

EUROPEAN COMPLIANCE AND POLITICIZATION OF PUBLIC ADMINISTRATION IN ROMANIA

Diana - Camelia Iancu¹

Abstract

This paper addresses the problem of public administration politicization in Romania between 1990 and 2012. The approach taken here is that of Europeanization by conditionality and social learning, and of reform reversal hypothesis where the social learning is absent. This theoretical framework consists, briefly stated, in the belief that the adhering CEE (Central and Eastern European) states are subjected to a "sticks and carrots" mechanism and they respond to it by a (usually high enough) degree of compliance with the EU (European Union) norm. From this, once this mechanism gone (when EU membership is granted) if the social learning was unsuccessful, it is to be expected to observe a regress of reform or a reform reversal. I discuss this reform reversal hypothesis for the Romanian case. The paper is organized as follows: first, I briefly deal with the problem of Europeanization; second, I discuss the problem of the general class of international compliance theories and I analyze the specific case of compliance by Europeanization; third, I discuss the problem of conditionality and conditional regress hypothesis; fourth, I deal with a specific case of European compliance, the problem of civil service's neutrality in CEE states before and after EU accession; fifth, I address the problem of Romanian public administration reform as a case of reform reversal. The argument I employ here is that the Romania experienced a reversal of reform after joining the EU and that might suggest a poor level of social learning in the case of de-politicization.

Keywords: politicization, public administration, Europeanization, conditionality, reform regress.

Europeanization

After the fall of the communist regimes, CEE countries experienced a process of democratization which along the way transformed itself in a

¹ Ph.D. Diana – Camelia Iancu is lecturer at the National University of Political and Administrative Studies (NSPAS), Bucharest, Romania. The author would like to express her gratitude to the helpful comments of Ph.D. Mihai Ungureanu.

process of democratization by Europeanization. As a result of becoming Member States of the EU, Europeanization was amongst the main factors of democratic consolidation. A few definitions of Europeanization are needed here. Ladrech (1994), for instance, defined Europeanization as "an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making" (Ladrech, 1994, p.69). Börzel (1999) offered a similar definition: "Europeanization is a process by which domestic policy areas become increasingly subject to European policy-making." (Börzel, 1999, p.574). Olsen (2002, pp.923-924) described Europeanization as: a) a change in external boundaries, b) developing institution at the European level, c) central penetration of national systems of governance, d) exporting forms of political organization, e) a political unification project. These are only a few of the large amount of definitions which Europeanization received in the literature. Drawing partly from them, I will use Europeanization so as to label the incremental process of import-export of norms and practices between EU and candidate countries (and potentially between candidate countries themselves) with a focus on the exporting process from EU to the candidate states – therefore a process in which EU mainly exports norms and candidate states (mainly) comply with them. This brings forward the problem of compliance.

The problem of international compliance

Why comply? The process of compliance of an actor to an external rule or norm was studied in various ways. Checkel (2001) identified two main strategies of assessing the compliance of national actors to international norms: a rationalist one which emphasized "cost-benefit calculations and material incentives"² (Checkel, 2001, p.553) and a constructivist one which emphasized "social learning, socialization and social norms" (Checkel, 2001, p.553). The rationalistic approach is in fact the old rational choice approach to politics applied this time to international compliance. Checkel (2001) described it as a "neo-utilitarian, contractualist, and interest-based approach" (Checkel, 2001, p.556). So its tenets are based on methodological individualism, the utility maximizing paradigm, (mainly) the homo economicus principle and on preferences treated as exogenous (for this qualification see for example March, Olsen, 1984, p.737). In this approach rational actors behave

² This is similar to what March and Olsen (1998) called *logic of anticipated consequences and logic of appropriateness*. Here, the first stands for the rationalistic strategy of research while the second for the constructivist – socio-historical one. As I noted elsewhere (Iancu, 2013, p.74), these descriptions are referential for what Borzel and Risse (2000) and Schimmelfenning and Sedelmeier (2002) acknowledged as the (classical) rationalist and sociological institutionalism.

