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Enlargement of the European Union and Human Rights
The case of Bulgaria: an insight to the Political Conditionality

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ABSTRACT

This paper looks at the relation between human rights conditionality and enlargement of the European Union. It is divided in two parts: first, it studies the place of democracy and human rights and their conditionality in the recent history of the European Union Enlargement, analysing its evolution as the EU increased its integration and number of Member States. It later shifts to focus its attention on the accession of Bulgaria to the EU and studies the treatment given by the European Commission and the European Council to the Political Criteria during the process of accession of Bulgaria. To this end, this paper analyses the main instruments provided at the time: the Accession Partnerships and the Regular Reports. An assessment of the accession of Bulgaria to the Council of Europe is introduced in order to throw greater clarity about the evolution of the country since 1990.

AP	Accession Partnership
CEE	Central and Eastern European
CEEC	Central and Eastern European Countries
CLCC	Civil Law Convention on Corruption
CSCE	Conference on Security and Co-operation in Europe
EC	European Commission
ECHR	European Convention on Human Rights
ECTHR	European Court of Human Rights
ECJ	European Court of Justice
EP	European Parliament
EU	European Union
FCCEPNM	Framework Convention of the Council of Europe for the Protection of National Minorities.
JHA	Justice and Home Affairs
NCEDI	National Council on Ethnic and Demographic Issues
NATO	North-Atlantic Treaty Organisation
OSCE	Organisation for Security and Co-Operation in Europe
ODIHR	Office for Democratic Institutions and Human Rights
PACE	Parliamentary Assembly of the Council of Europe
PHARE	Poland and Hungary: Assistance for Restructuring their Economies
RFP	Roma Framework Programme
SJC	Supreme Judicial Council
UNAC	United Nations Convention Against Corruption
WEU	West European Union

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INTRODUCTION

The European Union is known worldwide for being a peaceful territory, the paradigm of regional integration and democracy. Without taking into account the current political developments that have resulted in a wave of euro-scepticism and a raise of nationalism and xenophobia in some member states, we can say without any doubt that for the past 30 years European countries have looked towards the European Union as a source of political stability, economic prosperity and good neighbourhood relations. Its principles and core values are regarded as an example for many other countries and regional organisations which wish to achieve the same level and standards of peace, democracy and respect for fundamental rights. The success of the European project is a fact.

For decades, the EU has prided itself for its high standards and active promotion of human rights, both inside and outside the Europe. In the continent, the promotion of democracy, rule of law and human rights has had place throughout the enlargement policy. Since the very beginning, the EU acclaimed these values and made them part of what the Union is. Nevertheless, the EU was initially created as an economic instrument, and for many decades its activities were devoted to this area. When the EU decided to enlist onto the enlargement to the east, it started to apply a strong policy of political conditionality on the states that wished for EU membership. The EU did not possess such human rights acquis or instruments of itself, but the fear of some Member States, and the titanic proportions of the task led to the application of a double standard during a long time.

Bulgaria was one of the last countries of the big enlargement wave to join the European Union. When it applied for membership, the country wished was pursuing a dream of stability and economic prosperity. Currently, Bulgaria is one of the poorest countries in the European Union, and is still facing great problems related to corruption and political agitation, with thousands of citizens asking for a democratic renovation.

This paper looks at the relation between democracy, human rights and rule of law, which are known in the EU as the Copenhagen Political Criteria, and Bulgaria's accession to the EU. The first chapter will analyse the evolution of the Political Conditionality since 1990. It will look at the place given to democracy and human rights on the enlargement process and how grew in importance at the same time as a core value of the European Union. The second chapter will make a review of Bulgaria's accession to the Council of Europe and the first years of political transition that the country experienced. The aim of this exercise is twofold: on the one hand, it shows at which point of its transition was Bulgaria when it started its involvement with the European Union. On the other hand, it analyses the standards in democracy and human rights applied by the Council of Europe, which were used by the European Union as a benchmark to assess the political conditionality of the candidate states. The third chapter will study the accession of Bulgaria to the European Union, focusing on the evolution of the Political Criteria. It will study and analyse the main instruments created by the European Commission and the European Council, and assess to which extent the policy of the EU in this area was coherent throughout the pre-accession and accession process.

It is extremely complicated to determine which was the effect of the EU's enlargement policies on Bulgaria's record in democracy and human rights; this paper does not intent to do so. There is an extent literature on the conditionality of the European Union towards accessing countries, which is now attracting analysis on the backsliding of some countries such as Hungary or Romania. In addition, many institutions, such as the Open Society Institute, are currently devoted to the study of corruption in Bulgaria, as the country is still under the CVM.

This paper will therefore restrict to the policy and recommendations made by the EU to Bulgaria on the framework of the Political Criteria, and it will cover the period between 1990 and 2005, when Bulgaria signed the Treaty of Accession to the European Union. Different sources have been used: mainly, EU legislation and documents have provided the greatest source of information. Existing literature in this field has been also used. Information and reports from some NGOs were used in order to contrast the information

of the European institutions, as well as the monitoring reports of the Parliamentary Assembly of the European Union.

Chapter One

Recalling the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe, confirming their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law, desiring to deepen the solidarity between their peoples while respecting their history, their culture and their traditions...

(Maastricht Treaty 1992)

3. The foundations for the Copenhagen Criteria

In 1993 the European Council made the historical decision of inviting the Central and Eastern European countries to become members of the European Union. In order to do so, the European Council established the so-called “Copenhagen Criteria”¹, a set of conditions that all countries wishing to access the Union would have to fulfil. The first of those three is the political criterion: it demands that candidate countries achieve institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

Why did the European Council decide to expressly include the demands for democracy and human rights in the Enlargement policy? If we have a look at the enlargement process of the European Union, we will realize that it had been an expansion towards a club of democratic European states, unlike other international organisations such as the OECD or NATO. Although the democratic condition had never been expressly mentioned before, the Community had made it known long before the end of the Soviet era, and some countries such as Greece, Spain and Portugal could only contemplate to join the club after they had shed authoritarian regimes². On the other hand, since its

¹ European Council, 1993. The other two Copenhagen criteria were the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union, and the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

² Laursen, 2003, p.22

creation the six founding countries, representatives of the free West, had struggled against communism. Therefore, they could not establish any formal cooperation with authoritarian regimes without contradicting their own principles. When the Southern European democracies shifted to democratic regimes there was no reason therefore, to refuse to incorporate neither them nor the post-communist regimes after the collapse of the Soviet Union³.

In addition to it, we have to take into account the context of euphoria in the aftermath of the Cold War, when the European Community rushed to fill the vacuum by the Soviet Union. Gathered in Dublin in 1990, the European Council qualified the historic event as an opportunity for change that would bring closer a Europe which, “having overcome the unnatural divisions imposed on it by ideology and confrontation, stands united in its commitment to democracy, pluralism, the rule of law, full respect for human rights, and the principles of market economy”.

According to the Council, the European Community had reached a point “where the continued dynamic of development of the Community has become an imperative not only because it corresponds to the direct interest of the twelve Member States, but also because it has become a crucial element in the progress that is being made in establishing a reliable framework for peace and security on Europe. The European Council therefore agrees that further, decisive steps should be taken towards European unity as envisaged in the Single European Act”⁴. In these early days, the stability and security of the continent were among the top priorities of the European Community, and the Council connected the notions of democracy and freedoms as conditions for the first ones.

Other than the rhetoric about the European values and “the return to the European family”, some Member States showed their reluctance and initially opposed to the enlargement. Therefore, the conditionality was meant to overcome this opposition, and

³ Telo, p. 47

⁴ European Council, 1990, pp. 1-2

the Copenhagen Criteria were designed, among other things, to prevent the risk that the new members would be a burden to the European Community⁵.

When the Copenhagen Criteria were launched some years later, the European Union had just adopted its name after the reforms introduced by the Maastricht Treaty. It was an economic union dealing mainly with matters of internal market and security policies. Yes, some modest steps towards a political union were made, but it was far from the political union and the system of protection for fundamental rights of today. Successive rounds of expansion would mechanically modify the text of the EU's founding Treaties but, as a matter of fact, the founding Treaties contained no specific provisions on fundamental rights.

The place given to fundamental rights in the Community Treaties has changed considerably throughout the years. When the first treaties were launched fundamental rights were not even close to constitute a central concern or goal: the Treaty of Paris, which established the European Coal and Steel Community (ECSC), concerned solely with the coal and steel industries. This sectorial approach gained strength after the failure, in 1954, of the European Defence Community (EDC) and the concomitant moves towards political union. It thus became a feature of the Rome Treaties establishing the European Atomic Energy Community (Euratom) and the European Economic Community (EEC). Although the EEC Treaty was wider in scope than the other two, all three Treaties covered well-defined economic spheres⁶.

One consequence of this sectorial approach was to set the founding Treaties apart from any basic law of a constitutional nature which incorporated a solemn declaration on fundamental rights. The Treaties in question were not suited to the inclusion of such a preamble, and the Council of Europe's European Convention on Human Rights (ECHR) already provided an advanced model for the protection of human rights in Europe.

⁵ Grabbe, 1999, p. 2

⁶ http://europa.eu/legislation_summaries/institutional_affairs/treaties/amsterdam_treaty/a10000_en.htm
accessed on 14 June 2014

The situation changed rapidly as the European Court of Justice, in the judgments it handed down, began to monitor the respect shown for fundamental rights by the Community institutions and the Member States whenever they took action within the areas covered by Community law. Initially the ECJ was reluctant to consider possible violations of fundamental rights that arouse in different contexts, both under the EEC and the ECSC treaties. At that time, the Court's concern had its focus on the consolidation of the core principles of the European Community legal order –such as primacy or direct effect⁷. Nevertheless, the process of integration inevitably affected the fundamental rights and their endorsement. Given the lack of presence in the treaties, the ECJ had no other alternative but to “outsource” and take the general principles common to the constitutional traditions of the Member States and to the ECHR as a reference for its rulings. This way, the ECJ “internalised” these external sources⁸.

Already in 1969, the ECJ recognised the status of fundamental human rights by stating that these were “enshrined in the general principles of Community Law”, and as such, protected by the Court (Stauder Case, 29/69 12 November 1969). In 1977 the European Parliament, the Commission and the Council signed a Joint Declaration in which they undertook to continue respecting the fundamental rights arising from the two sources identified by the Court : the constitutional traditions of the Member States and the international Treaties to which the Member States belonged (and the ECHR in particular). In 1986 a further step was taken when the preamble to the Single European Act included a reference to the promotion of democracy on the basis of fundamental rights. The Treaties to come would further develop and reinforce the protection of fundamental rights and human rights.

When the European Council announced the Copenhagen Criteria in 1993, it was also laying down the groundwork for what would become a proactive and meticulous pre-membership policy. In previous accessions aspirant states had to fulfil the EU admission conditions without any further interference from the Union. This time the challenge posed by the CEECs required a pro-active engagement of the EU to guide and monitor

⁷ Di Federico, 2011, p.17

⁸ Ibid, p. 18

the process⁹. Enlargement also represented an exercise of constitutional significance. This way, we will see how the Enlargement would end up by affecting the constitutional fabric of the EU: by articulating what was required to become a Member State, the EU was self-defining constitutionally. It has in turn disclosed what the EU stands for, or at least how it wants to be perceived by the outside world¹⁰.

This chapter intends to look through [the origins of] the idea of democracy and human rights as core values of the European Union and the creation and development of the EU *acquis* in Fundamental Rights as a result of the enlargement process.

4. The foundations of democracy, rule of law and human rights in the European Union.

a. The Helsinki Final Act, 1975

Between 1973 and 1975 thirty-five states, including the USA, Canada, and most European states except Albania celebrated three rounds of meetings which would be named as the Conference on Security and Co-operation in Europe. For the first time since the beginning of the Cold War countries from the East and West block sat down together to reach some consensus on practical aspects that concerned them. Although not all the countries shared the same reasons for celebrating and attending this conference, gathered in Finland in 1975 they eventually signed the Helsinki Accords. The Final Act, which lacked the category of treaty and was therefore non-binding, expressed their willingness for cooperation in various topics and spheres of activity. It consisted of a catalogue of ten principles that would guide the future relations between the signatory countries. Already in the Preamble we can read these words:

“Motivated by the political will, in the interest of peoples, to improve and intensify their relations and contribute in Europe to peace, security, justice and cooperation as well as to rapprochement among themselves and with the other states of the world”.

⁹ Hillion, 2012, p.1

¹⁰ Ibid, p. 1

As we can see, “*peace, security, justice and cooperation*” are some of the principles that would lately inspire the creation of the European Union as we know it today. The values that characterize the European continent were being laid down. The signatory parties also recognised the need for a close cooperation in order to contribute to “*the strengthening of world peace and security and to the promotion of fundamental rights, economic and social progress as well as well-being for all peoples*”. Although it is clear that not all the countries present in the conference shared the same idea of what fundamental rights are, given the context of confrontation at that time we can consider this declaration as a symbolic first step towards what would later come.

Principle VII of the Helsinki Accords contains some important statements from the point of view of human rights: the participating states engaged to “*respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief for all without distinction as to race, sex, language or religion*”. Moreover, they expressed their will to promote and encourage the “*effective exercise of civil, political, economic, social, cultural and other rights and freedoms, all of which derive from the inherent dignity of the human person and are essential for his free and full development*”. They also recognised the universality of human rights and fundamental freedoms, linking the respect of these with peace, justice and well-being, necessary to ensure the development of friendly relations and co-operation among all states. This last statement is of great importance: for decades, Eastern bloc countries had refused to recognise the universality of human rights, crossing out this idea as an imposition coming from the Western imaginary. Now, this acknowledgment implied considering human rights as a legitimate subject of international relations and thus no longer a subject classified as internal affairs of states¹¹. Yet, Principle VI of the text postulated the non-intervention in internal affairs, thus leading to a conflict of norms which was used by the Soviet Union and its allies to repudiate Western criticism.

The text also included the protection of the rights of minorities, whose respect constitutes one of the conditions of the political criteria set in Copenhagen.

¹¹ <http://www.humanrights.ch/en/Standards/Europe/OSCE/Helsinki/index.html> accessed on 12 June 2014

“The participating states, recognizing the contribution that national minorities or regional cultures can make to co-operation among them in various fields of culture, intend, when such minorities or cultures exist within their territory, to facilitate this contribution, taking into account the legitimate interest of their members.”

Effectively, countries in post-communist Europe have been pressured to adopt Western standards or models of multiculturalism and minority rights¹². Talking about minority issues at the time was not easy. Western countries did not share a uniform policy in this regard, and many of them had restricted the recognition of national minorities, which in many cases was reflected in the national Constitutions. Since the creation of the different Charters and Conventions that enshrined the human rights of the men and women, there was a belief that everyone enjoyed the same rights and that everybody was in theory equally protected against any violation; therefore, the belief that there were not minority rights problems technically speaking was quite widespread among western European countries. Thus, generally speaking, minority issues were dealt with from the point of view of individual rights, and not in a collective way.

As for the Soviet Union, it was organised in ethno-territorial units. Nevertheless, minority interests were subordinated to the security, economic and diplomatic concerns of the government. Moreover, since its creation steps were taken to ensure that the ethno-territorial units did not develop as centres for nationalism: it is well known that a wide variety of minority populations were subject to deportations - notably peoples of the North Caucasus and Volga Germans - and to forced assimilation to the prevailing Russo-Soviet culture. Yet, despite the measures of “russification”, from the 60’s there was a growing ethnic and national awareness among the many minorities which lately led to the emergence of indigenous political and cultural elites within many of the territories. This tendency increased during the time Brezhnev held the position of General Secretary of the Communist Party¹³.

¹² Kymlicka, 2002, p.1

¹³ <http://www.minorityrights.org/?lid=2492> accessed on 17 June 2014

In any case, already in 1975 the Minority rights or at least their situation and the possible existence of conflicts among them were regarded as an important issue for the security and stability of the eastern part of the continent. In the years to come the link between the protection of Minority rights and security and stability would become more and more evident. This belief would lead to the creation of the High Commissioner on National Minorities in 1993. But at this early stage, we can affirm that the first concern laid out on the security and stability of Eastern Europe rather than on the rights of the different national minorities.

In addition to the ten principles, the final part of the text, the so-called third basket of the Helsinki Final Act also addresses some human rights and humanitarian issues, such as freedom of information and freedom of the press, and cooperation and exchange in cultural and educational issues. Despite these being vaguely worded norms consisting of declarations of intention, they ranked among the most controversial of the whole Conference process: they represented the main issues in the ideological conflict between East and West.

As we have mentioned above, the Helsinki Final Act is not a treaty, and it was therefore non-binding for the signatory states. It was a political agreement that formed the basis for mutual controls and requests on the observance of the obligations contained in it.

b. The Charter of Paris for a New Europe, 1990

The Charter of Paris for a New Europe put in evidence the linkage between democracy, human rights and the rule of law¹⁴. In this document, the participants of the Conference on Security and Cooperation in Europe not only declared that future state relations would be founded on mutual respect and cooperation, they also suggested that by committing themselves to this principle they were liberating Europe from the legacies of its past and opening up a new era of democracy, peace and unity on the continent.

¹⁴ Bassiouni, 1998, p.20

Why does this document matter? Despite the CSCE being a regional conference, different from the European Economic Community of the time, all the European states were part of it and some of the foundations of the current European Union were laid there.

In the text, the signatory countries declare that a democratic government, based on the will of people and expressed regularly through free and fair elections, is the only valid system of government. The protection and promotion of human rights and fundamental freedoms, which are inalienable and must be guaranteed by law, shall be the first responsibility of governments. Along with an enumeration of civil and political rights, the Charter of Paris affirmed the protection of the ethnic, cultural, linguistic and religious identity of national minorities. *“Full respect for these precepts is the bedrock on which we will seek to construct the new Europe; our states will co-operate and support each other with the aim of making democratic gains irreversible”*.

The document went along with a set of guidelines for the future, where the states commit themselves to cooperate to strengthen democratic institutions and to promote the application of the rule of law. They declared their respect for human rights to be irrevocable and showed their determination to foster full respect for the rights of persons belonging to national minorities by reaffirming their deep conviction that *“friendly relations among our peoples, as well as peace, justice, stability and democracy require that ethnic, cultural and religious identity of national minorities be protected”*¹⁵.

