a declared intention of bringing Croatia into the European institutional framework, has had backing for this in the Sabor, and has worked in a goal-oriented manner toward that target.⁵¹⁴

The European Union Commission therefore declared in its *Opinions* in April 2004 that the Copenhagen Criteria were fulfilled and recommended EU accession

⁵¹⁴ Fisher, *Political Change* [note 8], pp. 185-195; and Søberg, "Croatia since 1989" [note 8], p. 52.

negotiations to be opened, thus showing that Croatia to a great extent had managed to establish stable democratic institutions, respected the democratic principles, the rule of law, human rights, had a functioning market economy, and showed respect for minorities.⁵¹⁵

The EU thus seems to have managed to respond to the urge for change and pushed Croatia in a European direction. However, there might not have been any real alternatives for Croatia to choose among other than Europe. The Tudjman regime's policies had led to years of stigmatizing isolation, economic hardship and soaring unemployment rates. For a country which felt much more advanced both politically and economically relative to the other Balkan countries, and which was of that firm conviction that its place should be in Europe and not in the Balkans, this must have left a mark and may have helped the Croats replace nationalism with liberalism and European integration after the national project led nowhere. Vlasta Ilišin⁵¹⁶ has also found that liberalism as a value orientation among the Croats has been an integrative value in Croatia already from the late 1980's despite the preponderant nationalist political climate during the 1990's. The values of liberalism and democracy thus seem to be an accepted norm in the Croatian society⁵¹⁷ and provided the foundation on which the democratic reforms in the early 2000s could be built.

Since the end of the Tudjman era, the Catholic Church has also continued to be a vocal veto player on key issues of interest. The Church criticized the liberal-secular Račan government and continued to promote traditionalist values.⁵¹⁸ Some clergy have also criticized the EU demands in relation to the ICTY, and defended Croatian war crime indictees from prosecution. But in 2008 the Church argued against the implementation of an Anti-Discrimination Act that was meant to harmonize Croatian Anti-Discrimination legislation with the EU anti-discrimination standards. Through this Act, the Church is afraid that homosexuals shall be allowed to get married and adopt children, even though the Act does not stipulate such rights.⁵¹⁹

⁵¹⁵ Fisher, *Political Change* [note 8], p. 195.

⁵¹⁶ Ilišin, "Political Values and Attitudes" [note 502].

⁵¹⁷ Ola Listhaug and Zan Strabac, "Support for Democracy and Strength of Civic Attitudes: Croatia Compared with New and Old Democracies" in Ramet and Matić (eds.) *Democratic Transition in Croatia* [note 8], pp. 103-107.

⁵¹⁸ Hedl, "Croatia" [note 451].

⁵¹⁹ *EUBusiness* (2 July 2008), at <http://www.eubusiness.com/news-eu/1215616623.9/> (retrieved 13 June 2009).

Croatia has, however, managed to implement several provisions to protect against different forms of discrimination since the early 2000. In 2003, Croatia, for example, and in spite of the Račan government's reform difficulties, adopted a Gender Equality Law and an Act on Same-Sex Union (which recognize unregistered co-habitation rights for same-sex couples).⁵²⁰ These two legal regulations thus prevent discrimination on grounds of sexual orientation.⁵²¹ But the Commission has still consistently criticized at the shortcomings in this area, especially when it comes to practice, and has urged Croatia to provide a more comprehensive legal framework.⁵²² The Anti-Discrimination Act was therefore adopted with a large majority by the Sabor in the summer of 2008 (only one MP voted against and one abstained from voting).⁵²³ EU democratic conditionality seems to have had an impact in relation to anti-discrimination protection in Croatia, even though some of these anti-discrimination provisions are not sufficiently implemented after EU standards. In its 2008 Progress Report the Commission, for example, stated that "(...) the level of protection against discrimination in practice and its judicial prosecution is not in line with EU standards".⁵²⁴ But what distinguishes Croatia, which has rather quickly implemented anti-discrimination protection, from Poland, which has dragged its feet to a greater extent in this area?