instrumentally and the compliance is stated only in cost-benefit terms. In other words, an agent will comply with the norm of an external agent if that is the lowest opportunity cost available action. On the other part, constructivists, as Checkel (2001) noted, traditionally focused not on the “why`s” of the compliance but rather on its later stage where norm internalization would be almost complete. “The result was a somewhat static portrayal of social interaction” (Checkel, 2001, p.557). The new constructivists though, focused on the dynamics of compliance and identified “two causal mechanisms through which social actors comply with norms: social protest/mobilization and social learning” (Checkel, 2001, p.557). This approach could be described as institutional or in its extreme version, methodologically holistic and preferences would be taken usually as endogenous – they are nested by social and formal institutions (March, Olsen, 1984, p.739). So what one has here is a picture of two apparently methodologically incompatible views of social research and scientific explanation³ both carrying a claim of universality. This claim was challenged amongst others, by Checkel (2001), Kelley (2004) or Schimmelfenning (2005). They all talked about a third (hybrid) alternative, but only Checkel assumed it explicitly. “For elites [...] norms are not internalized, they merely constrain behavior. Rationalist models easily explain elites’ compliance [...] Deriving systematic explanations for compliance at the grass-roots, activist, and NGO-levels is more problematic. In some cases, norms genuinely constitute agents in the sense meant by constructivists, providing them with new understandings of interest/identity.” (Checkel, 2001, p.558) From this, one needs both “eye glasses” to view the entire social phenomena.

Conditionality and the conditional regress hypothesis⁴

Building on the above argument and turning back to the initial problem, compliance to the European norm, this paper`s argument is fourfold (Table 1).

³ This distinction draws on a suggestion made by my colleague from NSPAS, Dr. Mihai Ungureanu. For a detailed methodological analysis of rational choice theory see Ungureanu (2011), Ungureanu (2012).

⁴ This idea of conditional regress hypothesis is based on Ungureanu and Iancu (2013).

Table 1: Patterns of Europeanization

Conditionality	Social learning	
	Effective	Ineffective
Present	Type 1: High level of compliance, Fair changes	Type 2: Fair level of compliance, Pretense changes
Absent	Type 3: Fair level of compliance, Internalized changes	Type 4: Low level of compliance, Reversed changes

(Source: Ungureanu and Iancu, 2013)

First, if social learning is effective at the grass-roots level, and an external mechanism of sticks and carrots is in action, they will both act as external constraints on political elites⁵ and one should observe a compliance of national actors to the European norm. Second, if social learning is ineffective but external conditionality is present, one should expect an effective compliance to the external norm. Third, if the external conditionality is absent (or almost absent) and social learning is ineffective then one should observe a lack of compliance to the European norm. And finally, if the external conditional is absent, but social learning is effective, then one could observe compliance to the European norm.

Putting this to work for the Europeanization of CEE states, the problem could be reformulated in terms of "before accession" and "after accession". Before accession the CEE states complied with the European norm. This is a fact acknowledged by almost any scholar of Europeanization and it is backed up by EU Regular Reports and the final stage of the accession process - the EU membership. After the accession, though, the conditionality⁶ mechanism of the EU is no longer in place (at least not for most of the CEE countries⁷). Compliance by rewards and sanctions is not available anymore. Starting from this factual observation, the rationalistic Europeanization literature argued

⁵ The hidden assumption here is the classic rationalistic (public choice) assumption that politicians seek re-election and they will be sensible to the median voter's ideal point. Here, internalization by social learning changes the position of the median voter and a change in policy position it is expected to occur.

⁶ By european conditionality I mean a system of positive and/or negative stimuli used as a central strategy by the EU to induce non-member state harmonization with its own standards. This definition draws from Kelley (2004, p. 428) and Schimmelfennig, Engert and Knobel (2003, p. 495).

⁷ Romanian and Bulgaria remained under scrutiny due to the Cooperation and Verification Mechanism (CVM).

that one should observe a reform regress or a reform reversal from the part of the new Member States. This is the regress hypothesis or reform reversal hypothesis. This hypothesis was formulated, amongst other, by Schimmelfenning and Sedelmeier (2004), Schimmelfenning (2005, 2008), Epstein and Sedelmeier (2008), Meyer-Sahling (2009), (2011), Pridham (2008), Iancu and Ungureanu (2010).