5. Enlargement to the east: towards a policy of Fundamental Rights

3.1. First steps: Europe Agreements and Maastrich Treaty

With the beginning of the new decade, the European Union initiated a new path by taking important steps forward and preparing for the big enlargement.

¹⁵ Charter of Paris for a New Europe, 1990, p.7

Other than the Trade and Co-operation agreements, the first contact between the European Union and the CEE countries were the Europe Agreements. The approach adopted for these first negotiations was to be tailored to respond to the political and economic situation in each country. The Commission announced that they would not include the objective of an eventual accession to the Community¹⁶. Instead, they would constitute “an incentive to Eastern European states to implement political and economic reforms”. Furthermore, the Commission introduced some conditions in order to benefit from those agreements, these being rule of law, respect for human rights, the establishment of a multi-party system with corresponding free and fair elections and the introduction of a market economy (ref. Commission Communication to the Council, E.C. Bull 7/8-1990 93). In this context, the reference to “human rights” was very vague and elusive, and the absence of concrete measures designed to promote them let the European Community the opportunity to have greater leverage. Eventually, given the pace of political events it was clear that the Europe Agreements would be only the first step in a larger race to membership and the move to accession negotiations brought human rights issues to the front¹⁷.

In 1993 the Commission addressed the Council in order to suggest the necessity to take further steps in the negotiations with CEE countries, and concluded that “it is vitally important for the Community to give a clear, unambiguous signal of its intention to forge closer political links with those countries in a perspective of future membership...”¹⁸. In addition, the Commission recommended the road for membership should only be “opened” to those countries who were able to satisfy certain conditions, inter alia, have the capacity to assume the “acquis communautaire”, ability to guarantee democracy, human rights, respect for minorities and the rule of law, and the existence of a functioning market economy¹⁹. These suggested conditions were very similar to those

¹⁶ European Information Service, 1990

¹⁷ Williams, 2000, p.4

¹⁸ European Commission, 1993

¹⁹ Ibid.

required for the Europe Agreements, but at last it was clear that the ultimate goal was the possibility of full membership²⁰.

The recommendation of the Commission saw the light during the European Council meeting in Copenhagen in 1993. Indeed, the fact that the European Council decided to invite the associated countries of Central and Eastern Europe to become members of the European Union is perhaps one of its biggest political decisions in the aftermath of the Cold War.

That very same year the entry into force of the Maastricht Treaty established the European Union into its current name. It deepened integration in various ways and it was expected to mark the ending of a prolonged period of uncertainty of the Community's direction. In addition, it would be an occasion for the Union to meet with renewed vigour and determination the many challenges it was faced internally and externally²¹.

Art. O (current article 49) of the Maastricht Treaty opened the door for membership:

“Any European State may apply to become a Member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.

The conditions of admission and the adjustments to the Treaties on which the Union is founded which such admission entails shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the Contracting States in accordance with their respective constitutional requirements.”

Some months later, in June 1993, the European Council celebrated a summit in the Danish capital. The final document of the Presidency has passed into history for having set the famous “Copenhagen Criteria”, the backbone of the Enlargement policy, which

²⁰ Williams, 2000, p.4

²¹ European Council, 1993.

is commonly known as the set of political, economic and legal conditions that Central and Eastern European candidate countries would have to fulfil in order to become member states:

“Membership requires that candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, 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.”

On which basis did the European Council select these criteria to prepare the CEEC for their membership? In the Lisbon summit in June 1992, the Commission presented its report “Europe and the challenge of enlargement” after a request from the European Council, in order to examine the implications of other European States acceding to the European Union on the basis of the Maastricht Treaty, which had just been agreed.

The Copenhagen Criteria took its inspiration from the Lisbon Report, which suggested the following accession conditions²²:

1. Democracy and the respect for fundamental rights;
2. Acceptance of the Community system and capacity to implement it, including a functioning and competitive market economy, and an adequate legal and administrative framework;
3. Acceptance and capacity to implement the Common Foreign and Security Policy “as it evolves over the coming years”.²³

At the time of the Lisbon summit in 1992 none of the CEECs had applied for membership, but it was known that they wanted to join, and the EU was preparing the “association agreements” with some countries already. The Commission found that after

²² Commission of the European Communities, 1992, p.8.

²³ Laursen, 2003, p. 24

the end of the Cold war, the integration of the new democracies into the European family presented a historic opportunity, where the enlargement could contribute to the unification of the whole Union²⁴. Moreover, it declared that since the European Community had never been a closed club, it could not refuse the historic challenge it had ahead. Therefore, it had to assume its continental responsibilities and contribute to the development of a political and economic order for the whole Europe²⁵. Here the European Commission outlined the idea of a pan-European liberal order, which was already present in the EEC Treaty in 1958 – the founding fathers declared their determination to “lay the foundations of an even closer union among the peoples of Europe”-. The *European Identity* had also been used as a claim by the CEECs in order to be considered as candidates for accession; the “Return to Europe” became the battle cry for almost all CEEC’s governments²⁶. Overall, the different statements in favour of the enlargement and in order to accept the new democracies lied on the idea of a moral commitment to accept these states as members, with an ultimate focus upon democracy and human rights.

In this context of alleged European inter-state brotherhood, the reason behind the 1st condition laid, according to the Commission, on the Article F of the Maastricht Treaty. It referred to some of the essential characteristics of the Union: the principles of democracy and respect for human rights. Therefore, the Lisbon Report declared that “*any state that applies for membership must satisfy the three basic conditions of European identity, democratic status and respect of human rights*”²⁷.

Already in the meeting held in Maastricht in December 1991 the European Council had stated that “*any European State whose system of Government is founded on the principle of democracy may apply to become a member of the Union*”²⁸. At the meeting of Luxembourg in 1997 the European Council would reaffirm the idea that respect for the political Copenhagen Criteria was an essential precondition to start accession negotiations. Each accession partnership would therefore include a corresponding

²⁴ Commission of the European Communities, 1992, p.9.

²⁵ Laursen, 2003, p.24

²⁶ Schimmelfenning, p. 266-268

²⁷ Commission of the European Communities, 1992, p.11

²⁸ Laursen, 2003, p.24

conditionality clause, to be applied in the event of an applicant country's breaching the principles of democracy and human rights. Moreover, the European Council reiterated the idea that extending the European integration model to encompass the whole of the continent is a pledge of future stability and prosperity.

3.2. The Copenhagen Criteria

Going back to the Copenhagen criteria, for the first time the conditionality is explicitly mentioned, as a formal and main feature of the enlargement process and a safeguard for quality. In addition to this, the final document reiterates that "*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*"²⁹. The ability of the European Union to absorb new members, while maintaining the momentum of European integration, was also an important consideration.

We have to keep in mind that this process was to put at the same level many countries with different political and economic situations and historical backgrounds. The need for a set of rules, which would create a predictable or at least objective accession process, was therefore quite great. These conditions served a double purpose: on the one hand they would become an objective counterpart of the political commitments, underlining the importance of a well-managed accession process based on the fulfilment of specific conditions. On the other hand, they would be a guarantee that the process of accession would not be rushed through³⁰. In the words of Stefan Füle, EU Commissioner for Enlargement and Neighbourhood Policy, "*enlargement is thus by definition a gradual process, based on solid and sustainable implementation of reforms by the countries concerned. This is where the impact of conditionality driven by the Copenhagen criteria comes into play*"³¹.

As we can see the European Council established very demanding requirements intended to the complete transformation of the institutions in each of the associated country.

²⁹ European Council, 1993, p.10

³⁰ Fühle, 2013, p.9

³¹ Ibid.

These criteria were meant to provide with a very clear sense of direction as well as a challenging list of homework to do. The political criteria, which interests us the most, was clearly set out as a guide for the new democracies that were emerging and had to face many immense challenges: *stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities* basically enumerated all the characteristics and standards present in the western European political culture.

Last but not least, the decision of including the minority rights among the political criteria rests on a number of controversial assumptions. Mostly, the decision was taken by Western leaders almost in panic, as a response to fears that ethnic conflict would spiral out of control across the post-Communist world, especially given that the ethnic minefield of the ex-republic of Yugoslavia had turned into a bloody ethnic conflict. Nevertheless, the wisdom of exporting the “western” policies to the Central and Eastern European countries is questionable: at the time, and even today, there was not one unique view towards minorities, and western countries continue to differ among themselves in their approach to ethnic relations. The attempts to codify a common set of minimum standards or best practices has proven difficult, despite the existence of European and international Treaties and Conventions that have been ratified by western European countries³².

Unfortunately, we don't find any further explanation regarding this first criterion on the final document of the Copenhagen meeting. Instead, the heads of governments and states rather elaborated on the second and third set of conditions. What is more, the Copenhagen Criteria has known no further amendments providing any additional explanation regarding the conditions laid down in 1993. We have to regret this absence since the broad scope and lack of transparency of the three criteria leaves an open door to speculations and different concepts regarding crucial issues such as the notion of democracy, the scope of human rights or the number of requirements requested for the establishment of the rule of law³³.

³² Kymlicka, 2012, p. 1

³³ Ficchi, 2011, p. 117

At the Copenhagen meeting of 1993, the European Council expressed its satisfaction for the “*courageous efforts undertaken by the associated countries to modernize their economies, which have been weakened by forty years of central planning and to ensure a rapid transition to a market economy*”. Moreover, the institution pledged to support this reform process, stating that peace and security in Europe depended on the success of those efforts. The document goes on recognising the importance on trade in the transition to a market economy, where the European Union had agreed to accelerate the Community’s efforts to open up its markets.

It is surprising and regrettable that the European Council limited to mention the importance of a successful transition to a market economy as a condition for peace and security in Europe, especially taking into account that the one of the bloodiest conflicts, the War in Bosnia, was taking place in the background. The lack of acknowledgement of the efforts made by the associated countries in their accession to the Council of Europe, which had already been accomplished or was taking place at the time, is also missing in the document. It diminishes the credibility of the importance given by the European Council to those achievements.

Yet, regarding the importance of the approximation of laws in the associated countries to the *acquis communautaire*, especially the competition laws, the protection of workers, the environment and the consumers, the European Council announced the creation of a task force to provide training in Community laws and practise to the officials of the associate countries. Indeed, these exchanges would be beneficial for the associated countries in meeting the Copenhagen criteria, but they were mainly focused on the implementation of the European Union laws, instead of being oriented towards improving the quality and efficacy of the judicial systems overall.

Related to it was the announce on the Copenhagen Summit of the inclusion of the PHARE Programme among the means for expediting the accession preparations of EU candidate countries, which became the main form of financial and technical cooperation between the EU and candidate countries in the pre-accession period. The support was aimed at institutional building and economic and social cohesion, and the financial

allocations were conditioned on the fulfilment of the Copenhagen criteria for the accession of associate countries to the EU.

3.3. The Treaty of Amsterdam, 1999

The Treaty of Amsterdam meant a greater emphasis on citizenship and the rights of individuals and endeavoured to give formal recognition to human rights.

It amended the Article F (new Art. 6) of the Treaty of the European Union by stating unequivocally 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 States³⁴. It also amended the preamble to the EU Treaty, confirming the Member States' attachment to fundamental social rights as defined in the European Social Charter of 1961 and the Community Charter of the Fundamental Social Rights of Workers of 1989.

Former Article F.2 of the EU Treaty stressed respect for the rights guaranteed by the ECHR and those resulting from the constitutional traditions common to the member states. However, the impact of this declaration was limited, since under former Article L (now renumbered Article 46) the powers of the Court of Justice did not extend to Article F. The task of the Court consists of ensuring respect for the law in the interpretation and application of the Treaty, therefore the scope of fundamental rights was correspondingly reduced.

The Treaty of Amsterdam also amended Article 46 therefore ensuring that Article 6(2) would be applied. From that moment on the Court would have the power to decide whether the institutions have failed to respect fundamental rights when applying the EU Law.

In addition, the Treaty included some new provisions that would reinforce respect for human rights:

³⁴ Treaty of Amsterdam, 1999, Art. 6

- It laid down a procedure for dealing with cases where a Member State has committed a breach of the principles on which the Union is based;
- Introduced the prohibition against discrimination based on nationality, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation; individuals were afforded greater protection with regard to the processing and free movement of personal data;
- The Final Act included declarations on the abolition of the death penalty, respect for the status of churches and philosophical or non-confessional organisations, and on the needs of persons with a disability³⁵.

As we can see, the Treaty of Amsterdam upgraded the protection of fundamental rights a great deal, especially compared to the existing treaties; by reinforcing those values it contributed to give legitimacy to the demands for democracy and respect for human rights laid down in the Copenhagen Criteria.

3.4. Agenda 2000

The European Union continued developing its Enlargement policy on the following years. Gathered in Madrid in December 1995, the European Council asked the Commission to elaborate its opinion on the different membership applications, as well as another comprehensive document on enlargement. As a result, in 1997 the Commission presented its Opinions on the accession applications, along with a comprehensive Communication on the development of EU policies in relation to enlargement called “Agenda 2000 - for a stronger and wider Union”³⁶. This Communication comprised a single complete framework offering a clear and coherent vision of the Union's future on the threshold of the 21st century³⁷. The Commission communication highlighted a number of priorities, among which we find the accession of new members. The European Council, meeting in Luxembourg in December 1997

³⁵ http://europa.eu/legislation_summaries/institutional_affairs/treaties/amsterdam_treaty/a10000_en.htm
accessed on 14 June 2014

³⁶ COM/97/2000 final - Vol. I / COM/97/2000 final - Vol. II

³⁷ http://europa.eu/legislation_summaries/enlargement/2004_and_2007_enlargement/160001_en.htm
Accessed on 14 June 2014.

confirmed once again the principle that the compliance with the Copenhagen political criteria was a *condition sine qua non* for the opening of any accession negotiations.

To translate these priorities into legal instruments, on 18 March 1998 the Commission presented legislative proposals on the various topics set out in its communication. The resulting package of legislation covers four main, closely related areas: the reform of the common agricultural policy, structural policy reform, the pre-accession instruments and the new financial framework³⁸.

The Commission also took into account assessments made by the Member States, particularly with respect to the political criteria for membership established by the Copenhagen European Council. The European Parliament's reports and resolutions, and the work of various international organisations, non-governmental organisations and other bodies were also used by the Commission.

The Agenda 2000 Communication consisted of three volumes. Volume I is equally divided in three parts: the policies of the Union (part one), the challenge of enlargement (part two) and the new financial framework (part three). As we know, at the time the Union didn't have any competences in any area related to the matters that occupy us – democracy, rule of law and fundamental rights. This policy was mainly developed and put into practice through the second pillar (the Common Foreign and Security Pillar) on the foreign relations of the EU.

In the area of its external action, the Commission was confident that enlargement would help enhance the influence of the Union which had “a major contribution to bring to peace, democracy and the defence of human rights and values”³⁹. Nevertheless, one of the main interests behind the enlargement of the Union was stability and security. As the Commission declared in the Communication, the greatest achievement of the Union was having created “a real Community of security within which it is inconceivable that there would be the slightest threat of recourse to force as a means of settling disputes. The challenge is now to extend that basic achievement of the European project to new

³⁸ Ibid.

³⁹ European Commission (1), 1997, p.10

Member States. The enlargement of the European Union must therefore aim to make an additional stabilizing impact complementary to that made by the enlargement of NATO.” Given its new neighbor countries, stability through cooperation in this region would be all the more important for the enlarged Union⁴⁰. It concluded by confirming the intention of the Union to “continue its policy of providing support for democracy, and assisting the reform process and the transition to the market-economy system” as the best means to guarantee security and stability in the long-term.

Part two of the first volume aimed at explaining the way in which the Commission had examined the different applications for accession and the main questions they raised, on the basis of the accession Copenhagen Criteria. It also included an analysis of the impact of enlargement on the Union’s policies and a detailed presentation of the reinforced pre-accession strategy.

On its evaluation regarding the state of compliance with the membership conditions, and specially the political criterion, the Commission went deeper on its analysis to assess how democracy actually worked in practice and deployed a series of detailed criteria. In order to do so, the Commission relied in external sources such as the Council of Europe or the OSCE standards⁴¹. The Commission also considered the progress made under the Europe Association Agreements. This was a huge task never undertaken before: the Copenhagen Criteria were very broadly drafted and they go beyond the *acquis communautaire*. For this reason, the Commission undertook a review of the current situation which went beyond a formal description of political institutions and assessed the situation by relying of standards and external indicators.

Regarding the political criteria, the Commission conducted its assessment only on the basis of the current elements which had been verified and confirmed. Without any doubt, the effective functioning of democracy occupied a high position on the list of priorities in assessing the different applications for membership. As it has been

⁴⁰ Ibidem pp. 40-41

⁴¹ EP Secretariat’s Task-Force Enlargement, 1998, p. 31

mentioned before, the Amsterdam Treaty enshrined in Article F the constitutional principle of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law. The Commission considered therefore that “the respect of the political conditions defined by the European Council in Copenhagen by an applicant country is a necessary, but not a sufficient, condition for opening accession negotiations”.⁴²

- Democracy and the rule of law: the Commission set the focus on the achievement of constitutions guaranteeing democratic freedoms, including political pluralism, the freedom of expression and freedom of religion. In addition, it analysed whether the applying countries had set up democratic institutions and independent and judicial and constitutional authorities, which would permit the normal functioning of the different state authorities. The celebration of free and fair elections, permitting the alternation of different political parties in power was also looked upon. The Commission noted that on the whole, the applicant countries had complied with those requirements. Nevertheless, the stability of institutions, a consolidated rule of law, the independence of qualified judges and training of police forces were still on the pipeline in the case of some candidates⁴³.
- Human Rights: in order to assess the respect for Human Rights the Commission turned to the Council of Europe; it took the accession to this institutions and the ratifications of the Council’s Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocol allowing citizens to take cases to the European Court of Human Rights as the standards to measure the respect for fundamental rights. Moreover, the Commission measured the freedom of expression and association and the independence of radio and television⁴⁴.
- Minority Rights: in this case, the Commission used the Framework Convention for the Protection of National Minorities and Recommendation 1201 of the Council of Europe as the standards to measure compliance with both individual

⁴² European Commission (1), 1997, p. 49

⁴³ Ibidem p. 51

⁴⁴ Ibidem p. 52

and collective rights of persons belonging to minority groups. Moreover, it warned that unresolved minority problems could “affect democratic stability or lead to disputes with neighboring countries”. Therefore, the Union and the applicant countries need to assure that satisfactory progress in integrating minority populations is achieved before completing the accession process. In this regard, the Commission could have mentioned the role of the OSCE High Commissioner for National Minorities⁴⁵.