First of all, EU democratic conditionality might have been seen as more *credible* in the Croatian case, something to respect. As Poland was pushed very little to implement anti-discrimination legislation during its accession period, the EU might by its strict policies toward Croatia have managed to establish that non-compliance would have obstructed EU membership. Indeed, the EU on several occasions halted negotiations on the grounds of non-compliance with the ICTY. Given this close monitoring and criticism, the EU might also have managed, by virtue of its even more active anti-discrimination promotion in Europe and in Croatia in particular, beginning with the Amsterdam Treaty in 1997 and the subsequent initiatives resulting from this,

⁵²⁰ European Parliament, "Conclusions" [note 480]; and IGLHRC, "Croatia" [note 480]; United Nations Information Service, "Committee to Eliminate Discrimination" [note 480].

⁵²¹ University of Vienna, "Country Report Croatia. Executive Summary", Research Project "Governing Difference", University of Vienna, 2007, available at http://typo3.univie.ac.at/uploads/media/Executive_Summ_Hr.pdf (retrieved 5 March 2009), p. 11.

⁵²² European Commission, "Croatia 2008 Progress Report", Commission Staff Working Document, Brussels, 5 November 2008, SEC(2008) 2694.

⁵²³ Owpsee Foundation, "Croatian Sabor Adopted Anti-Discrimination Law", Oneworld Platform for South East Europe, 10. July 2008, at <http://www.oneworldsee.org/node/16088> (retrieved 15 June 2009).

⁵²⁴ European Commission, "Croatia 2008" [note 522], p. 12.

to more successfully interconnect the need for more anti-discrimination protection in Croatia and the character such protection must have, with the prospects of EU membership. EU has, as mentioned, been especially critical of the lack of minority rights in Croatia, and now lately also of the lack of rights for sexual minorities such as homosexuals. The democratic conditionality might therefore also have been seen as *determinate* stating specific laws to implement to combat certain types of discrimination. However, the insufficient implementation of certain anti-discrimination protection, especially in relation to homosexuals, might suggest the contrary.

Second, it seems that the HDZ-government is increasingly defying the intolerant stance of the Catholic Church and has done so for some time. This is also different from the Polish case where, even though the Catholic Church's political power is limited, the traditional values promoted by it have exerted some influence, especially on right-wing parties, such as the Law and Justice Party. The question is therefore: can this increasing governmental defiance of the Catholic Church's interests be indicative of a profound norm change in Croatia in the area of anti-discrimination as a response to EU pressure? I will argue that, at this point in time, that is not likely to be the case.

A socialization of the political elite might have been possible given the evidence of a reformed HDZ which might have seen that its political course was not compatible with the post-Tudjman political reality. The EU's heavy criticism of this regime and the constant demands it posed after the fall of the HDZ regime in 2000 might have persuaded the HDZ of the necessity of change if economic prosperity and political stability in Croatia should be obtained, and that the respect for liberal democratic principles are imperative if such a goal should be obtained. But when the Croatian responses to EU anti-discrimination demands are taken into consideration it is clear, as already mentioned, that the provisions implemented are often short of meeting EU demands.⁵²⁵ Either the political elite in Croatia is still informed by national traditionalist values when it comes to implementing these provisions, or it is confused by the broad and sometimes equivocal EU anti-discrimination framework making it hard for them to distinguish between the needed legislation needed for combating discrimination, and thus not being able to decide on which norms to implement to fulfill EU demands, or possibly both.

⁵²⁵ *Ibid.*

When looking at the value foundation in the Croatian population the former seems to be the case. It seems that, even though it supports general democratic principles, tolerance toward certain groups of people is exempted from this system of equal treatment. Untraditional values as reflected in homosexuality, same-sex marriage, and divorce are still to a large degree frowned upon. In 2004, gays as a group in the Croatian society were for example accepted by only 10% of the Croatian adults, and only 22% of the Croatian youth, same-sex marriage was accepted by 20% of the Croatian adults and 33% of the Croatian youth, and the right to divorce accepted by 52% of the Croatian adults and 66% of the Croatian youth.⁵²⁶ Croatia is also lagging behind when it comes to the acceptance of gender equality, rather supporting traditional patriarchal patterns than increasing women rights and liberation.⁵²⁷ Croatia is in other words still highly traditionalist. As in Poland, there has not been any obvious disequilibrium of anti-discrimination rights in Croatia. The civil society at large, other than certain human rights NGO's, has not demanded additional protection.⁵²⁸ It is rather the EU that has upset an equilibrium by virtue of its democratic conditionality, demanding protection for groups of people which are not tolerated by a large majority of the Croatian population.