At the beginning of this section I briefly stated a fourfold argument about the effectiveness of European compliance. As it can be seen, this argument belongs to the class of regress hypothesis theories but it is a special case of this class. It states the regress hypothesis conditional. Applied to CEE compliance after accession, the hypothesis should have the following form: Once EU conditionality is gone, the compliance of CEE states to EU norm should regress *if* social learning was ineffective. In other words: compliance to EU norms was costly to the national CEE elites. Once gone, if there is no domestic (popular) pressure to maintain it, they will change the rules and one will witness a reform reversal. This argument is useful for a large class of phenomena and its domain is large enough to explain almost any aspects of reform and de-form in CEE states. I will, though, use it here only for the case of Romanian public administration reform and de-form or reform reversal for the politicization dimension.

Civil service politicization and reform reversal

The Wilsonian – Weberian tradition favors the civil service as the most advanced form of public administration. In other words, bureaucratic production is considered to be superior to its counterparts. Wilson (1892) and Weber (1922) argued that bureaucracy has (unlike other forms as spoils system or the older system of class and privilege) two of the most important characteristics: it is neutral or impartial and it is efficient or effective. In this paper I am interested only in the problem of neutrality⁸. The systematic study of neutrality of modern public administration began rather recently. Starting with the nineties though more scholars manifested scientific interest in it. Rauch (1995), Rauch, Evans (1999), (2000), Goetz, Margetts (1999), Goetz, Wollmann (2001), Meyer-Sahling (2001), (2004), (2008), (2009), Peters, Pierre (2004), Gajdushek (2007), Eichbaum, Shaw (2008) are some examples of this kind of studies. These authors are mostly focused on the ways in which CEE countries imported formally and behaviorally the bureaucratic EU norm. Explicitly stated, non-neutrality or politicization on the public

⁸ It is though reasonable to argue that a politically biased public administration will produce other goods than those wanted by the citizens and therefore it will be inefficient with respect to their demands.

administration was the status quo of these states. By conditionality, EU guided these states through a long, difficult and sometimes not fully successful process towards an impartial public administration. Quoting Nunberg (1999), Meyer-Sahling (2004) argued that “more than one decade after the change of regime, the record of civil service reform in post-communist Europe suggests that civil service developments are characterized by reform delays, failures to implement legislation and the continuing politicization of personnel policy processes” (Nunberg in Meyer-Sahling, 2004, p.72). Further, Meyer-Sahling describes this situation arguing that Poland, Lithuania and Latvia adopted civil service laws but they were ineffective in implementing it. This failure was patch by revised laws in 1998, 1999 and 2000. Estonia adopted such a law in 1995, Bulgaria and Romania in 1999, Slovakia in 2001 and Czech Republic in 2002 (another failure case because the 2002 law was never implemented). The only CEE country which is an exception from the slow progress rule is Hungary which adopted a civil service law in 1990 and 1992 and which deepened its reforms by 1997, 2001 and 2002 laws. (Meyer-Sahling, 2004). The Nunberg-Meyer-Sahling argument has at least two important implications: first, the existence of a zero point – an over-politicized communist type public administration (Goetz, Wollman, 2001, p.864) is presumed. Second, the process of de-politicization actually took place. It was slow but it existed. Absent (or not strong enough) were, however, - as Meyer Sahling (2009), (2011) argues - the mechanisms to ensure the durability of these reforms. “EU failed to address the issue of post-accession durability, as it devised virtually no instruments to prevent post-accession reform backsliding in the area of civil service governance.” (Meyer-Sahling, 2011, p.235). Indeed, Slovakia, Czech Republic, Poland and Slovenia are, as Meyer-Sahling (2011) shows, cases of reform reversal after accession. In the Baltic countries case the regress hypothesis is not confirmed and for the Hungarian case the evidences are not conclusive. (Meyer-Sahling, 2011, p.251).