In its resolution on 'Agenda 2000', the European Parliament put an emphasis on the political conditionality and expressed its opinion by pointing out that 'all the applicant countries which do at present meet the criterion of a stable democratic order, respect for human rights and the protection of minorities laid down at Copenhagen, have the right to open the reinforced accession and negotiating process at the same time'⁴⁶.

It emphasized the vital importance for the accessing countries to develop “an efficient and trustworthy public administration” to strengthen the rule of law; moreover, it stressed that “the independence of the judiciary is one of the pillars upholding the rule of law and fundamental to the effective protection of fundamental rights and civil liberties” and insisted that the political criteria for accession must explicitly include respect for the freedoms and fundamental rights of women. One of the novelties of the Amsterdam Treaty had been the furthering of equality between men and women, when it imposed a general obligation on the Union to eliminate inequalities and promote gender equality in all of its activities. The European Parliament advanced the idea that this gender equality principle “must be one of the criteria for assessing the state of preparations for accession” (paragraph 64).

With regard to preparations for accession, the EP particularly stressed out the great importance to progress in the following areas:

- The ratification and implementation of legal human rights standards,

⁴⁵ Ibid bis

⁴⁶ European Parliament, 1997.

- The legal accountability of police, military and secret services,
- Respect for the rights of minorities,
- The right to free speech, and the freedom of media,
- The abolition of capital punishment, where applicable,
- The eradication of torture and ill-treatment,
- The acceptance of the principle of conscientious objection to military service,
- The acceptance and encouragement of the non-profit-making sector as an important partner in the task of continually improving respect for human rights.

3.5. The European Union Charter of Fundamental Rights

Almost a decade after the disappearance of the Soviet Union, the concern about the ability of CEE countries to fully integrate into the EU legal system was widespread. Moreover, the growing process of integration among the member states was making it unavoidable for the Union to address the absence of fundamental rights in the *acquis communautaire*. At the same time, candidate countries put forward their own claim against the European Union: the double standard applied in the fundamental rights conditionality. As part of the accession conditionality candidate countries were expected to comply with the (much higher) standards *at any time*⁴⁷. On the contrary, Member States are only required to do so when they apply European Union law. This imbalance questioned the legitimacy of the European Union to require such harsh conditions, and above all, his genuine interest in pursuing a strong policy on human rights.

In addition, we have to evoke the constant call from institutions such as the Council of Europe, the European Parliament and the Commission for the European Union to sign and ratify the European Convention on Human Rights. It was an attempt to enhance the protection of fundamental rights in the EU, but it never found favor with the Member States⁴⁸. This option would later be ruled out when the ECJ rendered the Opinion (2/1994) where it warned about the lack of competence of the Community to accede to the Convention. Consequently, this procedure could only be pursued after having

⁴⁷ Hillion, 2013, p.9

⁴⁸ De Búrca, 2003, p. 685

amended the Treaties. After the failure of the European Constitution, this possibility eventually materialized with the Treaty of Lisbon⁴⁹.

Thus, in an attempt to calm down the voices of complaint that were coming from the outside and add some more legitimacy to the Union's enlargement and human rights policies, the institutions decided to take a step further. The idea of the European Union having a Charter of Fundamental Rights materialized at the meeting of the European Council held in Cologne in 1999. The member states decided that "at the present stage of development of the European Union, the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident"⁵⁰.

The Council defined the content of the Charter in these terms: "this Charter should contain the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, as general principles of Community law. The Charter should also include the fundamental rights that pertain only to the Union's citizens. In drawing up such a Charter account should furthermore be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), insofar as they do not merely establish objectives for action by the Union". The Council decided that the consideration whether and how the Charter should be integrated into the treaties would be left for a later time. Eventually, it was decided that the Charter would have a non-binding nature. This only changed later, when the Treaty of Lisbon declared it.

The Charter represents a major breakthrough in the history of the Constitutional Law of the EU⁵¹. This is due, among other things, to the fact that Member States will be subjected to internal scrutiny in order to assess their compliance with fundamental

⁴⁹ Under Article 6 TUE the Union is currently preparing to access the ECHR.

⁵⁰ European Council, 1999, p. 18

⁵¹ Ficchi, 2011, p.1

rights and freedoms standards. However, the main value of the Charter lies elsewhere: by acknowledging that the Union is a community of rights and values and that the citizens' fundamental rights lie at the heart of the EU, the document is explicitly recognizing the central role that fundamental rights play in the EU legal order.

Recently, some scholars have wondered about the possible consequences for the enlargement policy coming from the binding nature of the Charter. A priori, one would say that there are no apparent effects since the Charter, as its Art. 51 emphasizes, applies primarily to the institutions and bodies of the Union (in compliance with the principle of subsidiarity) and is only binding for Member States when they act in the scope of Union Law. In addition to it, the Charter mainly reproduces the content of the already existing *acquis communautaire* (although it is surprising that it does not mention minority rights with regard to the accession policy and conditionality⁵². Nevertheless, we can point out some "side-effects": the Charter could have a great impact on the internal scrutiny mechanism enshrined by Art. 7 TEU, primarily on assessing the seriousness of violations committed by Member States. Moreover, as we have pointed out before, it could help to defuse the critics regarding the "double standards" and establish a more fair procedure against Member States⁵³.

3.6. Chapter 23 of the *acquis communautaire*

The latest novelty in the fundamental rights policy in Enlargement was the addition of a new chapter (number 23) on Judiciary and Fundamental Rights. It constitutes a new approach to accession negotiations and was included for the first time with Croatia and Turkey. The scope of the chapter 23 of the pre-accession document is broader than that of the Art. 2 TUE or the EU Charter of Fundamental Rights, notably due to its call for protection of Minority rights and freedom of expression⁵⁴. The inclusion of a specific chapter on the matter, combined with the articulation of benchmarks, has considerably strengthened the significance of fundamental rights in EU accession negotiations. As a result, respect for the latter would no longer be regarded solely as an eligibility

⁵² Ficchi, 2011, p. 91

⁵³ Ibidem, pp. 120-121

⁵⁴ Hillion, 2013, p.4

condition (i.e. prerequisite for starting accession negotiations) as suggested in Article 49(1) TEU. Fundamental rights would also be conceived as an integral part of the EU *acquis* which the candidate would have to assimilate and would, as such, be considered under the third Copenhagen criterion related to the “candidate’s ability to take on the obligations of membership⁵⁵.”

4. Conclusion

For the past 25 years, the concept of fundamental rights has evolved to become an important part of the values of the European Union and its *acquis*. This evolution has taken place in two senses:

- On the one hand, it has developed through the Enlargement policy. The conditionality of respect for fundamental rights has evolved significantly since it was introduced with the Copenhagen Criteria, in part as a response to the inherent needs of each wave of accession⁵⁶, but also as a result of the changing role of fundamental rights in the EU constitutional order.
- On the other hand, the presence of Fundamental rights in the EU has been enhanced since its formal inclusion as a value of the Union with the Amsterdam Treaty, to the binding Charter of Fundamental rights as a result of the entry into force of the Lisbon Treaty. This evolution has mainly taken place as a result of the integration process, but it has also been influenced by the different waves of enlargement and the internal and external demands for greater legitimacy and coherence.

For decades, there was a strong imbalance regarding the obligation to respect and monitoring of fundamental rights depending on the pre or post accession contexts. Nowadays the EU Constitutional law regarding fundamental rights has considerably increased. Even if it has not been expressly mentioned, Enlargement has provided a platform for the development of an EU fundamental rights policy, at least vis-à-vis the

⁵⁵ Ibid.

⁵⁶ Editorial comments, 2012, p.1

candidates⁵⁷. Nevertheless, there are still some shortcomings regarding the extent to which the EU is able to monitor and guarantee the fundamental values on which it is based⁵⁸.

⁵⁷ De Burca, 2004, p.679

⁵⁸ Hillion, 2013, p.

CHAPTER 2

As we have explained in the previous chapter, at the time the European Council decided to invite the CEECs to join the European Union and started to design and shape its enlargement policy towards the East, the European Union Constitutional Law on Fundamental Rights was very scarce. Supposedly, the Enlargement provided an opportunity for the development of an EU Fundamental Rights policy, at least vis-à-vis the candidates. This way, in order to evaluate the fulfilment of the Copenhagen Criteria the Commission had to rely on a variety of external sources such as the ECHR, the European Framework Convention on the Protection of National Minorities or the expertise of the OSCE High Commissioner for National Minorities. As a result, given the limited competence in this field and the almost non-existent EU norms regarding Fundamental Rights, the broad political criterion was filled with contents that the EU was lacking⁵⁹.

With this idea in mind, it is interesting to examine the process of Bulgaria's accession to the Council of Europe: it provides an example of the standards in democracy and human rights used by this institution and allows us to follow up the evolution of the country and have a clear idea of the state of the Bulgarian politics, law and institutions by the time the country opened its negotiations with the EU. It constitutes valuable information in order to better understand the challenges facing Bulgaria's accession to the European Union.

1. Bulgaria's first steps : commitment towards democracy and Europe

In 1992 Bulgaria joined the Council of Europe. Together with other countries, it made part of the big enlargement through the east of Europe. At the time of its accession, Bulgaria was a new, fragile democracy with a long path ahead. Nevertheless, it

⁵⁹ Ibid.

expressed its desire for membership almost immediately after the change of regime in November 1989, when President Zhivkov was removed from power after a coup⁶⁰.

The Council of Europe was itself facing quite important challenges; the fall of the Berlin Wall in 1989 meant more than just the release from the Iron Curtain: many countries were now moving towards a democratic regime and applying for membership. Between 1990 and 1992 the Committee of Ministers received requests for membership from the following countries: Czech and Slovak Federal Republics, Estonia, Latvia, Lithuania, Bulgaria, Croatia, Ukraine, Russian Federation, Albania, Slovenia and Romania. On the one hand, the European organization had the huge task of assisting and securing this delicate process while, on the other hand, ensuring and maintaining the stability and peace of the continent, trying to cover the vacuum left after the dissolution of the Soviet Union.

During the Cold War era Bulgaria had remained quite isolated and had barely been taken into account by the Western countries. Largely, this was due to the fact that Bulgaria had closely followed Moscow's policy lines, rendering its situation a unique study case: during the whole Cold War period Bulgaria was the most loyal ally of the Soviet Union and this, to the extent that in two occasions the President Zhivkov asked the Soviet authorities to accept Bulgaria as its 16th Republic. In turn, Bulgaria's loyalty was rewarded with cheap oil and natural gas.

It is worthwhile explaining the political and institutional situation of Bulgaria when it expressed its desire to join the Council of Europe. In November 1989, in view of the reforms laid out by Gorbachev, demonstrations asking for political reform staged in Sofia. Surprisingly the Communists didn't break the demonstrations, which was interpreted as a sign of a possible change and soon after the communist party decided to remove Todos Zhivkov from power. Eventually, forced by street protests, the Communist Party gave up its claim on power and broke up, becoming the new Bulgarian Socialist Party. They won the constituent elections of June 1990, the first free elections to be held since 1931, and in July 1991 a new Constitution was adopted, which regulated a representative elected President and a Prime Minister and Cabinet. A multi-

⁶⁰ Rathbone, 1992, p.1

party system was instituted, where new parties also emerged, as well as a political opposition. Moreover, the freedom of expression was reinstated.

Given its past, Bulgaria's attitudes towards the West when the country changed its regime were regarded with expectation. Other than its foreign and security policy, there were cultural, religious and historical reasons that approached Bulgaria to the Russian Federation, and there was an elite that very much sympathised with their old friend: the fact that Bulgaria had been liberated by Russia in 1878 was present in the national imaginary⁶¹. Nevertheless, Bulgaria rapidly turned its eyes to the West and adopted a pro-western foreign policy aiming at joining the EU, the Council of Europe and the NATO as soon as possible.

2. Which requirements for Bulgaria's accession?

If the Republic of Bulgaria was to access the Council of Europe, which were the conditions it had to fulfil, and according to which criteria? Were the current guidelines sufficient or would the Council develop a new set of conditions for the central and eastern European countries that had expressed its desire for membership? The latest country to join the Council had been Finland, which, as the PACE had acknowledged on its Opinion on the Application for membership by the Nordic country, had an outstanding international and European vocation and was an old-established parliamentary democracy which respected the principle of the rule of law, as well as the human rights and fundamental freedoms embodied in the European Convention on Human Rights. The new round of applicant countries made up a whole new category with specific idiosyncrasies.

Given the division of the continent for the past four decades in two blocs, it was easy to fall in the temptation of simplifying and deciding on a uniform treatment for all former Soviet countries. Nevertheless, from the first moment the Council was aware of the specificities and different historical backgrounds and national context of each country: some of them had already experienced democracy prior to the Soviet era, others had had

⁶¹ Katsikas, 2011, p.

a violent transition after the fall of the Iron Curtain –such is the case of Romania-. Therefore, a specific treatment for each country was necessary.

One of the steps taken by the Council towards facilitating Central and Eastern European countries' accession was the decision of the PACE, on 11 May 1989, to create a “special guest status” for the national parliaments of the countries of Central and Eastern Europe which had applied or implemented the Helsinki Final Act, with a view to those countries' possible membership of the organisation. Delegations from national parliaments could attend the Assembly's proceedings, but they were not entitled to vote⁶². It was a first step towards membership that contributed to speed up and strengthen that process and was a valuable tool for co-operation and communication between the Council and the national delegations. Only three months later Bulgaria submitted its application, with the view of setting up a framework for co-operation, and it was granted unanimously already on the 3 July 1990. Under this status, and prior to accession to the Council, Bulgaria signed and ratified many international conventions that approached the country to the Council's legal and political standards.

Another measures taken in order to cope with the constitutional needs of the new democracies was the creation of the European Commission for Democracy through Law, usually referred to as the Venice Commission, an advisory body in charge of assisting and providing with advice in constitutional matters in order to improve functioning of democratic institutions and the protection of human rights.

As for actual membership, if we have a look at the Statute of the Council of Europe, the lines in this regard are laconic: Art. 3 demands respect for the rule of law, human rights and fundamental freedoms, as well as collaboration for the realisation of the aims of the Statute: *“every member [...] must accept the principles of the rule of law and of the enjoyment of all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council...”*⁶³. Straightaway, Art. 4 states that upon fulfilment of the previous article,

⁶² http://www.cvce.eu/obj/forms_of_participation_in_the_council_of_europe_for_non_member_states-en-f587cb5f-0e08-4458-8361-8bf285fbfe38.html Accessed on 10 May 2014.

⁶³ Statute of the Council of Europe, 1949, Art. 3.

any European State may be invited to become a member by the Committee of Ministers. Moreover, the Statute has differentiated between sovereign states (Article 4), which can become full members, and other countries (Article 5) which have not obtained sovereignty.

On the 31 January 1991, Mr. Zhelev pronounced the first speech from a President of Bulgaria in front of the Council of Europe. There it announced Bulgaria's intention to turn back to the Western countries and declared his government's resolution to become a full member of all the European institutions, explaining that "*after having suffered five centuries of Ottoman domination, Bulgaria managed to return to the European fold, by firmly embracing the fundamental institutions of the European scene – a pluralist parliamentary system, private ownership of property, Christian morality, education and training for the mind. Today, after forty-five years of totalitarianism and enforced Sovietisation, Bulgaria restates its firm intention to re-join free and democratic Europe*". Moreover, the President Zhelev expressed Bulgaria's regard for the Council of Europe, considering it to be "*one of the most powerful and prestigious of European institutions, [...] which has striven unflinchingly to encourage and give practical effect to the processes of European construction.*"⁶⁴.

3. Assessment on Bulgaria's accession

In February 1991 the Committee of Ministers decided on its Resolution (91)6 on Bulgaria, according to the common procedure, to consult the Parliamentary Assembly with regard to a request of membership made on the 17 January 1991 by the Government of the Republic of Bulgaria, where it declared its readiness to respect the principles stated on the Art 3 of the Statute of the Council of Europe. As a result, the Committee of Ministers submitted a request for an opinion⁶⁵ to three different committees: The Committee on Legal Affairs and Human Rights and the Committee on Relations with European Non-Member Countries were both required to draft opinions on the application, while the Political Affairs Committee was responsible for examining

⁶⁴ Jeleff, 1997, pp. 190-191

⁶⁵ Committee of Ministers, 1991.

the matter on its merits. Moreover, the Council of Europe send special delegations to Sofia to attend the celebration of the first free and democratic elections in 1990 and 1991.

The three committees evaluated the situation in Bulgaria and decided whether the country was or not ready for accession, taking into account different aspects of the political and institutional developments since the change of regime. In general, the three documents focus their attention on the following issues: democratic elections, the political system, respect for the rule of law, observance of human rights with special focus on minority rights and freedom of expression.

The Committee of Political Affairs and Democracy, in charge of writing a report, put special attention on the system of guarantees for human rights and minority rights and this, given the special background of the country. As it's been mentioned before, Bulgaria was the closest satellite to the Soviet Union of all the countries from the Eastern bloc. Moreover, when it attracted the attention of the Council of Europe, it was only in relation to the mistreatment of the ethnic and Muslim minorities living in Bulgaria, which at the time counted for about 10% of its population. As a matter of fact, this same Committee published in 1985 a report on the situation of ethnic and Muslim minorities in Bulgaria⁶⁶ and only three years later, 1989 the PACE passed the Resolution 928 on the same topic. It urged the Bulgarian Government to end its policy of Bulgarian assimilation, which was regarded as the main cause for the mass exodus, and to lift the ban for its ethnic and Muslim minority on using their original names, as well as ending the restrictions on the use of the Turkish language and the practice of the Muslim religion (Resolution 927 (1989)). Moreover, political dissidence was minimal in Bulgaria.

3.1. Electoral Elections

Given this background, the Committee of Political Affairs and Democracy stated that, if Bulgaria was to join the Council of Europe, it could play a very important role

⁶⁶ PACE, 1985.

regarding the treatment of Minorities' rights in the region of the Balkans, where it could bring some stability.

Since it was one of the main conditions for membership, special attention was paid to the different rounds of elections that took place during those years. Already on its Report on the General Policy of the Council of Europe for East-West Co-operation of 1989, the Council underlined the vital role of democratic institutions, and recalled its Resolution 800 (1983) on the principles of democracy which defined pluralistic elections as "the irreplaceable core of democratic political life", specifying that such elections must involve a "secret ballot and universal suffrage, at reasonable intervals, to parliaments enjoying a large measure of sovereignty and composed of representatives of political parties with freedom to organise and express themselves"⁶⁷.