Furthermore, whereas the Račan government was dependent on the conservative forces to stay in power and had to compromise its pro-EU strategy, the Sanader government allied with the left-wing political forces in the first government, creating a reform-friendly environment, and is also in its second governmental constellation enjoying the political support of both the Sabor and the EU. While holding such a broad mandate it can to a larger degree follow the secular interests an EU accession implies without the fear of losing power. And as the HDZ has reformed into a conservative-center affiliated party it can reach out to a broader group of voters and does not need to count on the Catholic Church and its supporters in all aspects to reach preferable voter turnouts. This party reform might have been a strategic maneuver of the HDZ to regain its legitimacy and power by answering the democratic and economic needs of the Croatian society, and not the intolerant and traditionalistic values of the Catholic Church. The fact remains that the Catholic Church is simply not needed for the cause of legitimization of the HDZ government as it was during

⁵²⁶ Ilišin, "Political Values and Attitudes" [note 502], pp. 111-122.

⁵²⁷ Bijelić, "Women on the Edge" [note 463], pp. 276-295.

⁵²⁸ Bureau of Democracy, Human Rights, and Labor [note 493]; University of Vienna, "Country Report Croatia" [note 521].

the 1990's, and the HDZ-government has managed to conduct a firmer EU strategy than any Polish government has been able to.

One can therefore suspect that the efforts made in the policy area of anti-discrimination protection have been means to fulfill the EU demands in order to be granted EU membership with the political and economic rewards this results in, rather than to meet domestic demands for more anti-discrimination protection. It is thus the external incentives of EU membership that drive this implementation process, anti-discrimination might in Croatia, as in Poland, be regarded as a by-product of European integration which has to be implemented to be able to reach the greater goal of political stability and economic prosperity. It is after all these benefits both populations crave from EU memberships, not more anti-discrimination protection.

The domestic battles between the Catholic Church's emphasis on traditional values and the Croatian government's increasing independence and disregard for these traditional values show that the more autonomous the government has become, the more it can meet EU demands without the fear of losing power. However, certain HDZ politicians have opposed this defiance, fearing that the political support of the Catholic Church would diminish, and the HDZ ultimately lose it power. This indicates that some HDZ politicians still regard the Church's support as important, and this might start an internal debate in the near future. A decision on this issue becomes especially pressing when the anti-discrimination legislation is supposed to be respected in practice. The EU institutions have after all shown that non-compliance with its standards will not go unnoticed. This will therefore be the real test for the commitment to any profound norm change in the Croatian government.

7 Conclusion

This work has sought to analyze the influence the Catholic Church exercises on the Europeanization process of anti-discrimination protection in post-communist Poland and Croatia. It has by the use of process tracing accounted for the EU rule implementation process of anti-discrimination protection in these two countries. The Catholic Church's role in these two countries with an emphasis on the post-communist era, as well as the Catholic Church's interests in relation to the Europeanization process has therefore been assessed. In addition, the EU strategies for the post-communist development in these countries have been considered, and the domestic responses accounted for.

The three theoretical models sought tested in this work, the external incentive model, the social learning model and the lesson-drawing model, have informed the analytical approach, and thus been the basis for the discussion. The empirical evidence has been evaluated against these models, and the factors influencing the Europeanization process of anti-discrimination protection in post-communist Poland and Croatia have been identified.