The underling theory here is that politicians or political elites are interested in having a power instrument as bureaucracy in their grasp. As a result of external pressure (EU conditionality) they slowly reform the public administration. Since after accession the compliance external incentives are gone, one should expect that the CEE political elite seek to reinstate the politicized status quo. Of course, this explanation is not valid for the Baltic states cases and therefore one should add either the possibility of a methodological failure from Meyer-Sahling (2011) or a case of successful social learning. Since I think that the methodological problem is rather improbable, the latter case seem to be more appropriate. So I should rewrite the regress hypothesis in the case of

public administration politicization as the absence of both terms. In other terms, it is not the case of a true disjunction of the conditionality term and the social learning term or of a conjunction of both.

This theory and its fully rationalistic cousin (the unconditional regress hypothesis) have, of course, to be tested. In this respect, Rauch and Evans (1999) used a Webberianess Scale Rauc and Evans, 1999, p.749) to assess the degree in which central agencies are characterized by meritocratic recruitment and the degree in which they provide a predictable long term career for civil servants. Gajduschek (2007) addressed the Hungarian case using an imaginary merit-patronage scale, while Eichbaum and Shaw (2008) used a similar index of "administrative politicization" (Eichbaum and Shaw, 2008, p.337). The politicization literature is scarce for the Bulgarian and the Romanian cases (Iancu and Ungureanu 2010 and 2011; Andrei et al., 2012). From this point of view, it could be said that both Romania and Bulgaria fall under the shadowy part of EU, one to be partly (only on the Romanian case) dealt with in the following section.

Politicization in the hidden part of EU: The Romanian case

For some time now, reform and democratization in CEE countries have triggered the interest of many public administration scholars (Klimovsky, 2013; Iancu, 2013b; Pinterič and Prijon, 2013). Romania, with its institutional changes targeted to satisfying the public interest and the EU membership criteria was no different. Several national researches focused on reform patterns and actors involved in democratizing central and local public administration. Politicization emerged as a subject *per se*, and arguments were raised on whether the country was still (really) a viable and stable democracy. In fact, by July 2012, the Commission Report on the progress of Romania under CVM its serious concerns on the democratic status of the country: "Political challenges to judicial decisions, the undermining of the constitutional court, the overturning of established procedures and the removal of key checks and balances have called into question the Government's commitment to respect the rule of law and independent judicial review" (p. 3). And although by December 2012, Romania formally assured the European leaders of its commitment to democracy (in an "agreement of inter-institutional collaboration" signed by the Romanian President T. Basescu and Prime Minister V. Ponta), eyebrows still raise on account of politicization.

A recent study relevant to civil service and thus to the scope of this article, is the one written by Andrei et al. (2012). Their general argument was that civil servants were highly vulnerable to legislative changes, as top politicians usually altered the rules of recruitment so as to better fit

their appointees into management positions (Andrei et al. 2012, p.7). Following a survey conducted on 550 employees from public administration, the authors operationalize politicization as: changes in top management and executive positions based on political reasons and membership of public administrators in political parties. As results are presented, one reads that abruptly 36% of the respondents opted for a “I do not know” answer when asked “Were there any changes in personnel based on political criteria in your institution during the last year?”. Such a behavior, as argued by Andrei et al. (2012, p.10), could be seen as fear for acknowledging the politicization of the system. Furthermore, regarding the political membership variable, 57.1% of the top management civil servants working for the central administration and 42.9% of those employed by local administrations declared their political affiliation to a party (Andrei et al., 2012, p.12). That led the authors into concluding that between 2007 and 2010 the neutrality of civil service in Romania could be questioned (Andrei et al., 2012, p.19).