On the 10 and 13 June 1990 Bulgaria held its first elections to a Constituent Assembly, and a year later, on the 13 October 1991, it held elections for the National Assembly. In both cases, the fact that the country was able to organise free and fair elections with such a high level of participation –almost 80% of the electorate-, was much praised. On the first elections the observer mission concluded that the conduct had been reasonably free and fair, and despite some local irregularities, there was not significant fraud. As a matter of fact, the Committee on Legal Affairs and Human Rights declared on its Opinion document that, by holding these free elections Bulgaria had fulfilled one of the conditions for accession to the Council⁶⁸. Nevertheless, these events were to be considered cautiously: despite the success, it was early to judge to what extent the electorate was freely expressing their views. Moreover, there was a manifest strong confrontation between the three main political parties.

3.2.Economic context

The economic situation of Bulgaria was regarded with concern. The Council had itself targeted the adoption of a market economy as a condition for a successful transition of

⁶⁷ Martinez Cuadrado, 1989, p.6

⁶⁸ Columberg, 1992, p.5

the country, since it was necessary for the enjoyment of certain rights. Nevertheless, it was not a secret that it would take more time than the political transition and would be more painful. Moreover, the eagerness to join the European Union as soon as possible could jeopardize the progresses in some fields, such as the judiciary body, for the sake of the economic progress of the country. This fear would be confirmed years later when the country had completed the process of accession to the European Union⁶⁹.

3.3. The Constitution and the Constitutional Court

Regarding the Constitutional Court, the Committee found that former membership of the Communist Party should not automatically be taken as sufficient reason for disqualification, given that party membership was an essential precondition for the holding of certain posts, particularly in higher education. Instead, it would be more appropriate to judge by the guarantees given in the current moment and to accord them due credit. The functions of the Court were underlined due to the extremely importance of the body, required to rule on the compatibility between the Constitution and the international instruments concluded by the Republic of Bulgaria prior to their ratification, and on the compatibility of domestic laws with the universally recognised norms of international law and the international instruments to which Bulgaria is a party.

The Constitution of 1991 was another point of focus for the Council, and it was thoroughly looked over, especially since the party in office, the UDF, had criticised it and wished to amend it. One of the main concerns for the rapporteurs was the status that would be accorded to international laws and more specifically to the European Convention on Human Rights, which Bulgaria had yet to sign and ratify. The Committee on Legal Affairs and Human Rights very much welcomed the decision of giving priority to international agreements over domestic law⁷⁰. This was especially important with regard to the ECHR and possible contradictions with the domestic law.

⁶⁹ Holovaty, 2009, p.3

⁷⁰ Constitution of the Republic of Bulgaria, 1991, Art 5.4

In addition to it, the Committee on Legal Affairs and Human Rights found that some articles of the Constitution needed to be modified in order to comply with the ECHR. The provisions that caused certain concern were those related to sensitive issues such as religion, freedom of expression or linguistic rights. To mention some, the following were signalled:

- Art. 12 established a prohibition for associations to pursue any political objectives or engage in any political activities.
- Art. 13 declared that the traditional religion of the Republic of Bulgaria was the orthodox cult.
- Art. 36 stated that the study and use of the Bulgarian would be a right and a duty for all the Bulgarian citizens.

Yet, the most polemic provision was Art. 11.4 establishing a ban on creating political parties on ethnic or religious grounds. This prohibition, unique in Europe, is contrary to the provisions in some national constitutions. According to the Political Affairs Committee, Art 11.4 might have some justification as a safeguard against fanaticism, but it should be interpreted with flexibility, and certainly not at the expense of a reasonable party, committed to the protection of minorities⁷¹. In addition, the Committee warned the BSP about the danger of seeking to exclude and isolate a national minority which the sovereign people had voted.

3.4.Minority Issues

Indeed, the ethnic cleavage had caused quite big troubles and confrontations since the beginning, especially since the natural integration process had been accelerated by draconian administrative measures for the past years. The Committee on Legal Affairs and Human Rights expressed its disappointment for the lack of guarantees for the rights of minorities on the Constitution. Yet, it acknowledged some recent improvements implemented by the government, such as giving the possibility to provide for Turkish

⁷¹ Martinez, 1992, p.5

language teaching in some schools of Sofia, or allowing the publication of newspapers in Turkish. Moreover, the government declared that it would welcome participation by Turkish groups in the Parliament and at regional and local level as the best way towards integration and harmonisation.

On October 1991, the BSP asked the newly established Constitutional Court to declare unconstitutional the Movement for Rights and Freedoms party. Certainly, it was formed on an ethnic basis and drew its strength from the support of a specific ethnic minority. The Committee expressed its views in this regard, stating that the annulment of MRF would lead to distortion of the Assembly and provoke extremely grave reactions from the Turkish minority, and risk the stability that Bulgaria was supposed to bring to the Balkans' ethnic problems. Eventually, the Court rejected the petition of the BSP and affirmed the constitutionality of the MRF. This decision has been recognized as an essential ingredient of what has been called "the Bulgarian ethnic model" or a mode of collaboration across ethnic lines marked by a "relatively high level of religious toleration and open-mindedness with regard to minority issues"⁷².

3.5. Overall assessment of human rights and the rule of law

Regarding the situation of Human rights and the Rule of Law, the Committee on Political Affairs concluded that there were no reasons to doubt that Bulgaria accepted the principles of the rule of law and enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. On inquiring after the state of freedom of expression, the Committee found that there were three pluralistic -yet strongly partisan- newspapers, which quite covered the whole political spectrum. Moreover, representatives of the MRF party acknowledged that there were no longer problems with religious freedoms, and that they could feel the start of the reversion of bulgarisation process. After a visit to the prisons system, at request of the Committee of Legal Affairs and Human Rights, it concluded that the conditions were comparable to those in several of the Council's member countries, and found a very vigorous reformist

⁷² Ganev, 2004, pp. 66

attitude, that would have the support of the Council's Demosthenes Programme. The Committee's overall opinion was that there was no reason to doubt that Bulgaria accepted the principles of the rule of law.

Last but not least, death penalty was not removed from the Bulgarian legal system. We won't refer to the data of previous years, since it concerned a different political regime. Nevertheless, it is interesting to point out that by that time, 80% of the population affirmed to support the maintenance of the death penalty, providing a good example of the moods and reality of the Bulgarian society in those very first years of democracy.

3.6. Legislative and Executive Powers

On examining Bulgaria's National Assembly, the overall impression was most positive: the Committee on Legal Affairs and Human Rights found that great progress had been made in the process of democratisation within an extremely short period of time. Bulgarian political leaders affirmed to be firmly committed to continuing their vigorous efforts to complete and consolidate the rule of law and ensure the observance of human rights, and both the National Parliament and the Government agreed on signing the ECHR. As it could be expected, the three committees reported on the strained relationship between the three main parties: the Bulgarian Socialist Party (BSP), the anti-communist Union of Democratic Forces (UDF) and Movement for Rights and Freedoms (MRF) a centrist party. Looking at the panorama, there was an urgent need for consensus to replace confrontation in view of the risk of continued economic deterioration and high un-employment and debt un-payment.

The electoral working programme drafted by the Government was a cause of concern: the UDF had drafted and threatened to introduce legislation aimed at decommunisation: concretely, they aimed at banning former communists holders of any paid office. One of the purposes of the dismantling of the Communist regime was to prevent the main beneficiaries of the old system from transferring state property abroad or to private companies and thus retaining their privileged positions. In fact, there was likelihood on

this since the individuals concerned are often well qualified to do so. The BSP strongly objected these measures, arguing that a collective sanction of this type would be unacceptable and lead to new injustices; it would be contrary to the principles of established law and would certainly not be endorsed by the ECHR⁷³. This was one of the reasons why the BSP was highly interested in co-operating with the Council of Europe.

4. Conclusions on the accession process

The main conclusion after analysing the institutions, political system and current situation of the country was that the Government of Bulgaria had made a considerable effort in the progress of democratisation. Moreover, it was very positive that the Constitution specifically recognised the pre-eminence of international law. The Bulgarian authorities had expressed an urgent desire to accede to the Council as soon as possible and sign a number of international treaties. Some irrevocable changes had taken place: all institutions had been elected by universal suffrage, there was a multi-party system, a re-established constitutional law, new freedoms of democratic choice, media and religion, freedom of movement and freedom to study in one's own language, the right to strike had been recognised and the depolitisation of the army, the police, the Courts and the civil service was ongoing. Yet the political transition had been faster than the economic one, the Committees remembered that transition from a totalitarian state to a democratic system is fraught with difficulties, and attitudes do not change overnight; changing the structures of the state, society and economy would be extremely difficult.

In any case, it was clear that Bulgaria had disavowed the doctrine of limited sovereignty and abandoned the socialist internationalism. Instead, it had embraced the policy of good relations with neighbours and of expanding participation in the ongoing process of European integration.

The three reports from the different committees agreed on concluding that there was plenty evidence that Bulgaria gave a cause for satisfaction and that the new democratic

⁷³ Columberg, 1992, p. 15

state fulfilled the conditions required to become a full member of the Council of Europe.

5. Post-Accession lost of euphoria?

The accession of Bulgaria to the Council of Europe in 1992 was listed as a great achievement, becoming one of the first countries in the Soviet bloc to enter the club. He did it even before countries such as the Czech Republic and Slovakia who had had democratic experiences in the past. Furthermore, having Bulgaria to sign and ratify the Convention and its Protocols was a huge victory, since from that moment on, it would be accountable for its actions against the ECHR.

However, the enthusiasm generated by the rapid progress made by the country was shortly stained. As a matter of fact, just one year after its accession to the Council news arrived that rang the alarm bells and led to a series of interventions in this regard.

In February 1993 twenty-eight members of the Parliamentary Assembly presented a written declaration, expressing their concern on the current situation of Bulgaria due to a change of the party in office, and the possibility of a revision of some important laws promoting decommunisation, which might prevent the democratic processes that have been initiated from becoming irreversible⁷⁴. They therefore asked the Council and its representative bodies to follow closely the development of the young Bulgarian democracy.

Soon after that some members of the Parliament presented a Motion for a Resolution on the current situation of the country. They called the attention on some serious issue that were taking place, such as the inclusion in the legislative programme of undemocratic projects of bills curbing the rights and freedoms of citizens and of local government, or the politically motivated dismissals from office of highly qualified experts appointed to the government structures only a year ago and their replacement with discredited

⁷⁴ Dimmer and others, 1993, p.1

communist officials⁷⁵. In addition they asked the Parliamentary Assembly to express its concern over the political and economic situation of Bulgaria, and appealed to the Bulgarian state institutions to refrain from actions and from adopting legislation that may bring about a revival of certain principles of communist rule in the country and may violate the requirements for membership in the Council of Europe. This Motion for a Resolution was accompanied by another one, some months later, where some deputies appealed the Parliamentary Assembly to require Bulgaria to give the necessary explanations concerning the legitimacy of the Constitution, the state system and institutions in Bulgaria after having found some unsolved irregularities on the process of adoption of the Constitution of 1991⁷⁶.

Perhaps ironically, that very year Bulgaria –and the rest of the members of the Council of Europe- had signed the Vienna Declaration (1993) where the signatory states undertook to accept the ECHR's supervisory mechanisms in its entirety and resolved to ensure full compliance with the commitments accepted by all member states within the Council. Moreover, that very same year the PACE put the basis for the development of a Monitoring System: in its Order No. 488 it instructed its Political Affairs Committee and Committee on Legal Affairs and Human Rights "to monitor closely the honouring of commitments entered into by the authorities of new member States and to report to the Bureau at regular six-monthly intervals until all undertakings have been honoured". Also, in its Order No. 485 (1993), the Assembly instructed its Committee on Legal Affairs and Human Rights "to report to it when problems arise on the situation of human rights in member States, including their compliance with judgments by the European Court of Human Rights".

One year later, the Assembly observed that in addition to the honouring of obligations with the Council, "the authorities of certain States which have become members since the adoption in May 1989 of the Resolution 917 (1989) on a special guest status with the Parliamentary Assembly, freely entered into specific commitments on issues related to the basic principles of the Council of Europe during the examination of their request

⁷⁵ Tarschys and others, 1993, p.1

⁷⁶ Probst and others, 1993, p.1

for membership by the Assembly. The main commitments concerned are explicitly referred to in the relevant opinions adopted by the Assembly."⁷⁷ Furthermore, the Assembly warned that "persistent failure to honour commitments freely entered into will have consequences [...]. For this purpose, the Assembly could use the relevant provisions of the Council of Europe's Statute and of its own Rules of Procedure".

6. To be continued: monitoring procedure

The Republic of Bulgaria, together with the rest of the member states of the Council, would be subject to periodic monitoring. In 1997 the PACE created the Monitoring Committee⁷⁸, which would be responsible for verifying the fulfilment of the obligations assumed by the member states under the terms of the Council of Europe Statute, the European Convention on Human Rights and all other Council of Europe conventions to which they are parties, as well as the honouring of the commitments entered into by the authorities of member states upon their accession to the Council of Europe. Furthermore, the Assembly instructed the Monitoring Committee to "report to it once a year on the general progress of the monitoring procedures, and at least once every two years on each country being monitored"⁷⁹.

The first monitoring report on the Republic of Bulgaria would be published in 1998, one year before the country was accepted as an official candidate to join the European Union, and it reported on Bulgaria's respect for its obligations and commitments to the Council of Europe since its accession in 1992⁸⁰. Slowly, the country initiated its pace towards the consolidation of its institutions, and by the date of the report, its commitment to democracy was out of doubt. Nevertheless, Bulgaria was facing a great number of challenges, in part, due to its past communist. The country had to undergo a deep politic, institutional, economic and social transformation : the ambition of EU

⁷⁷ Resolution 1031 (1994) of the PACE

⁷⁸ PACE, Resolution 1115 (1997)

⁷⁹ Ibid.

⁸⁰ See Annex 1

membership jeopardized in various occasions the pace of the progress in the field of democracy, human rights and rule of law.

Nevertheless, the early accession to the Council of Europe counted for Bulgaria as a great success. The fact that the country was monitored on a periodic basis and subject to the ruling of the ECTHR was highly beneficial during the first decade of consolidation of the new Bulgarian republic.

CHAPTER 3

“Bulgaria’s membership of the European Union constitutes a strategic goal and is a matter of national interest. It will consolidate the results of the democratic reforms which have been carried out since the beginning of the 1990s and will represent a political acknowledgement of their success. Bulgaria’s aspiration for full membership of the EU reflects the will and readiness to take part in the realisation of the vision of a united Europe living in peace, prosperity and social justice”⁸¹.

In the early 1990’s the European Council gave green light to the enlargement of the European Union towards the east and established the conditions for applying for membership⁸². Soon, the CEE countries filled in their applications and both parties engaged in a long process that led to the greatest wave of enlargement of the European Union to the date. Bulgaria applied for membership of the European Union in 1995. The country had previously initiated negotiations with the Union through different instruments and after a long process, in 2007, it eventually became a full member. During those years the country underwent a great political and economic transformation, in great part, due to the need to meet the different set of conditions in order to become a member of the European Union.

Our focus will be on the political conditionality: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Eventually, the Commission gave a different treatment to the rule of law. Initially, this topic was addressed as a part of the political conditionality. When the Commission realized the problems and major challenges that this particular policy would pose, it decided to address it separately and set up a new instrument that would eventually lead to the creation of the Cooperation and Verification Mechanism prior to the accession on Bulgaria (and Romania) to the EU⁸³.

In this line, this chapter will focus mainly on the treatment given to the conditionality of democracy, human rights and minority rights, and their evolution in Bulgaria as a consequence of the guidelines received from the European Union. Nonetheless, it will

⁸¹ Bulgaria’s application for membership of the European Union, Government Memorandum, 14 December 1995.

⁸² Art. 49 TUE; Presidency Conclusions of the Copenhagen European Council, 1993.

⁸³ Commission Decision (2006/929/EC).

also make some references to the rule of law, since both are inter-connected and it constitutes the basis and a precondition for the correct functioning of every State and a guarantee for the respect and protection of human rights and democracy.

1. Pravova darjava

For 40 years Bulgaria lived under the rule of the Communist Constitution of 1947. This one, proclaimed after the Second World War, established a legal order that had little in common with what was later applied in Bulgaria, when it embraced the western European legal and political order. The Bulgarian Constitution of 1947 was obviously strongly influenced by the communist dogma; we can point out some of its features: the State and Law were considered part of the superstructure of society and were therefore expected to fade away at some point. As for the Constitution, it had no status of law and was not directly applicable; it had therefore no direct effect. Moreover, there were no limitations to popular sovereignty, and human rights, considered individualistic, were therefore contrary to the idea of collectivism promoted by the Communist propaganda. Only in the late 1980s did Bulgaria see some changes regarding the concept of rule of law and its place in the constitutional order. After the reforms driven by Gorbachev, the Bulgarian Communist Party also launched a reform package⁸⁴.

It is against this background that in 1990 Bulgaria embarked with enthusiasm in the construction of a whole new democratic state. Yet, the Constitution of 1991 had some specialties. The purpose of the Constitution was to guide the country towards the transition to democracy and it enshrined the principles of democracy, welfare state and of rule of law. The later was endowed with special features: rule of law or “pravova darjava” in Bulgarian, is understood in the Constitution primarily as an attribute of the State. The Preamble presents “democracy”, “pravova darjava” and “human rights” as different principles and gives to the later a slightly higher position than the other two. Nevertheless, the legal theories quite agree that the Preamble lacks a binding nature and its content is therefore not directly applicable. Instead, it provides guidance when there is a need to interpret or clarify the meaning of the constitutional norms.