It is clear that the EU has faced two radically different cases of aspiring EU members which has demanded different EU strategies, and both have also experienced substantial difficulties during their respective reform processes. A complex picture therefore emerges, and it is not always easy to identify the paths of causation. The findings in this work, however, suggest that the democratic conditionality imposed by the EU in relation to anti-discrimination did not have any effect in the early reform processes in neither Poland nor Croatia. It has only been influential from around 1996 in Poland and from 2000 in Croatia, thus indicating a process of lesson-drawing in Poland from 1990 until 1996, and in Croatia from 1989 until 1991. In Croatia, however, this lesson-drawing process metamorphosed into a process of lesson-avoidance until around 2000.

Nevertheless, even when the democratic conditionality is influencing the reform process of anti-discrimination protection, this work shows that domestic factors to a large extent are decisive for its effectiveness, even though the net benefits of EU membership have provided strong incentives to compromise the influence of these. EU standardized anti-discrimination legislation has eventually

been implemented in spite of domestic resistance. Thus, when EU democratic conditionality is influencing the reform process this work has found that:

First, the EU anti-discrimination legal framework is rather broad and in some areas not specified to any greater degree. The content of the national anti-discrimination legislation in a given country can therefore to some extent be decided on by the state's own discretion. Provisions for legislation on abortion and same-sex marriage, for example, are non-existent in the EU framework, even though the recognition for such rights is heavily promoted by the EU institutions. This therefore poses legislative grey areas which are not easy to regulate by the EU, especially when discrimination is present in the old EU countries as well. This makes the democratic conditionality of the EU related to anti-discrimination rather *indeterminate* to the candidate countries.

Second, the EU has exerted more pressure on Croatia than it did on Poland to make the Croatian government harmonize its legislation with EU standards, including in the area of anti-discrimination, , and especially when it comes to minority rights. The transposing of anti-discrimination legislation is in both countries poorly conducted, but Croatia seems to respond much faster to EU demands than Poland did. EU democratic conditionality related to anti-discrimination might therefore seem to have more *credibility* in Croatia than in Poland during its accession period. The EU has after all on several occasions broken of the negotiations with Croatia on the grounds of non-compliance. This never happened with Poland, even though that country lagged behind in its reform progress. However, the democratic conditionality of the EU's credibility seems to have increased somewhat for the Poles after its accession, as the EU has increasingly criticized discrimination in the Polish society and threatened it with legal sanctions for non-compliance. The new Civic Platform government has, however, changed the Polish political course somewhat.

Third, certain anti-discrimination provisions induce little *resonance* among major parts of the Polish and Croatian population. Large parts of these populations are traditionalists in the sense of supporting many of the conservative values promoted by the Catholic Church, and thus do not identify themselves with many of EU's anti-discrimination norms. Most people in these two countries are also more interested in domestic issues such as personal economic prosperity and personal freedom and security, rather than complex foreign policy issues such as European integration. Furthermore, even though many Poles and Croats support the integration

project, they expect the EU to provide for these interests mentioned, and show little concern for social issues such as anti-discrimination and tolerance. These issues might be seen as irrelevant for the further reform progress as a minimum of such protection already exists in national legislation and follow national value patterns. Added to this, both countries have relatively weak civil societies where both civil and political participation is low. Especially in Poland this has led to problems as the population and the interest groups are left out of the debates on both national and EU issues, and certain NGOs' pleas for more anti-discrimination protection not responded to by the government. Croatia, on the other hand, seems to be better of in this respect, especially when it comes to NGO's managing to voice their concerns to a more reform-friendly government. It is mostly through elections that the majority of these two populations are expressing their opinions. This lack of popular engagement and resonance therefore makes the national norms harder to change.

Fourth, the Catholic Church is a strong domestic actor with several channels of influence and which show little respect for compromise. Common to the Catholic Church in Poland and Croatia is that it strongly connects Catholic religious values with national identity, and thus seeks to strengthen its position within the state by gaining privileges from it. It is as such dependent on a stable state structure to be able to draw advantages from this, and therefore tends to argue against any compromise of national sovereignty lest it lose privileges secured under national law, e.g., the introduction of EU standardized anti-discrimination legislation at odds with the Catholic social teachings. Because it managed to consolidate its legal position in the early democratization process in both countries and created numerous channels of societal influence, it has become the strongest moral authority in both these countries which no other national actors have managed to compete with. It is thus the only societal veto player that manages to voice its interests and oppose the EU anti-discrimination norms in an otherwise generally weak civil society.