In the same vein, but arguing on the dead letters⁹ of the civil servants' code of conduct in Romania stands the work of Bryane (2012). As his argument unfolds, he comes to the very interesting conclusion that “no sane civil servant in Estonia, Romania or another Central European country would reasonably disobey their bosses' orders because they believe their own decisions would better serve the public interest or the economise on government resources. No sane civil servant would rely on an administrative court, tribunal or arbiter to rule in their favour in such a circumstance. As civil servants can not rely on these codes of conduct in their daily work, they fail to provide substantive rights for these civil servants” (Bryane, 2012, p.297). Giving that the Romanian Code of Conduct (Law 7/2004 with amendments) speaks quite clearly of impartiality and political independence (article 3), Bryane's work (2012) provides an excellent opportunity for consolidating the view that Romanian civil servants as well as politicians exhibit an instrumental behavior: the first do not attempt to disobey their political leaders, and the latter dissimulate political impartiality for the eyes of monitoring agents, while altering the rules according to their discretionary agendas.

Nuțu and Ioniță (2012) provide, at their turn, another proof for the existence of a deeply politicized administration in Romania. Their “clientelism index”, built on the frequency of discretionary transfers from

⁹ See Falkner and Treib (2008). They argue that the new member (and two other old member states) states appear to fall within a group that could be dubbed the “world of dead letters” (Falkner, Treib, 2008, p.293). This label refers to the inconsistent behavior of the mentioned states in regard to European norm.

central budget to local administrations serving the ruling party shows a peak between 2007 and 2008. Amounting to almost 80% of the total own revenues of local governments in 2008, such transfers were made based on power affiliation “with a twist” – money were targeted not only to mayors of the political color of the ruling coalition, but also to the independent officials (who usually denounced the opposition parties and became independent after election) (Ioniță, 2012). Giving that according to the law, mayors are actively involved in recruiting civil servants, one could infer at this point that politicization of the recruitment system might be worth testing.

On this issue, Ungureanu (2012) and Iancu and Ungureanu (2010) and (2011) built a quite comprehensive outlook of the bureaucracy and civil service reform in Romania. In fact, Iancu and Ungureanu (2010) and (2011) suggest that the European Union played an important role in adjusting the instrumental behavior of politicians and hence, directed the reform so as to better accommodate the accession expectations. Such an argument, supported by an overview of the civil service act, amendments and reform strategies adopted between 1999 and 2010, present a pattern of reform in two stages.

The first one seemed obvious during the negotiation trials (1999-2006): Romania was a candidate (adhering) country, interested in playing by the rules (as set by the European Councils of Copenhagen and Madrid) and following to the letter the recommendations provided by the European monitoring agents. The analysis of the Regular and Monitoring Reports the European Commission issued for Romania (and the rest of the CEE region, for that matter) between 1998 and 2006 offered a comprehensive ‘to do list’ for civil service reform. In a non-exhaustive manner, Romania was kindly advised to adopt a civil service act, draft a code of conduct, improve the transparency of the recruitment procedures, adjust its institutional mechanisms for better fighting against corruption, and improve the overall efficiency of the public system. And if one follows the legislative innovations of the time, one may find that Romania adopted a Civil Service Act by 1999 (and amended it no less than 38 times up to present and 24 times between 1999 and 2006), created a National Agency for Civil Servants in 1999 (and by 2006 it reinforced its objectives and mission), allowed free access to public information by 2001, designed a Reform Strategy for Public Administration and e-Government by 2001 and one targeted at fighting against corruption by 2002, and elaborated a Code of Conduct for Civil servants by 2004.

The second stage was evident between 2007 and 2010. Iancu and Ungureanu (2010), (2011) argued that some of the provisions regarding the meritocratic civil service recruitment and mobility were changed thus allowing politicians to discretionary allocate offices within public administration. They especially referred to the 2009 changes in the Act of civil servants, when the list of eligibility criteria for high rank civil servants (top management positions) was amended so as: to allow the equivalence between graduating a training program and exercising a full Parliamentary mandate; to acknowledge the mayor's power to recruit his/her own civil servants locally; and to approve the situations when, upon request, top management civil servants would suspend their public office so as to exercise a parliamentary mandate.

The studies presented so far roughly argued in favor of the very same conclusion: politicization is present in the Romanian civil service, and the law and regulations allow it. Under-regulating the recruitment and mobility of civil servants, the competencies of the National Agency for Civil Servants or the methodology for allocating financial resources gives room to discretionary powers. How do these powers manifest in the case of civil service reform, or most specifically in that of recruiting personnel in Romania? Did EU made any difference?