¹Ivanona, 2013, p.79

As Ivanka Ivanova explains, “according to the Bulgarian constitution, pravova darjava and human rights are fundamental constitutional principles that are interconnected. There is no legal definition as to what pravova darjava is or what the components of the principle are. The content of the concepts of pravova darjava and human rights in the national legislation is interpreted by national institutions usually in concert with the ECHR”⁸⁵. As a consequence, these two concepts have been subjected to different interpretations along the years. In a commentary of the Constitution published in 1999 we find the following statement:

“The constitutional provision that Bulgaria is pravova darjava is a declaration that has no real value. It is there to set up the future trend in the development of the statehood, rather than to determine the present character of the state. ... What is proclaimed in the Constitution is the intention to build a pravova darjava, i.e. it is in the making, but it is not ready yet. A considerable time period is needed for the establishment of the necessary material, legal, organisational, human resources and other preconditions for the establishment of a pravova darjava. Of particular importance is to establish first a new system of social values, new way of thinking and new attitude towards the individual human being and the state, in accordance with the principles of the civil society. ... The democratic state is a state based on law The pravova darjava is a guardian of the freedom of the individual.”⁸⁶

Therefore, in the first years of the transition to democracy, we can understand the concept of rule of law or pravova darjava as a concept that guarantees certain features and characteristics of the State. In 1991, pravova darjava was the promise of what a democratic state of the XXI century should be. Soon, the country would embark in a transition to democracy not exempt from complications, and in a few years Bulgaria initiated the conversations to become member of the European Union. The country had no previous democratic experience and the transition was expected to be tough.

⁸⁵ Ibid, p. 80.

⁸⁶ Balamezov, 1999, p.35

Almost 20 years later, Bulgaria is one of the poorest countries of the Union, has the second highest corruption rate ⁸⁷, and problems to enforce the rule of law. In addition, it has lately been catalogued as one of the “backsliding countries” and together with Rumania, is still undergoing the monitoring of the European Commission under the Cooperation and Verification Mechanism.

2. Bulgaria’s application for membership of the European Union

2.1. First contacts: 1990-1995

The normalization of relations between Bulgaria and the European Community took place in the early 1990’s. The strategic objective of integration with the EU had been maintained by consensus by all the governments since 1990 and Bulgaria’s application for Union membership, backed by a virtually unanimous endorsement from the National Assembly, was lodged on 14 December 1995. During the whole transition period, it was remarkable the absence of violence and respect for constitutional order.

The Europe Agreement, signed in 1993 and entered into force two years later, was the legal basis for relations between Bulgaria and the Union. As we have already explained, it aimed to provide with an appropriate framework for the gradual integration of Bulgaria in the Community. In order to become an “associate country”, Bulgaria had to fulfil some basic conditions (according to the Commission, “the rule of law and human rights, the setting-up of multi-party systems, the organization of free and democratic elections and economic liberalization). Yet, despite the human rights conditionality the agreement mainly promoted the expansion of trade and economic relations between Bulgaria and the European Union ⁸⁸.

As it is natural, at this first stage the framework didn’t contain any specific mention or guidelines regarding rule of law, human rights etc. in order for Bulgaria to have a better

⁸⁷ http://www.transparencyinternational.eu/wpcontent/uploads/2013/12/CPI2013_EU_english.pdf

Accessed on 25 June 2014.

⁸⁸ Alexandrov and Petkov, 1997, p. 587

idea of what was expected to achieve. Nevertheless, the European Community recognized “the fundamental character of the democratic changes..., taking place in a peaceful manner and aimed at building a new political and economic system, based on the rule of law and human rights, political pluralism, and a pluralist multi-party system involving free and democratic elections and the creation of the legislative and economic conditions, necessary for the development of a market economy, as well as the need to continue and complete that process with the assistance of the Community”. Moreover, it reaffirmed the firm commitment of both parties to “the rule of law and human rights, including those of persons belonging to minorities, and to the full implementation of all other principles and provisions contained in the Helsinki Final Act, the concluding documents of Vienna and Madrid and the Charter of Paris for a New Europe”. The Europe Agreement provided for the creation of an Association Council in charge of supervising the implementation of this framework, which shall meet at ministerial level once a year and when the circumstances would require it (Art. 105 Europe Agreement).

In 1994, the European Council launched its strategy to prepare Bulgaria and other CEE countries for accession: it would take form in joint meetings, and would structure the relationship between Bulgaria and the Union. Bulgaria was granted its participation in several programs and different institutions were created to this end⁸⁹. One year later, Bulgaria presented its application for membership of the European Union. It had been two years since the country had accessed the Council of Europe, and was undergoing great changes. How had the country progressed in the areas of democracy and human rights ever since?

According to the NGO Human Rights Watch, Bulgaria’s overall human rights record in 1995 remained poor⁹⁰. Widespread impunity for crimes perpetrated by police officers remained common that year, and regrettably, it was no longer a problem affecting only minority groups. In addition to it, reports of xenophobic attacks and mob violence intensified during 1995. Just as in previous years, the Roma minority continued to be the target of much police violence, without any charges being brought against police

⁸⁹ Ibidem, pp. 589-590

⁹⁰ HRW, 1996, pp.

officers in any case. Besides, other groups not recognised in Bulgaria as national minorities confronted racial attacks. As for civil liberties, the Bulgarian government continued to restrict free expression and association of certain Bulgarian citizens who identified themselves as ethnic Macedonians, as well as religious diversity. As a matter of fact, up to forty-five “non-traditional” religious groups had been denied legal registration since February 1994, when a new law in non-profit organisations was adopted.

Nonetheless, Bulgaria took some positive steps in 1995: the Council of Ministers amended the penal code, providing for life imprisonment as an alternative to the death penalty in certain cases. In addition, the 1992 law for “Additional Requirements Towards Scientific Organisations and the Higher Commission”, also known as the “Panev law”, which barred former secretaries and members of the Communist Party from a variety of high-level positions, was abolished.

Between 1997 and 2000 Bulgaria experienced major changes both as a consequence of national and international events. 1997 was a turbulent year: the country had been hit hard by an economic crisis and strikes and demonstrations were the norm. Elections were held in April and brought a coalition government led by the Union of Democratic Forces. Despite the promises of the new government for greater protection of human rights, serious violations were reported⁹¹. Once again, police brutality continued to be a major human rights problem during 1997. According to the HRW 1998 World Report, one of the most blatant abuses of police power occurred during a peaceful anti-government protest on January, whose action resulted in approximately 300 injuries. That year the penal code was amended in order to reinforce fair trial guarantees⁹². Unfortunately it was decided that the law would not be applied retroactively. In addition, in spite of Bulgaria’s moratorium on executions death sentences were issued by the courts during that year. Despite the change in the government state intervention

⁹¹ Human Rights Watch 1998 World Report http://www.hrw.org/legacy/worldreport/Helsinki-06.htm#P460_118055 Accessed on 12 Jly 20014.

⁹² The amendment introduced the guarantee of trial within one year of incarceration and two years for serious cases.

in religious matters continued in 1997, with the ongoing refusal to register different religious groups or minorities and banning of religious activities. Moreover, expressions of Macedonian culture were frequently suppressed, to the point that the government refused to acknowledge the existence of a Macedonian minority in Bulgaria⁹³. Violence and discrimination against Roma continued, not limited to police action, and official discrimination extended to the gay community⁹⁴. Last but not least, violence against journalists and the use of courts to suppress reporting were reported.

2.2. The Assessment of the Commission

Responding to the request of the European Council in Madrid in December 1995, the Commission presented its Opinion on Bulgaria's application for membership of the European Union. There, the Commission "analyses the Bulgarian application on its merits, but according to the same criteria as the other applications, on which it is delivering Opinions at the same time. This way of proceeding respects the wish, expressed by the European Council in Madrid, to ensure that the applicant countries are treated on an equal basis."⁹⁵

Taking the Copenhagen Criteria as a benchmark, the Commission analysed the situation in respect of the political (and other) conditions. The assessment was aimed for determining the extent to which democracy and rule of law actually operated in the country. To this end, the Commission carried out a systematic examination of the many ways in which the public authorities were organised and operated. The assessment relates to the situation in 1997, when the country was headed by President Stoyanov and the government of Mr Kostov. He enjoyed absolute majority in the National Assembly since the victory of the Union of Democratic Forces (UDF) in the parliamentary elections of April 1997.

⁹³ The Bulgarian president told the Council of Ministers of the Council of Europe in Strasbourg on 22 April 1997 that there was no Macedonian minority in Bulgaria.

⁹⁴ Police violence was reported in gay bars in Sofia in March and August of that year.

⁹⁵ European Commission (2), 1997, p.6

The Commission structured the analysis of the political conditionality following two thematic areas: democracy and rule of law on the one hand, and human rights and minority rights on the other, which at the same time were classified in 1) Civil and Political rights, 2) Economic, Social and Cultural rights and 3) Minority rights and protection of minorities. This division seems to follow the logic of the human rights instruments of the Council of Europe, which at the time constituted for the Commission a benchmark for compliance with human rights conditionality. This pattern would be reproduced later on the Regular Reports that the Commission started to produce in 1998.

2.2.1. Democracy and Rule of Law⁹⁶:

The Commission carried out an assessment on the executive, legislative and the judicial powers and made several recommendations⁹⁷:

- The executive had considerable discretionary power and there was a lack of clarity in allocating responsibilities. Moreover, power among Civil Service department had allowed corruption to take hold easily. As a consequence, Bulgaria must introduce transparent public administration procedures, particularly with regard to public contracts, and establish a professional and impartial public service.
- The Commission judged the control of the secret services as insufficient, since they were not accountable to the Parliament for their activities.
- Independence of the Bulgarian judiciary was guaranteed in a number of ways. This work was overseen by the Supreme Council of the Judiciary, which plays the same role in respect to the procurators. Ordinary Courts are in charge of monitoring and reviewing administrative measures and their decision can be challenged before the Supreme Court of Administration. The Commission

⁹⁶ Ibidem, pp.12-15

⁹⁷ For further information, read the « Commission Opinion on Bulgaria's Application for Membership of the European Union », 1997.

pointed out the fact that Bulgaria has no Ombudsman, but it made no further comments. Moreover, it remarked the lack of a procedure that allows citizens to refer matters directly to the Constitutional Court (this option was possible only when a dispute had already been brought before the Supreme Court and in this case solely at the latter's initiative).

- Overall, the Commission noted a series of shortcomings that affected seriously the functioning of the Judiciary: courts overburdened with work, a shortage of qualified judges, complexity of legal procedures and the lack of a Supreme Court of Cassation, provided for in the Constitution, which still had to be set up.

2.2.2. Human rights and protection of minorities⁹⁸: the Commission noted with satisfaction that Art. 5 of the Constitution established the direct incorporation into Bulgarian law of any duly ratified international treaty, and would take precedence over any provisions of national law which might conflict with it. Nevertheless, it recalled that the country still had to ratify the European Social Charter and the Framework Convention for the Protection of National Minorities (both belonging to the Council of Europe). It has signed but not ratified the main human rights conventions concluded under the aegis of the United Nations. In this line, it is surprising the absence of any reference to Protocols 4, 6 and 7 of the Council of Europe.

- Civil and Political rights: the Commission pointed out some shortcomings or weakness regarding different matters, these are the most remarkable:
 - The Code of Criminal Procedure did not at the time provide with a system of legal aid for the application of the rule during preliminary hearing. As a consequence, the poorest individuals were unable to obtain the services of a lawyer during this stage of the proceedings. Moreover, victims of police violence cannot bring a legal action against the police if the Procurator's Office refuses to do so. This is a special matter of concern since as the Commission points later in the report, the cases of

⁹⁸ Ibidem, pp. 15-19

police inflicting inhuman and degrading treatment on persons in detention was a fact. Regrettably, judicial proceedings were not always initiated as a result of such incidents. Prison conditions were also extremely difficult, largely because of inadequate funding.

- The death penalty had not been abolished in Bulgaria, but since 1990 it had been subject to a moratorium decreed by the President of the Republic. Nevertheless, the Commission made no reference to the need of signing of Protocol 6.
- In 1996 a Law on Radio and Television that threatened the independence on audio-visual media was passed. After being censored by the Constitutional Court, the government was drafting a new law. Yet, impartiality of public radio and television in Bulgaria were often being questioned by the opposition. Respect for private life was guaranteed in Bulgarian law.
- Although Bulgaria had ratified the Geneva Convention on asylum-seekers, its national procedures did not meet international standards.
- Living conditions for children in orphanages were still difficult because these institutions are short of money.

With regard to property, which had been one of the big issues and was on the legal agenda since the beginning of democracy, quite progress had been made: the right of ownership was assured, and expropriation may take place only in the public interest and with fair compensation paid in advance. Arrangements for restoring their property- or, failing that, for paying compensation - to those who had been deprived of it under the Communist regime had been introduced in respect of claims registered before June 1993.

- Economic, social and cultural rights: the Commission did not pay them as much attention as to civil and political rights (this could be due to the Communist past of the country). Yet, we recall that *pravova darjava*, the rule of law, had been sometimes interpreted as depending on material preconditions; socio-economic equality would therefore be a component of rule of law⁹⁹. In this line, the Commission noted with satisfaction that the Constitution enshrined the right to the minimum income required for survival and to social. Furthermore, it focused on the presence and respect for some of the fundamental rights, such as the trade union freedoms and right to strike (and political strike) As for freedom of education and religion, the Commission points that they are guaranteed, but does not explain by which means. Art. 13 of the Constitution provided for the separation between Church and State; however, it also recognized the Eastern Orthodox confession as the country's "traditional" religion. Last but not least, the report indicates that the State granted financial assistance to Bulgaria's main confessional groups (Muslims, Catholics and Jews).

- Minority Rights and the Protection of Minorities: Albeit respect and protection for Minority rights constitutes one of the political conditions enshrined by the Copenhagen Criteria, the Commission conducted a rather superfluous analysis of the situation. In fact, its main concern seemed to be the signing and ratification of the Council of Europe's framework convention on minorities, which was still pending. The Commission omitted an analysis of the (levels of) protection granted to the national minorities in the Constitution and limited to mention the improvements of the situation of the Turkish minority.

With regard to the Roma minority, the Commission noted that this collective continued to suffer considerable discrimination in daily life and were "the target of violence either directly by the police or by individuals whom the police do not always prosecute". It noted their difficult social position, though here sociological factors played a part alongside the discrimination they suffer from

⁹⁹ Ivanova, 2013, p. 81

the rest of the population. Its only recommendation in this regard was rather vague: “the government should take appropriate steps to ensure that the specific difficulties of these people are genuinely taken into account¹⁰⁰”.

At this early stage, the Opinion of the Commission also included an analysis of the main administrative institutions in order to assess their capacity to adapt and implement the *acquis*. This would become a priority for both the Commission and the Council, which would make of it almost a forth pre-accession condition for Bulgaria.

The European Parliament also presented its Opinion on Bulgaria’s application for membership¹⁰¹. Similarly to the Commission, it acknowledged the country’s efforts to establish the rule of law, stable democratic order and respect for human rights and protection of minorities. Nevertheless, the Parliament made more emphasis in other areas such as social rights and social conditions, the need mobilizing the civil society, media and local authorities for active participation in the process of preparation for accession. At the same time, it considered that the media reform should be completed in line with the understanding of the media's role in the process of democratisation, activating public opinion, furthering pluralism, developing an open society, and directing public opinion towards participation in the decision making (paragraph 8).

Most importantly, the Parliament stressed the need for the dynamic of the accession process to cover all countries with which the European Union has a Europe agreement, and reiterated its firm conviction that there should be no closed groups of accession candidates. On the contrary, the opportunity for a smooth transition to the phase of intensive negotiations should remain open at all times. Moreover, it stressed the need for the dynamic of the accession process to cover all countries with which the European Union has a Europe Agreement¹⁰².

¹⁰⁰ European Commission (2), 1997, p. 19

¹⁰¹ European Parliament, Opinion on Bulgaria’s Accession 1998.

¹⁰² European Parliament, 1998, p.3

The Bulgarian government shared the same opinion. The negotiations should take place at the same time in order to avoid the creation of disparities among them: it could create an adverse and detrimental impact on the process of cooperation between them. Otherwise, new divisions were to be feared. A decision of the European Council to open negotiations with all these states would be the recognition of their equal opportunities to become members of a unified Europe.

The Bulgarian government defined the relations with the EU as a priority for their domestic policy and welcomed the support of the Member States towards the enlargement process. Nevertheless, it made an interesting remark regarding the intention behind it: “integration into the EU is more a matter of domestic policy than foreign policy issue. Reforms that are carried out today are made for the good of the country and not because of the EU. Membership is actually a logical continuation of the efforts that have been made for years¹⁰³”.

2.3. Interpreting the European Commission’s Opinion

The Opinion on Bulgaria’s application for membership was quite unique: for the first time the Commission judged not only Bulgaria’s aptness for membership, but it also assessed whether the country would be able to fulfil all the conditions within a reasonable time¹⁰⁴. Nevertheless, if we take into account that this report was the first evaluation ever conducted by the European Union on the state of political conditions in Bulgaria, we have to note that it is not as thorough as it would had been expected (notably, in comparison with the first Regular Report on Bulgaria published by the Commission in 1998). The simplicity of the assessment carried out by the Commission runs counter with the importance of the document itself, and suggests a lack of interest or commitment in this regard.

Alongside with the assessments on Bulgaria’s progresses and preparedness for a future accession, the Commission made some recommendations, instructing Bulgaria on the

¹⁰³ Minister of Foreign Affairs, 1997.

¹⁰⁴ Grabbe, 1999, p.13

reforms that the country would have to carry out, precisely on the basis of the assessment made. These initial recommendations would find its continuation under the Regular Reports and the Accession Partnerships, although their nature and strength of conditionality would differ great deal.

First of all, it is important to note that, other than the Copenhagen Criteria and general comments of the European Council, prior to the Opinion Bulgaria had never before received any feedback, assessment or concrete guidelines from the European institutions with regard to what the country was expected to achieve in terms of the political criteria. Moreover, we have to take into account that the analysis made by the Commission was based on the Copenhagen criteria, which were very broad and were never further developed nor amended. As a consequence, the Commission had a very broad margin for deciding whether the country met the political conditions required for membership, and therefore had a high degree of leverage over Bulgaria.

In relation to this, it is understandable that the Bulgarian government took a defensive stance and made it clear that the reforms and changes that Bulgaria was implementing (“reforms that are carried out today are made for the good of the country and not because of the EU”) were made for the sake of the country. As it is well known, the EU was not, at the time, the only organisation exerting some influence over the country: *inter alia* Bulgaria was also undergoing the monitoring procedure of the Parliamentary Assembly of the Council of Europe and following its indications, and had just concluded an stabilisation programme with the IMF¹⁰⁵. As a matter of fact, the PACE issued the first report on the Honouring of Commitments and Obligations by Bulgaria in 1998. It constituted an exhaustive analysis that reflected the situation of democracy, rule of law and human rights in the country.