A national strategy where the government has to make cost-benefit calculations to best meet both domestic demands and EU requirements seems to emerge. For the governments in post-communist Poland and Croatia, the implementation of EU standardized anti-discrimination protection seems to generally just be a bi-product of the greater economic and political benefits an EU membership can provide. When considering the hypothesized outcomes of the three theoretical models, little evidence is thus found to support the social learning and lesson-

drawing models, i.e., H2 and H3, in this phase of reform. There is no strong and genuine domestic demand for more anti-discrimination protection in either country. The governments did not initiate reform of their legal anti-discrimination framework to solve pressing domestic problems and did not look toward the EU for solutions, which is the premise for the *lesson-drawing model*. It is rather the EU that poses such pressure for change. Furthermore, most Poles and Croats are interested in the material benefits and political freedom of European integration, and in general seem to be satisfied with their traditionalist concept of tolerance. The additional anti-discrimination legislation therefore seems to be only implemented as a necessity for being granted these other benefits, and not out of their appropriateness, which is the premise for the *social learning model*.

The Catholic Church in both countries has, however, fiercely opposed this process as it is threatening its interests. But as the *external incentive model* hypothesizes, i.e., H1, during such cost-benefit calculations the Catholic Church's veto power is only as strong as the government's political weakness. Thus, in Croatia, the Catholic Church and the traditional values can be disregarded to some extent for the purpose of fulfilling EU demands. This was not the case in Poland after 2005, but, with the election of Bronisław Komorowski in snap elections in July 2010, there are prospects for Poland to adopt a more moderate course, more cooperative with the EU and less hostile to sexual minorities.

However, the anti-discrimination legislation is in both Poland and Croatia often insufficiently implemented and poorly practiced in reality, indicating that formal implementation is not equal to behavioral change, and that EU's influence is not ideal. But as the Croatian case indicates, EU pressure with the threat of withdrawal of rewards seems to be an effective way to influence domestic change. Therefore, only the future will tell if the EU manages to exert pressure on all EU countries to such an extent that all will have a uniform set of anti-discrimination legislation and will protect against the same types of discrimination. At the moment this seems unlikely. Even though the EU most certainly is contributing to the introduction of new anti-discrimination legislation and awareness of the different grounds of discrimination in Europe, EU lacks strong means of sanctions, and much is still dependent on national political conditions.

Major considerations therefore still pose challenges to the further relationship between these countries and the EU. The Catholic Churches of both Poland and

Croatia have, furthermore, not indicated that they will capitulate in their efforts to define the European moral foundation, and their voices will most certainly be heard more in the future as well. A religious actor such as the Catholic Church is therefore still important to consider when assessing the Europeanization process, even though as this work found in the Polish case, that Catholicism is often more tradition than religious piety. It is still an institution certain people and political actors are inclined to respect and might therefore continue to influence the political processes in Europe on policy areas such as anti-discrimination. More research should therefore be done in this field. The CBCEC's role in the Europeanization process could, for example, be explored to a further extent, analyzing the Catholic Church's lobbying activities in Brussels. More research can be done on the relevant civil actors and NGO's, and their influence in this process, perhaps analyzing specific types of discrimination in this respect. Another interesting approach would be to explore the Orthodox Church's role in the Europeanization process and its views on anti-discrimination. In this respect, Serbia, which is aspiring to EU membership but barely making any real efforts in this regard,⁵²⁹ is a country worth considering. In any case, it is evident that discrimination is a significant problem in Europe today, and many people fall victim for this. The patterns of discrimination therefore have to be accounted for and efficient measures applied. The EU is on the right path in this respect, and should continue to put pressure on its members, but additional initiatives from other actors should also accompany these efforts. A common front combating discrimination across Europe should be created.

⁵²⁹ Ramet, "Croatia and Serbia since 1991" [note 489].

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