In conclusion, the Opinion of the Commission provided for the first time an interpretation of the Copenhagen conditions that reflected the requirements for becoming a full member, although it was not exhaustive nor quite explicit. In addition, it was the first time the Commission made an active application of conditionality and

¹⁰⁵ PACE, 1998, p. 23.

provided and assessment that allowed differentiation between the applicants according to how well they were performing to meet the Copenhagen conditions¹⁰⁶. This Opinion would be the basis for the priorities that would later constitute a part of the Accession Partnerships and thus, the objectives for which the EU would grant financial aid¹⁰⁷

The final conclusion of the Commission was that Bulgaria had successfully set up democratic institutions, whose stability seemed secure. They had to be reinforced though, and expressed its concern for the shortcomings that remained on respect for fundamental rights. In addition, the Commission pointed that considerable efforts must be done made to combat corruption, improve administration of justice and provide fuller protection for individual freedoms, particularly as cases of abuse of power on the part of the police and the secret services were still all too frequent¹⁰⁸.

On the Conclusions of the European Council on the Principle of Conditionality governing the development of the European Union's relations with certain countries of South and East Europe, the Council included a list of elements to set the conditions that would be verified in the relations with those countries. This list provides further valuable information regarding the verification standards of the Council on the accession policy. The published annex included the following conditions:

- As for democratic standards, the following would be verified: the existence of a representative government and of an accountable executive; the presence of a government and public authorities that act in accordance with the constitution and the law; the separation of powers (government, administration, judiciary); the holding of free and fair elections at reasonable intervals and by secret ballot.
- With regard to human rights and rule of law: freedom of expression, including independent media; right of assembly and demonstration; right of association; right to privacy, family, home and correspondence; right to property; the existence of effective means of redress against administrative decisions; access to courts and right to fair trial; respect for the principle of equality before the law

¹⁰⁶ Grabbe, 1999, p.13.

¹⁰⁷ Ibid.

¹⁰⁸ European Commission, 1997, p. 118.

and equal protection by the law; protection from inhuman or degrading treatment and arbitrary arrest.

- As to minorities, the Council counted the right to establish and maintain their own educational, cultural and religious institutions, organisations or associations; the need to guarantee adequate opportunities to use their respective language before courts and public authorities as well as an adequate protection of refugees and displaced persons returning to areas where they represent an ethnic minority.

3. Accession Partnerships

3.1. A new impetus to conditionality

In the Opinion on Bulgaria's Application for membership of the European Union, the European Commission concluded that despite being on the path to fulfilling the required political conditions, further progress needed to be made in creating market economies. Moreover, Bulgaria had scarcely started to apply the *acquis communautaire* in its legislation¹⁰⁹. Thus, the Commission recommended not initiating accession talks with Bulgaria yet, and together with Romania, the country was left out of the group of ten countries that opened membership talks in 1997¹¹⁰. Only later, in the Helsinki meeting of the European Council in 1999, it was decided that accession talks would start with the remaining CEECs: Bulgaria, Romania, Latvia, Lithuania and Slovakia, and they were invited to start accession negotiations in 2000.

In the meantime, the European Union proposed a new framework, in order to continue providing assistance to Bulgaria and other associated countries. This instrument was the Accession Partnership and it indicated the priority areas for Bulgaria's membership preparations¹¹¹. By bringing together in one framework all the demands and assistance of the European Union, it was intended to speed up the pre-accession period and better

¹⁰⁹ Alexandrov and Petkov, 1997, pp-591-592.

¹¹⁰ It was decided by the European Council in Luxembourg, 1997.

¹¹¹ European Council, 2002, p. 4.

prepare the candidates for membership talks. It also laid the basis for several policy instruments¹¹² aimed for helping the candidates in their preparations.

The Accession Partnership was different from any other previous instrument for many reasons: first, it tightened the conditionality and reduced the margin of negotiation for candidate states. Indeed, for the first time the CEECs saw depicted concrete guidelines and objectives, set at short and medium term. This leads to the second feature: they would imply greater control of the accession policy from the Commission, and augment the presence of the EU in CEECs¹¹³. It became the main instrument governing the relations between the two groups and gave to the Commission a strong influence on CEE policy-makers.

It has been argued that the European Union did not pose a real impact on CEECs' policy-making on fundamental areas of transition until the second half of the 1990's¹¹⁴. Instead, domestic actors and other international financing institutions¹¹⁵ had exerted a wider influence. This situation changed with the AP, since it set out a more specific, wide-ranging agenda for transition and preparation for accession. Furthermore, it established a closer conditionality of the financing of the objectives.

Not only there was a big shift from negotiation to conditionality in different policy subjects, in some cases the content of the AP went beyond the *acquis*, so far as to cover several grey areas that member states had long time refused to extending those competences to the supranational level¹¹⁶. In the case of the political criteria, the AP covered areas such as judicial reform and prison conditions, and it extended the

¹¹² These include inter alia the revised National Programme for the Adoption of the Acquis, the Joint Assessment of Medium-Term Economic Policy Priorities, the Pact against organised crime as well as the National Development Plans and other sectorial plans necessary for the participation in Structural Funds after membership and for the implementation of ISPA and SAPARD before accession.

¹¹³ Grabber, 1999, p.2.

¹¹⁴ Grabbe, 1999, p.16

¹¹⁵ In 1997 the World Bank granted to Bulgaria a 100 million dollars loan and a new stabilisation programme was concluded with the IMF. Moreover, the country was being monitored by the Council of Europe since 1994.

¹¹⁶ Ibid.

conditionality to the civil service reform in an attempt to ensure CEECs met the “administrative capacity to apply the *acquis*”.

It is interesting to note that, despite the strong conditionality present in the Accession Partnerships, these lacked a specific legal base in the Treaty. As a matter of fact, they were unilateral documents, Decisions of the European Council and thus, they were not legally binding for candidate states. Yet, they made the Copenhagen Criteria a quasi-legal obligation, since the Accession Partnerships included a monitoring and sanctioning system, and made all the financial assistance dependent of these¹¹⁷.

Apart from the three Copenhagen Criteria, both the Opinion and the Accession Partnerships included a fourth quasi-criterion that acquired more and more importance over the years: the capacity of the candidate countries to successfully incorporate and apply the *acquis communautaire*. At its meeting in Madrid in 1995, the European Council had stressed the need for the candidate countries to adjust their administrative structures to ensure the harmonious operation of Community policies after accession. This idea was endorsed later at the Luxembourg Council meeting in 1997, when the Council stressed that incorporation of the *acquis* into legislation was necessary but not in itself sufficient. Therefore, it was necessary to ensure that it was actually applied¹¹⁸. From that moment on, the European institutions would refer to the “Madrid condition”¹¹⁹, which would acquire an important place on the Accession Partnerships and Regular Reports¹²⁰. In addition, Bulgaria was invited to draw up a national programme for the adoption of the *acquis* by the end of March 1998. The NPAA should set out a timetable for achieving the priorities and intermediate objectives listed in the Accession Partnerships and, where possible and relevant, indicate the necessary staff and financial resources¹²¹.

¹¹⁷ Grabbe, 1999, p.14

¹¹⁸ European Council Decision 98/266/EC.

¹¹⁹ European Council, 2003, p.6

¹²⁰ The 1998 Accession Partnership stated that “in all of the areas listed below there is a need for credible and effective implementation and enforcement of the *acquis*”.

¹²¹ European Council Decision 98/266/EC.

3.2. First Accession Partnerships

The first Accession Partnership for Bulgaria was decided in March 1998. According to the procedure, the Commission was to be in charge of monitoring and reporting regularly on the progress of the countries regarding the Accession Partnership, and the Council would have the authority to modify its content and take the final decision.

The purpose of the Accession Partnership was “to set out in a single framework the priority areas for further work identified in the Commission’s Opinion and Regular Reports on the progress made by Bulgaria towards membership on the EU”. In order for this to happen, it was necessary to define the intermediate stages in terms of the priorities for Bulgaria, and accompany these with precise objectives¹²². Thus, the priorities and intermediate objectives set in the AP were structures in short¹²³ and medium term.

Under the methodology developed by the Commission in the context of Agenda 2000, the Regular Reports would assess progress in terms of legislation and measures actually adopted or implemented by Bulgaria. According to the Commission, this approach ensured equal treatment for all candidates and permitted an objective assessment of the situation in each country. Progress towards meeting each criterion would be assessed against a detailed standard checklist, which allowed account to be taken of the same aspects for each country and which ensures the transparency of the exercise. The Reports would draw on, and were cross-checked with, numerous sources, starting from information provided by the candidate countries themselves, and many other sources including reports from the European Parliament, evaluations from Member States, or the work of international organisations and non-governmental organisations¹²⁴.

The Regular Reports soon became the most influential documents in the enlargement process, since they were recognised as fair overall evaluations of domestic reforms by

¹²² European Council, 1999, p. 3

¹²³ Short term was defined as what was realistic to expect by the end of 2000. Priorities listed under medium term were expected to take more than one year to complete.

¹²⁴ European Commission, 2002, p.10

both Member States and candidate countries. In addition, since the Regular Reports also contained specific reforms that Bulgaria had to undertake, they reinforced the conditionality of the Accession Partnerships by providing the Commission with an extra tool to influence developments and policy-making in Bulgaria.¹²⁵

Hence, the Commission made several recommendations on measures that had to be adopted, first through the Opinion on Bulgaria's application for membership of the EU, which were complemented with the 1998 Regular Report on Bulgaria's progress towards accession. Both documents agreed that Bulgaria was on the good path towards fulfilling the political conditionality; however some issues needed to be tackled. In spite of that, the Commission eventually did not take all of them into consideration for the establishment of the priorities and intermediate objectives that it identified for Bulgaria.

This way, the 1998 AP failed to address the political priorities, and restricted to one medium-term objective: "further effort to integrate the Roma and consolidation of protection of individual liberties", a rather vague guideline. On the contrary, the AP instructed several indications regarding the "reinforcement of administrative and institutional capacity", both at short- and medium-term¹²⁶. The AP reflected the indications of the Commission regarding the anti-corruption measures that were needed. Moreover, it recommended the adoption of the draft Civil Service Law and progress in public administration reform, and a wide set of measures meant to strengthen the institutions with the view of adopting and implementing the *acquis*. This way, the AP neglected important priorities in terms of human rights such as the lack of a Supreme Court of Cassation (which was provided of on the Bulgarian Constitution) or the need to ratify the Protocols 4, 6 and 7 of the Council of Europe, to point some. For instance, it is interesting to note that the Opinion of the Commission pointed at the lack of an Ombudsman, but not further comments or recommendations were made in this regard in the future.

¹²⁵ Nikolova, 2006, 401

¹²⁶ European Council, 1998, pp. 36-37

3.2.1. The 1999 Regular Report

The Regular Report of the Commission from 1999 was more exhaustive on the assessment and the shortcomings of Bulgaria's record on democracy and human rights to the date. The main points of the 1999 Regular Report regarding the political criteria can be summarized as follows¹²⁷:

- Bulgaria had achieved stability of institutions guaranteeing democracy and the rule of law. The political situation was stable and the Parliament continued to operate smoothly under the leadership of the recently elected United Democratic Forces.
- The result of the administrative reform process had been so far limited and co-ordination between officials of different ministers needed to be improved.
- The reform of the Judiciary continued and some progress had been made; nevertheless, an effective strategy was needed in order to: increase the effectiveness and transparency of the judicial system, assure the full independence of the judiciary, and introduce more clarity to the procedures for the administration of justice... The long pre-trial detention was an issue of great concern.
- Corruption was targeted as one of the most serious problems in Bulgaria, where petty corruption was reportedly spread in daily life. The Commission took note of the progress made in this area, but pointed that Bulgarian legislation did not yet provide a concrete definition of the concept of "corruption". Apart from the Administration and the Judiciary, more emphasis needed to be done in other areas such as the financing of political parties, the public procurement, fight against money laundering...
- Bulgaria continued its progresses in the field of human rights, notably the ratification of the FCPNM and Protocol N°6 of the Council of Europe, but still had to ratify Protocols N° 4 and 7.

¹²⁷ For further information, search in European Commission, 1999, pp. 11-16

- With regard to Civil and Political rights, there continued to be problems with the effective functioning of law enforcement bodies, the legislation on pre-trial detention and judicial control over the action of prosecuting authorities.
- Although freedom of expression had improved somewhat, the situation concerning media independence was worrisome.
- Concerns about the abuse of power by enforcement bodies (police) remained. The conditions in prisons and detention centres also gave a cause for concern.
- Problems remained with trafficking of human beings, especially women.
- The implementation of policies on integration of disabled people was slow or inadequate.
- Local police and authorities interfered arbitrarily in the activities of certain religious groups.
- The Roma Minority continued to suffer from discrimination, including in contacts with the administration, although some steps had been taken to improve their situation.
- In some regions the Turkish minority suffered from high unemployment. The Government had announced measures to improve the education in Turkish language but has not yet been concreted.

It is to regret the absence of comments by the Commission regarding some important questions such as the purges in administration, diplomatic corps and local authorities, the alleged intention of the authorities to introduce drastic changes in the legislation on local self-government with a view to appointing mayors of villages and regional governors or children's prisons¹²⁸.

3.2.2. The 1999 Accession Partnership

After consulting Bulgaria and on the basis of the principles, priorities, intermediate objectives and conditions decided by the Council, the Commission draw the 1999 AP. The main priorities regarding democracy and human rights were, as it is natural,

¹²⁸ Atkinson and Gjellerod, 1998.

included as part of the Political Criteria. However, there were some others, relevant for human rights and the rule of law, included in different sections such as the “Justice and Home Affairs” chapter, or the section allocated to the “Reinforcement of the Administrative and Judicial capacity”:

Political Criteria¹²⁹	
Short Term	<ul style="list-style-type: none"> • Start implementation of the Roma Framework Programme and strengthen the National Council on Ethnic and Demographic Issues including provision of necessary financial support; • Implement measures aimed at fighting discrimination (including within the public administration); • Foster employment opportunities; • Increase access to education.
Medium term	<ul style="list-style-type: none"> • Continue to implement Roma Framework Programme.

Reinforcement of Administrative and Judicial Capacity, including the Management and Control of EU Funds¹³⁰	
Short Term	<ul style="list-style-type: none"> • Implement Civil Service Law; • Strengthen the independence of magistrates, judges and the efficiency of the Court system, including case treatment and alternative dispute resolution mechanism; • Strengthen enforcement of civil and penal judgments.
Medium Term	<ul style="list-style-type: none"> • Complete the establishment of a professional and impartial civil service on the basis of the Civil Service Law, establish a civil service management structure and ensure simplification of procedures; • Upgrade teaching of European matters, including training of judges with regard to European Community law; • Strengthen public financial control functions through the provision of adequate staff, training and equipment; • Strengthen statistical capacities.

Justice and Home Affairs¹³¹	
Short Term	<ul style="list-style-type: none"> • Implement and enforce new legislative framework relating to

¹²⁹ European Council, 1999, pp. 3, 8.

¹³⁰ Ibid, pp. 7, 11.

¹³¹ Ibid, pp. 6, 11.

	<p>migration and asylum procedures;</p> <ul style="list-style-type: none"> • Develop national strategy to combat corruption and strengthen capacity to deal with money laundering;
Medium Term	<ul style="list-style-type: none"> • Continue progressive alignment of visa legislation and practise with that of the EU; • Upgrade facilities for asylum seekers and refugees; • Adopt and apply the international instruments related to the fight against drug trafficking; • Implement anti-corruption strategy; • Continue the fight against trafficking in women and children.

Analysing this list of priorities and intermediate objectives, it is quite evident that strengthening the capacity of the Bulgarian institutions in order to successfully implement the *Acquis* was a great priority for the Commission; all the measures dedicated to strengthen the rule of law were labelled as priorities intended for the “Reinforcement of the Administrative and Judicial Capacity” rather than “Political Criteria”. The aim of the Commission for strengthening the rule of law was thus, and first of all, for the sake of the European Union. Moreover, it is important to keep in mind that the Commission was setting priorities and making recommendations on areas that did not belong to its competences. Therefore, by setting objectives such as enhancement of the independence of magistrates and judges, or the implementation of the Civil Service Law, the Commission was taking its influence very far.

On the other hand, policies related to Justice and Home Affairs (notably the trafficking in women and children or the rights of asylum seekers and refugees) were matters for human rights.

Unfortunately, many priorities in human rights were not addressed in this AP, notably, the abuse of power by law enforcement bodies (police violence), the conditions in prisons and detention centres, or the legislation on pre-trial detention. Moreover, the recommendations regarding the Political criteria were very vague and lacked clarity: the Commission did not specify whether the guidelines on employment and education were directed towards the Turkish and Roma Minorities respectively (as it could be deduced from the Report of the Commission). Admittedly, those modifications constituted a

progress in comparison with the content of the 1998 AP, but they were far from meeting the expectations, since this was the first time the Commission set its demands in the field of democracy and human rights conditionality. Notably, we can conclude that at this stage, the recommendations by the Commission were very poor in comparison with the standards set by the Council of Europe for Bulgaria on the framework of its monitoring procedure¹³².

3.3. The 2001 Regular Report

In 2001 a newly formed party came into power after parliamentary elections were celebrated in June. The National Movement Simeon II party won half of all parliamentary seats in an election that was called largely free and fair by international observers¹³³¹³⁴. As of October 2001, however, the change in the government had made little impact on the serious human rights challenges facing the country.

Important events had taken place in the previous years: in 1999 the Helsinki European Council decided to begin negotiations with Bulgaria and other 6 countries on the conditions for their entry into the Union and the ensuing Treaty adjustments¹³⁵. One year later, in February 2000, the bilateral intergovernmental conferences would begin.

Furthermore, after the submission of the second report on Bulgaria by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, the PACE decided to close the monitoring procedure and pursue a dialogue with the Bulgarian authorities on the recommendations made, with a view to reopening the procedure in accordance with Resolution 1115 (1997), if further clarification or enhanced cooperation should seem desirable. By doing so, the PACE was acknowledging the commitment of Bulgaria to democracy. It was also a signal of Bulgaria's progress in achieving higher standards in protection of human rights during the past decade.

¹³² See Annex 1 and 2.

¹³³ Yet, the OSCE-ODIHR reported that "while the elections met the OSCE commitments for democratic elections, there is room for further improvements in the electoral process".

¹³⁴ European Commission, 2001, p.15

¹³⁵ European Council, 1999, p.1

3.3.1. Compliance with the 1999 Accession Partnership

The 2001 Regular Report of the Commission analysed the progress by Bulgaria on meeting the Partnership's priorities and objectives. Regarding the Political Criteria, the Commission found that Bulgaria had only partially met its obligations: it reported very little progress in the initial implementation of the Roma Framework Programme, and the administrative capacity of the NCEDI to implement the programme remained low, which was complicated by the lack of the necessary financial means. The appointment of Roma experts to ministries did however continue. The medium-term had (also) therefore, not been met¹³⁶.

In addition to the Political Criteria, the Commission reflected the criticism faced by Bulgaria for the Law on Refugees, which despite not being in line with some basic principles of the Geneva Convention, had not yet been amended. Facilities for asylum seekers and refugees had not been up-graded, and there was a need to continue fight against trafficking in women and children. In addition, very little progress had been made to upgrade the judiciary, which remained weak. Thus, the Commission considered that the short- and medium term priorities in JHA had not been met¹³⁷.

As for the measures intended to reinforce the administrative and judicial capacity, which were mainly connected to the strengthening of the rule of law in Bulgaria, the Commission found that only some priorities were partially met, notably: in the implementation of the Civil Service Law, and the legislative framework and institutional capacity for public internal financial control and public external audit. Nonetheless, Bulgaria failed to strengthen the independence of magistrates, judges and the efficiency of the court system, as well as to training judges with regard to European Community law¹³⁸.

3.3.2. The 2001 Assessment on the progress made by Bulgaria

¹³⁶ European Commission, 2001, p. 103

¹³⁷ Ibidem pp. 101-102, 105

¹³⁸ European Commission, 2001, pp. 102, 105

According to the Commission Bulgaria had achieved stability of institutions guaranteeing democracy and the rule of law and the country had made several steps forward on meeting its obligations. As a matter of fact, as of September 2001, Bulgaria had ratified all the main international instruments in human rights (except the European Social Charter)¹³⁹.

This Regular Report included an in depth, more extensive analysis of the Political Criteria that went beyond previous years' assessments¹⁴⁰.

3.3.2.1. Democracy and the Rule of law:

The Government made progress in developing and implementing secondary legislation for laying a professional and independent public administration. Further steps were taken towards the implementation of the Laws on State Administration and the Civil Service, whose salary levels and pay components were regulated by law.

→ In 2000 the codification continued in a good pace, notably with the passing of the Code of Ethics for Civil Servants, and the Statute of the State Administrative Commission, whose role is to ensure respect for the Civil Service Law. The adoption of the Law on Access to Public Information was a positive step forward into improving openness and transparency of public administration. Nevertheless, there was insufficient attention to how laws would be implemented, which resulted in delays between adoption and actual implementation. The Supreme Administrative Court continued to function and there had been an increase in the number of cases it had examined, although its role needed to be developed. Yet, according to the Commission much remained to be done to develop the civil service and promote a new administrative culture so that it would be ready to cope with EU Membership. In October 2001 the new government adopted a Strategy for Reform of the Judicial System, aimed for developing European standards in justice. Further steps had to be taken to

¹³⁹ See Annex 3

¹⁴⁰ European Commission, 2001, pp. 15-25.

promote equal access to justice and to improve the execution of judgments to ensure more effective protection of citizen's rights.

- According to the Constitution and the Law on the Judicial System, independence of the judiciary was guaranteed. Nevertheless, this body enjoyed some provisions on immunity that made it difficult to know the potential scale of corruption or criminal activity in the judiciary. The split of roles and responsibilities between the Ministry of Justice and the Supreme Judicial Court were unclear, what contributed to the poor functioning of the judicial system.
- Moreover, there were often delays in administrative processing of cases due to a number of factors. Case management also lacked transparent standards for assignment. Concerning recruitment, there had been no progress to introduce transparent national criteria and competitions for recruitment or promotion of judges, and training remained insufficient and inadequate. Since the last Regular Report, a consensus had emerged between the Supreme Judicial Council and the Ministry of Justice on the need to establish a national public institute for training of members of the judiciary.
- The 2001 Report also included a long assessment on the anti-corruption measures. Corruption continued to be considered as one of the main problems facing Bulgarian society. According to the Transparency International Corruption Perception Index (CPI), Bulgaria scored 3.4 in 2001¹⁴¹. In October 2001 the Council of Ministers adopted a national Strategy for Combating Corruption. While this legal framework was coming into place, the enforcement of the existing laws posed a significant challenge, notably because there had not been sufficient focus on prevention of corruption. A new Political Parties Act introducing clearer rules for financing political parties was hoped to bring some progress. In addition, the Public Register Law invited high-ranking government

¹⁴¹ http://archive.transparency.org/policy_research/surveys_indices/cpi/2001 Accessed on 13 July 2014.

officials to declare property, income and expenses, and first declarations were submitted in summer 2000.

→ Bulgaria continued to participate on the monitoring of anti-corruption measures of some international groups. Nevertheless, it is to note that it had not yet signed nor ratified the United Nations Convention Against Corruption.

3.3.2.2. Human rights and the protection of minorities

→ To the date, Bulgaria had ratified most human rights conventions. Since the last report, the country had made progress in the areas of human rights training of police, trafficking, pre-trial detention, and the legal framework for non-governmental organisations.

→ Reports of police violence and ill-treatment over minorities, homosexuals and prostitutes continued, where investigations into those abuses remained rare and a very small number of cases came to court. As in previous years, the Roma continued to constitute a disproportionate number of the victims of this violence.

→ Bulgaria remained a source and transit country for trafficking human beings, despite de efforts of the government. The fact that trafficking had not yet been defined as a specific offence made it harder to bring cases to court.

→ Some progress had been made in pre-trial detention, with a trend towards shorter preliminary proceedings. Instead, prisons still had problems with overcrowding, poor food and sanitation; the legal framework still needs to be revised to ensure cases have been heard in fully conformity with the right to a fair trial before detention.

→ Concerning right to privacy, concerns had been expressed by human rights organisations at the high number of permits granted for wiretapping and the need to ensure proper judicial controls on the issuing of these.

- There had been no further progress in adopting legislation on equal opportunities for women and men. The Child Protection Act had not brought any improvement: conditions in social institutions for children were mixed, but the situation was particularly serious in the institutions for severely handicapped children. The Government had adopted a regulation for the establishment of the Child Protection Agency and appointed a Chairman, but great effort had to be done to make it operational. Bulgaria still needed to ensure the full implementation of the UN Convention on the Rights of the Child.

- Bulgaria had ratified the FCCEPNM, nevertheless, the situation of the Roma did not improve. They continued to suffer discrimination and further problems affecting access to basic rights such as education, housing, healthcare... Approximately 70% of the houses were built illegally, which meant they had no access to basic public services. Some municipalities were implementing a series of projects, but overall, the progress in improving the situation of the Roma community had been limited. In addition, further efforts were needed for socio-economic integration of ethnic Turks who live in economically underdeveloped regions and face high unemployment rates¹⁴²

3.4. The 2001 Accession Partnership

The 2001 AP had a different structure from the previous one. This time, instead of setting the priorities for Bulgaria at short- and medium-term, the objectives listed in the revised Accession Partnership were determined on the basis that it was realistic to expect that Bulgaria could complete or substantially take forward over the next two years (2002 to 2003)¹⁴³.

Political criteria	
Democracy and	<ul style="list-style-type: none"> • Continue to make progress with public administration reform. Ensure effective implementation of the provisions of Civil

¹⁴² European Commission, 2001, pp. 24-25

¹⁴³ European Council, 2002, p.3

the rule of law	<p>Service Act and related regulations. Take steps to ensure accountability, openness and transparency of public service. Strengthen capacity for strategic planning, policy analysis and evaluation at the centre of government and in line ministries and improve quality of consultation with affected parties (e.g. social and economic partners, civil society, and private sector) on preparation of new legislation,</p> <ul style="list-style-type: none"> • In need of particularly urgent action: start to implement the strategy for reform of the judicial system, paying particular attention: <ul style="list-style-type: none"> - to strengthening the administrative capacity of key institutions; Supreme Judicial Council and Ministry of Justice, through building budgetary, supervisory, planning and human resource management capacity, - to review the degree of immunity of members of the judiciary to ensure this is in line with international standards, - to ensuring the full implementation of fundamental rights in penal cases such as legal aid, • In need of particularly urgent action: start to implement the national strategy to combat corruption in public life, especially focus sing on awareness building, prevention and the prosecution of corrupt acts.
Human rights and the protection of minorities	<ul style="list-style-type: none"> • Continue to implement the Roma framework programme with particular attention to providing necessary financial support, significant strengthening of the National Council of Ethnic and Demographic Issues, and ensuring equal access to health, housing, education and social security; • Ensure that an effective system for redressing police misconduct is established; • Adopt and implement secondary legislation necessary for the effective functioning of the Child Protection Act. Ensure further measures are taken to improve community care services for children. Ensure the full implementation of the UN Convention on the Rights of the Child.

For the first time, the priorities and intermediate objectives of the AP corresponded with the main recommendations and highlights made in the Regular Report. Notably, it made a stronger emphasize on strengthening the protection of human rights that had been neglected in previous years. For the first time, the AP addressed police violence. Nevertheless, despite the evaluation on the hard prison conditions and pre-trial detention shortcomings, those issues were not incorporated into the AP, as usual. Moreover, the need to tackle discrimination, which is a value that was enshrined in the

Amsterdam Treaty, is not included. The continued instructions on the need to further implement the RFP were a clear indicator of the failure of Bulgaria to tackle the problem and the incapability of the EU to exert its conditionality. Despite the ongoing human trafficking, this issue was not included in the framework of HJA as in the previous AP.

We can notice a stronger interest from the Commission on the field of democracy and human rights from the throughout report made in 2001. Nevertheless, the 2001 AP did not reflect his enthusiasm and exhaustiveness.

On the contrary, it is noticeable the absence of emphasise in measures towards strengthening the judicial and administrative capacity of Bulgarian institutions with a view on the *acquis*. As a matter of fact, there was no specific section focused on this problematic. This change in the attitude of the Commission could be connected to the fact that the Council decided by the Laeken 2001 meeting that Bulgaria and Romania would not be ready to join the EU by 2004¹⁴⁴, and this in spite of the declarations of the Council in the previous meeting in Goteborg, where it declared that: “they [CEECs] will have to pay particular attention to putting in place adequate administrative structures, to reforming judicial systems and the civil service, as well as to the situation of minorities. Special efforts will be devoted to assisting Bulgaria and Romania”¹⁴⁵.

In addition to the fall on the pace towards membership, Bulgaria (and Romania) saw new obligations and conditionality imposed. In 2002, the Commission announced on the Strategy Paper “Towards the Enlarged Union” that on the basis of the 2002 Regular Report, it would create detailed roadmaps for Bulgaria (and Romania). These roadmaps would cover the period up to accession, and their purpose was to indicate the main steps that they needed to take to be ready for membership. The Communication also stated that short- and medium-term issues identified in the roadmap would be further developed in the revised Accession Partnership to be presented next year, and that the

¹⁴⁴ European Council, 2001, p.3

¹⁴⁵ European Council, 2001 (2), p. 2

Accession Partnership would continue to be the basis for programming pre-accession assistance, but that priorities for assistance would also be drawn from the regular reports, roadmap and revised national development plans to be prepared by each country¹⁴⁶. They did not entail any new conditions or practices in accession negotiations, though, and were only addressed to the alignment of the *acquis*¹⁴⁷. Therefore, no further instructions regarding the political criteria were provided on this new framework.

3.5. The 2003 Regular Report

The 2003 Report was the longest to the date, and the analysis regarding Bulgaria's progress regarding the Political Criteria was at the same level as the one from 2001.

3.5.1. Compliance with the 2001 Accession Partnership

In the 2003 Regular Report, the Commission carried out a very brief assessment on Bulgaria's performance regarding the previous AP, by stating that Bulgaria "had begun to address the priorities defined by the revised Accession Partnership". With regard to the political criteria, the Commission reported progress in key areas such as public administration and the judiciary. Moreover, it stated that while further progress had been made relating to respect for human rights and protection of minorities, efforts were still necessary.

In spite of a concrete feedback, the Commission failed to show to which extent Bulgaria had (or had not) met the priorities and intermediate objectives laid down in the 2001 AP.¹⁴⁸

3.5.2 The 2003 Accession Partnership

The Accession Partnership that the Commission presented in 2003 was the most comprehensive and coherent one to the date as far as the Political Criteria is

¹⁴⁶ European Council, 2003, p. 3

¹⁴⁷ European Commission, 2002, pp. 2-3

¹⁴⁸ European Commission, 2003, p. 125

concerned¹⁴⁹. It was drawn on the basis of the analysis of the Commission's 2002 Regular Report and the roadmap. At this stage of the accession talks, with the view of closing the *acquis* chapters in two years, the fight against corruption was labelled as one category more of the Political Criteria, together with Democracy and Rule of Law, and Human Rights and Protection of the Minorities.

Democracy and the Rule of law	
Public Administration	<ul style="list-style-type: none"> — Prepare a fully comprehensive public administration reform strategy, including an action plan, in 2003. The strategy should involve a twin track approach combining: continuing to support institution building directly relevant to the <i>acquis</i> and management of Community funds; and horizontal reform designed to improve the effectiveness of the public administration more generally. — Take steps to ensure application of transparent procedures for recruitment and promotion and to improve human resource management. Take steps towards ensuring sufficient qualified staff to ensure sustainability of reforms. Increase staff percentage with civil servants status. Protect staff, whatever their status, from unfair dismissal. — Improve (through simplification and clarification) the legal framework for administrative decision-making and procedures to ensure legal certainty. Take further steps to ensure accountability, openness and transparency of public service. — Strengthen administrative structures to ensure that it has the necessary capacity for fully effective use of and proper accounting for Community funds. — Strengthen capacity for strategic planning, policy analysis and evaluation at the centre of government and in line ministries. — Give more attention when the <i>acquis communautaire</i> is transposed, to how this can be implemented and enforced, including in the court system, at national, regional and local levels, in a way appropriate to the situation in Bulgaria. — Further improve the quality of consultation with affected parties (e.g. social and economic partners, civil society, and private sector) on preparation of new legislation.
Judicial System	<ul style="list-style-type: none"> Take steps to continue the reform of the judicial system, including with a view to ensuring an impartial application of law. — Continue to implement the national reform strategy for the Bulgarian judicial system and action plan and adopt implementing legislation in line with EU practices. — Review the structure of the judiciary in line with EU best

¹⁴⁹ European Council, 2003, pp. 5-7

	<p>practices, including a review of the organisation of the pre-trial phase.</p> <ul style="list-style-type: none"> — Review the degree of penal immunity of members of the judiciary to ensure this is in line with EU best practices. — Take steps to improve judicial proceedings in particular to reduce excessive length and ensure full implementation of fundamental rights in penal cases, in particular as regards legal aid. — Ensure the budget for the judiciary is adequate, including for the appropriate enforcement of judicial decisions. — Clearly distinguish between the roles of the SJC and of the Ministry of Justice aiming to respect the independence of the judiciary. — Strengthen the administrative capacity of the SJC to ensure its proper functioning as regards both strategic decision-making and management of the court system. — Take steps to improve the functioning of courts through increasing management training for Court Presidents, development of efficient administrative support at both central and local levels and through introduction of a transparent case distribution system. — Improve security and working conditions in courts and prosecution offices. — Establish a more open, fair and transparent system for recruitment, evaluation and promotion process based on merit within the judiciary. — Enhance professionalism in the judiciary by ensuring adequate state funding for the National Institute for the Judiciary allowing it to develop high quality training for judges, prosecutors and administrative staff. — Modernise management methods in the prosecution service in order to improve the transparency and efficiency of case handling.
Anti-Corruption	
<ul style="list-style-type: none"> - Continue to implement the national anti-corruption strategy and the action plan. - Take steps to ensure the legal framework for tackling corruption is implemented and enforced. Introduce the notion of criminal or administrative penal sanctions against legal persons in Bulgaria. Ratify the Council of Europe CLCC. 	
Human Rights and the Protection of Minorities	
<ul style="list-style-type: none"> - Adopt and start to effectively implement comprehensive anti-discrimination legislation transposing the Community anti-discrimination acquis. - Complete reorganisation and modernisation of the police, continue efforts for police officers to respect basic human rights in all circumstances; broaden the use of community policing approaches, which improves relations with public, in particular minority groups. 	

- Continue efforts to tackle trafficking in human beings, including prevention and social reintegration efforts.
- Take further steps to bring all places of pre-trial detention, in particular police stations, into line with the basic requirements identified in the Council of Europe Committee for the Prevention of Torture report.
- Ensure implementation and sufficient budgetary resources to ensure access to justice and legal aid.
- Ensure the childcare system is reformed so as to systematically reduce the number of children in institutional care in particular through developing alternative social services aimed at children and families. Ensure the full implementation of the UN Convention on the Rights of the Child.
- In need of particularly urgent action: Provide a legal framework which ensures the necessary safeguards against arbitrariness of detention and improve living conditions in the mental health care system. Adopt and implement a strategy and action plan with an adequate financial framework of substantial reform in the mental health care system.
- Take concrete action to implement the Roma Framework Programme with particular attention to providing necessary financial support, significant strengthening the government body in charge of minority issues and ensuring equal access to health, housing, education and social security. Elaborate a concrete action plan and financial framework to the Roma Framework Programme which improves implementation.

The AP included large, ambitious recommendations for Bulgaria in order to achieve an effective and modern Public Administration, and an independent and transparent Judicial System, and align them with the European Union practices. Some of the priorities had already been targeted on the 2001 Report, but failed to be included in the 2001 AP (such as the need to clarify the roles of the Ministry of Justice and the SJC). Finally, the Commission had made a convincing effort on guiding Bulgaria towards the reforms needed to achieve a correct, functional Public Administration. In addition to it, despite the reiterated calls from the Council on candidate countries to “to adjust their administrative structures to ensure harmonious operation of Community policies after accession”¹⁵⁰, it seemed that the obsession of the first years in this regards had vanished.

At last, the Commission recognised the urgent need to introduce anti-discrimination legislation, which was actually provided for in the *acquis*. The Commission further acknowledged the need for improving the efforts to achieve professional police corps

¹⁵⁰ European Council, 2003, p. 4

that would respect human rights. In addition, it decided to bring back to the AP the fight against trafficking in human beings. As in previous years, its concern about Child protection was again reflected in the priorities set in the 2003 AP, where it urged Bulgaria to ensure effective reforms of the childcare system. Moreover, the recommendations regarding arbitrariness of detention, yet in 2003, give a clue about the failure to tackle this problem. The *acquis* chapter in HJA included some provisions regarding refugees and asylum seekers: Bulgaria had to increase the capacity of the reception centres, further improve the administrative capacity of the Agency of Refugees and improve the conditions for integration of refugees¹⁵¹.

3.5.3. The 2003 Regular Report

Progress was made with the adoption of a programme and an action plan for the implementation of the Strategy for Modernisation of the State Administration, which aimed at consolidating the legal framework in this area. Sustained efforts would be necessary to further implement the public administration reform and to fulfil Bulgaria's aim to have a qualified and efficient civil service in place in the medium term, to ensure the effective application and enforcement of the *acquis* when Bulgaria joins the Union.

The overall reform process for the judiciary continued in line with the 2002 Action Plan. In particular, the amendments to the Constitution regarding the status of magistrates represented an important step forward. Other legislative measures aimed at reducing the duration of court proceedings and strengthening judicial control of decisions of the executive. However, further efforts were necessary to re-organise the investigation service as part of the executive in line with best practice in Member States. Bulgaria also needed to ensure that the judicial budget was adequate for the smooth functioning of the judicial system.¹⁵²

Bulgaria continued with the good track in ratifying the main human rights conventions and in December 2002 it ratified Protocol No 13 of the ECHR on the abolition of the

¹⁵¹ Ibidem, p.17

¹⁵² European Commission, 2003, p. 27

death penalty in all circumstances. Unfortunately, there continued to be reports of ill-treatment and the use of force during interrogation. Government steps to address this situation included human rights awareness within the police, and a special group was formed to attract citizens of Roma origin to the services of the national police. In March 2003 new legislation prohibited the use of firearm during arrest, in line with European standards.

Trafficking in human beings continued to be a serious problem, although it was defined as a criminal offence and prohibited by law. A new law was passed on Countering Illegal Trafficking in Human Beings. Besides, conditions in Bulgarian prisons remained inadequate, despite some minor improvements; inter alia, the conditions for pre-trial detention were improved as many of the underground locations for pre-trial detention were closed. In addition, empirical surveys had shown that in practice there was no defence counsel in nearly 50% of criminal cases in first instance.

The legal framework for asylum and child protection improved considerably. However, the living conditions of children placed in institutions changed little during the past year. As regards the mentally disabled, the required legal framework is still missing, notably to ban arbitrary detention. Despite some efforts to address the situation, the living conditions in institutions for mentally disabled people are difficult and opportunities for rehabilitation and therapy are scarce. Further efforts were necessary to address the situation as regards degrading and ill-treatment by the police and trafficking in human beings, notably in women and children. In the area of social and economic rights, progress can was reported notably as regards equal opportunities and anti-discrimination, were legislation was being implemented. The new Action Plan for the implementation of the “Framework Programme for Equal Integration of Roma into Bulgarian Society” represented indeed a positive step, as it would cover the specific budgetary necessities for measures in the areas of anti-discrimination policy, education, culture, housing, employment and social protection. Determined and sustained efforts were still needed to fight discriminatory attitudes and behaviour and to address the widespread social disadvantage affecting the Roma community.

4. Conclusion

During the period from 1998 to 2003, the Commission and the Council used the Accession Partnerships and the Regular Reports to assess, recommend and monitor Bulgaria's progress in meeting the Political Criteria, in order for the country to become a member of the European Union. As we have seen, these two instruments entailed levels of conditionality never seen before in the process of enlargement. This conditionality was specially felt in Bulgaria given the problems facing, notably with regard to corruption and the weakness of the administrative institutions and the effectiveness of the judiciary.

Despite these strong tools, given the lack of commitment and coherence of the EU institutions in guiding and assessing Bulgaria, we can see little progress was made as regards of Political Criteria. There is a lack of coherence between the Regular Reports and the Accession Partnerships. It is true that both instruments were intended to assess and establish the main priorities and intermediate objectives. Nevertheless, the Accession Partnerships were the leading framework that Bulgaria had to look upon and comply with.

The attention given to the Political Criteria grew during the years, and in 2003 the Commission carried out an extensive, complete analysis of the situation in the country. Shockingly, that assessment did not translate into recommendations, and we find little guidance regarding the Political Criteria in the Accession Partnerships.

During the first years, it is notable the emphasize and obsession of the EU for the reinforcement of the administrative and judiciary institutions. Unfortunately, it played in detriment of the importance allocated to human rights and democracy. Indeed, the Commission instructed Bulgaria in order to carry out several measures destined to modernise the State Administration, approach it to the legal standards, but it was made for the sake of the implementation of the *acquis communautaire*, and not for the sake of the country. It is in the beginning, when it was not clear how Bulgaria would perform, that the EU maintained this accession-oriented attitude on its policies. As a matter of

fact, all the focus shifted from transition to accession. When the European Council and the Commission decided that Bulgaria would not be part of the first round on membership, it suddenly abandoned its impetus and started to pay more attention to the situation of human rights and democracy. This way, we can see a progressive evolution that culminated on the 2003 Accession Partnership, which contained a broad set of concrete measures destined to uphold and improve the protection of human rights.

Regrettably, there was little evolution and the progress made took many years: we have seen how many priorities, notably the need to protect the ethnic minorities, were reiterated during the three Accession Partnerships.

CONCLUSION

In 2007 Bulgaria completed the accession process, although the country was still facing serious problems regarding the enforcement of the rule of law and the widespread corruption.

With regard with the Political Conditionality, it is evident from the analysis carried out that there was a lack of commitment and coherence along the process. It is regrettable that the EU did not take the opportunity that provided its leverage during the pre-accession process to make further pressure over Bulgaria. This was made too late.

On the other hand, the problem regarding the double standards in human rights conditionality that were addressed on the first chapter could be a reason why the country did not make further efforts in this field.

Nevertheless, it would be very difficult to determine with precision which was the effect of the policies of the EU in Bulgaria's human rights and democracy, as the country was also receiving the guidance of various other regional and international institutions, such as the Council of Europe or the OCDE.

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ANNEX 1

SUMMARY OF THE REPORT ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS BY BULGARIA, 1998.

Doc. 8180, 2 September 1998, Information report.

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe.

Co-rapporteurs: Mr David ATKINSON, United Kingdom, European Democratic Group, and Mr Henning GJELLEROD, Denmark, Socialist.

I. THE SITUATION IN SEPTEMBER 1998, MAIN CONCLUSIONS:

"Generally speaking, the new UDF government in power since June 1997 has made progress in both economic and political terms:

—Inflation which reached 310% in 1996 has been drastically reduced.—

—The World Bank has granted to Bulgaria a 100 million dollars loan and a new stabilisation programme was concluded with the IMF.—

—The European Union Luxembourg Summit decided in December 1997 that Bulgaria was a potential applicant for EU membership.—

—Participation in Nato peace-keeping operations is increasing and the pro-Nato orientation has been confirmed.—

—The Islamic Summit Conference held in Teheran in December 1997 took off its agenda the situation of the Bulgarian ethnic Turks.—

—Good relations have been established with its neighbours, in particular Turkey, Greece and Romania, as well as with Russia; some problems remain with the former Yugoslav Republic of Macedonia (language problem).—

—There is a consensus in parliament to integrate European structures.—

—The human rights record seems to be improving, according to most NGOs the rapporteurs met.⁶

6. New positive developments

—The Supreme Court of Cassation and the Supreme Administrative Court are now set up, but the Courts of Appeal are still not operating.—

—A new National Council on Ethnic and Demographic Issues was set up in December 1997 and it seems to have the support of ethnic communities, in particular the Roma. This Council should play an important role in analysing the interethnic relationships in the country and work out appropriate solutions in co-operation with the Council of Europe. Bulgaria signed the Framework Convention for the Protection of National Minorities on 9 October 1997, and it is hoped that it will soon ratify it.—

—An Alternative Service Act was adopted in 1998.—

—Freedom of religion is considered as satisfactory by most religious denominations and NGOs. However, the requirements for the registration of religious groups remain questionable.—

—Administration: the draft law assessed by Council of Europe experts is to be welcomed. However, the National Assembly should take into account the comments of Council of Europe experts, in order to make the law more democratic.

7. Matters of concern

—Media

The National Radio and Television Council is, according to the opposition but not to the majority, composed of six members close to the ruling party (UDF) and one close to the opposition (Democratic Left), which would be in clear contradiction with the independent character of this body (and probably contrary to the European Convention on Transfrontier Television: the case is before the Constitutional Court).

New laws on radio and television and on telecommunications are to be adopted in 1998 and it is hoped that the National Assembly will take into account the assessments provided by the Council of Europe experts.

—Independence of the judiciary is theoretically guaranteed but the new draft amendments on the Judicial System Act are a matter of concern. The committee will have to follow developments very closely in the months to come, not only with regard to new legislation but also to its implementation.—

—Police violence (old habits die hard), in particular against members of religious communities, Roma and street children. According to some NGO reports, police brutality is increasing. The committee will have to investigate whether this trend is due to greater transparency in reporting or to an actual deterioration of police behaviour.—

—Purges in administration, diplomatic corps and local authorities. The dismissals seem to be mainly of a political nature.

In 1998, the National Assembly is to adopt a law on civil service; the Council of Europe should be consulted.

—Local self-government

The alleged intention of the authorities to introduce drastic changes in the legislation on local self-government with a view to appointing mayors of villages and regional governors is rather worrying. The CLRAE should closely follow the matter.

—New identity cards

They are to be delivered by the Ministry of the Interior with a coded information content, which might be contrary to the protection of individual data.

—Children's prisons

There are two such prisons (one for boys and one for girls) with unacceptable conditions. During their next visit the rapporteurs will check the situation on the spot.

—The relations between the majority in power and the opposition seem to be deteriorating and the lack of trust between them and between the population and the authorities might lead to a deep split in Bulgarian society.

8. Some preliminary recommendations

—The Council of Europe should be asked to evaluate the main draft laws to be adopted in 1998 (for example on religion and the civil service) and the Bulgarian authorities should take into account the comments of Council of Europe experts when adopting new legislation.—

—The Bulgarian authorities in power should endeavour to associate more the opposition political forces in their reform efforts in order to avoid a deep split in the society."9.

9. During their most recent visit (5-8 December 1999), the rapporteurs were informed of a number of new positive developments. However, it is clear for them that further progress is required.

ANNEX 2

SUMMARY OF THE REPORT ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS BY BULGARIA, 2000.

Doc. 8616, 17 January 2000, Report

Honouring of obligations and commitments by Bulgaria

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Rapporteurs: Mr David Atkinson, United Kingdom, European Democratic Group and Mr Henning Gjellerod, Denmark, Socialist Group

Further to their four fact-finding visits to Bulgaria since December 1997, the rapporteurs of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, MM. Atkinson (United Kingdom, European Democratic Group) and Gjellerod (Denmark, Socialist Group) recommend to the Assembly to close the monitoring procedure concerning Bulgaria.

They pay tribute to the Bulgarian authorities for the progress made on the road to democracy and the country's stabilising role in the Balkans.

At the same time they launch an appeal to the Bulgarian authorities to provide better guarantees of the independence of the judiciary and the media (in particular through decriminalisation of libel and defamation on the part of journalists), the rights of minorities and local self-government.

The rapporteurs also insist on Bulgaria stepping up efforts to combat corruption and police brutality with assistance from the Council of Europe.

1. Referring to the two reports by the Monitoring Committee on Bulgaria's honouring of obligations and commitments¹, the Assembly is convinced that Bulgaria is committed to democratic reform and welcomes a number of major steps forward on the road to democracy, which include:

- i. the abolition of the death penalty and the ratification of Protocol 6 to the European Convention on Human Rights (ECHR);
- ii. the adoption of a law on alternative service;

- iii. the functioning of three court levels as provided for in the Constitution;
- iv. the role played by President Stoyanov in the adoption of legislation in line with Council of Europe standards, including in the spheres of the media and the judicial system;
- v. the adoption of amendments to current legislation on provisional detention and the transfer of the responsibility for provisional detention centres to the Ministry of Justice and Legal Euro-Integration;
- vi. the government initiative to no longer apply the prison sentences provided for in the Criminal Code for libel and defamation;
- vii. the ratification of the Framework Convention for the protection of national minorities;
- viii. the holding of municipal elections in October 1999, which were considered "well organised and satisfactory" by the Congress of Local and Regional Authorities of Europe;
- ix. the registration of Jehovah's Witnesses;
- x. progress in the area of freedom of conscience and religion, despite widening rifts within the Orthodox church and the Muslim religious community;
- xi. efforts on the part of the government to combat crime and corruption and improve prison conditions;
- xii. the removal of compulsory licensing for Internet providers;
- xiii. the agreements on languages concluded with "the former Yugoslav Republic of Macedonia" on 22 February 1999;
- xiv. confirmation of the country's interest in membership of the European Union and of NATO and its contribution to a peaceful settlement of the Kosovo conflict.

2. The Assembly also appreciates Bulgaria's stabilising role in the Balkans.

3. However, the Assembly also notes a number of outstanding concerns and worrying trends:

- i. the influence of the governing party over the judiciary, with the change in membership of the Supreme Judicial Council during the procedure to appoint the new Chief Prosecutor;
- ii. the influence of the governing party over the public media with the change in membership of the National Radio and Television Council and the current procedure of licensing by a government appointed body;

- iii. the insufficient implementation of minorities' constitutional rights as regards education and information in their mother tongue;
- iv. the generalisation of corruption resulting in particular from illegal practices in privatisation, excessive licensing and various immunities enjoyed by judges, prosecutors and investigators;
- v. the control exercised by the executive on the 28 districts recently established;
- vi. the continued policy of dismissals of civil servants and corporate chief executives and the excessive time taken for their appeals to be heard;
- vii. the delays in modernising labour legislation and improving pensioners' living standards;
- viii. continuing police brutality, particularly as regards Roma;
- ix. the increasing divide within society, mirroring the lack of dialogue between the governing majority and the opposition and the rifts within the Bulgarian Orthodox church and the Muslim religious community.

4. The Assembly, therefore, launches an appeal to the Bulgarian authorities to take the following steps in the near future, the implementation of which it will closely follow:

- i. the Bulgarian National Assembly should take into account the present report and hold a debate on its conclusions;
- ii. it should take greater account of European standards and the opinions of Council of Europe experts on the draft laws it examines;
- iii. the independence of the judiciary and of the media against the executive authorities should be guaranteed and greater diversity of opinion on national television should be ensured;
- iv. the rights of minorities, especially as regards education and broadcasting in their mother tongue, should be improved and respected; minorities should be better represented in the police and the public services;
- v. the institution of an Ombudsman for human rights should be created;
- vi. efforts to combat corruption and police brutality should be stepped up with assistance from the Council of Europe; the Constitution should be amended to bring the immunity of members of parliament, magistrates and senior officials in line with European standards;
- vii. the 28 newly established districts should be given directly elected councils in accordance with the European Charter of Local Self-government;

viii. freedom of thought, conscience and religion should be maintained, in accordance with Article 9 of the European Convention on Human Rights, and the process of return of property to churches and the Muslim community should be continued;

ix. sanctions against journalists should be brought out of the sphere of criminal law and awards for damages limited to reasonable amounts, taking into account that journalists should abide by the principle of respect for privacy, in conformity with Article 8 of the European Convention on Human Rights.

5. In the light of the above considerations, the Assembly considers the current monitoring procedure as closed. It will pursue its dialogue with the Bulgarian authorities on the issues referred to in paragraph 4, or any other issues arising from the obligations of Bulgaria as a member state of the Council of Europe, with a view to reopening procedure in accordance with Resolution 1115 (1997), if further clarification or enhanced co-operation should seem desirable.

ANNEX 3

Human Rights Conventions ratified by the Candidate Countries, 30 September 2001

<i>Adherence to following conventions and protocols</i>	BG	CY	CZ	EE	HU	LV	LT	MT	PL	RO	SK	SI	TK
ECHR (European Convention on Human Rights)	X	X	X	X	X	X	X	X	X	X	X	X	X
Protocol 1 (right of property)	X	X	X	X	X	X	X	X	X	X	X	X	X
Protocol 4 (freedom movement et al.)	X	X	X	X	X	X	X	O	X	X	X	X	O
Protocol 6 (death penalty)	X	X	X	X	X	X	X	X	X	X	X	X	O
Protocol 7 (ne bis in idem)	X	X	X	X	X	X	X	O	O	X	X	X	O
European Convention for the Prevention of Torture	X	X	X	X	X	X	X	X	X	X	X	X	X
European Social Charter	O	X	X	O	X	O	O	X	X	O	X	O	X
Revised European Social Charter	X	X	O	X	O	O	X	O	O	X	O	X	O
Framework Convention for National Minorities	X	X	X	X	X	O	X	X	X	X	X	X	O
ICCPR (International Covenant on Civil and Political Rights)	X	X	X	X	X	X	X	X	X	X	X	X	O
Optional Protocol to the ICCPR (right of individual communication)	X	X	X	X	X	X	X	X	X	X	X	X	O
Second Optional Protocol to the ICCPR (death penalty)	X	X	O	O	X	O	O	X	O	X	X	X	O
ICESCR (International Covenant on Economic, Social and Cultural Rights)	X	X	X	X	X	X	X	X	X	X	X	X	O
CAT (Convention against Torture)	X	X	X	X	X	X	X	X	X	X	X	X	X
CERD (Convention on the Elimination of All Forms of Racial Discrimination)	X	X	X	X	X	X	X	X	X	X	X	X	O
CEDAW (Convention on the Elimination of All Forms of Discrimination against Women)	X	X	X	X	X	X	X	X	X	X	X	X	X
Optional Protocol to the CEDAW	O	O	X	O	X	O	O	O	O	O	X	O	O
CRC (Convention on the Rights of the Child)	X	X	X	X	X	X	X	X	X	X	X	X	X

X = Convention ratified

O = Convention NOT ratified

BG=Bulgaria; CY=Cyprus; CZ=Czech Republic; EE=Estonia; HU=Hungary; LV=Latvia; LT=Lithuania; MT=Malta; PL=Poland; RO=Romania; SK= Slovak Republic; SV=Slovenia; T=Turkey