With EU conditionality present, but not yet a clear vision on the effectiveness of social learning, two reform patterns seem to be under investigation:

1. *Conditional reforming* - seems to have happened between 1999 and 2006. Romania was officially a candidate country to the EU and the conditionality mechanisms were very much present. It was during that time that almost all regulations on meritocratic recruitment of personnel were enacted. As Iancu and Ungureanu (2010), (2011) presented it, the Act on civil service (1999) spoke of merit base selection, stability and a civil service free of political pressure. It also proclaimed the obligation of all civil servants to restrain themselves from expressing their political beliefs while on duty and announced free public competitions to be monitored by a National Agency for Civil Servants. The Act failed yet to include any pieces of information on how recruitment committees were to be formed or how the competition was to be organized. Such a situation made the European Commission give a rather blunt comment on the success of the reform, as it stated in 2002 that "little substantial progress could be reported" (Regular Report 2002, p.28). A year later, the Act on civil service undergone major revision: new (more merit-base) recruitment procedures were put in place, a new rank of civil servants was introduced and formerly political appointees (the prefects) were

transformed into career officials; still, recruitment commissions for top management positions (high rank civil servants) would have been formed out of people nominated by the Prime Minister at the proposal of the Ministry of Internal Affairs and Administration. While the National Agency seemed to have consolidated its powers, it remained under the political supervision of the Government. At the time, the European Commission had already advocated in favor of signing the accession treaty, and by 2004, Romania closed all the negotiation chapters. As EU's Monitoring reports (issued in 2005 and 2006) were still quite scrupulous in advocating against corruption in the system and more transparency in the public administration, by 2006, a peak in civil service reform was reached.

2. *Unconditional de-forming* – seems to have happened as of 2007. One could argue that EU continued its monitoring through the CVM reports. While fully aware of the role such documents might present for the overall image of Romanian reforms, there are two reasons for which I consider them of lesser importance for the conditionality argument. First refers to the scope of the CVM: in the case of Romania, EU seemed interested in how the fight against corruption went within the judicial system. Surely, when question on whether there was a rule of law present appeared in the summer of 2012, political neutrality became an indirect subject of concern. Still, no direct references in that regard were being made. Second, what could Romanian politicians lose should EU got suddenly upset by their behavior in recruiting civil servants? Such a question (and not really its possible answers) made me think twice on considering EU's conditionality present after 2007. Under these limits I consider safe to assume that after gaining the EU membership, Romania faced no real conditionality in terms of merit-base recruitment of civil servants. In such context, the amendments to the Act on civil servants that followed suggest an increase in re-politicization - just as argued by Andrei et al. (2012), and Iancu and Ungureanu (2010). For example, in 2009, former high rank civil servants (as of 2003, the prefects) were re-converted into political appointees; recruitment commission were reformed so as to comprise three members from the institution where the job opening is present, and only two delegates from the National Agency; no unanimity vote was required. And giving that with the start of the financial crisis, almost all new public recruitments were blocked, it comes as no surprise that no legal substantial changes were further reported as of 2009.

If read under the lenses of Table 1, the two reform patterns presented above seem to suggest that while EU conditionality was present (1999-2006), politicization of the civil service (and recruitment procedures) was

at its lowest levels; however, with the conditionality gone (2007-2012), politicization re-appeared. That might suggest that the levels of social learning effectiveness were quite low, and therefore that the Romanian case could belong to the fourth type of Europeanization (low level of compliance, reversed changes) – the de-europeanization.

Conclusion

This article started with defining Europeanization as the incremental process of import-export of norms and practices between EU and candidate countries, where EU mainly exported norms and candidate states (mainly) complied with them. That raised the argument of compliance, which led me into assuming a hybrid model of compliance which implied that there were four possible types of Europeanization. The first one relies on the existence of political conditionality and an effective social learning; the second, maintains the conditionality but reduces the social learning of candidate / Member States. The third and fourth types assume the absence of conditionality, while addressing a case of internalized changes (type 3) and one of reversed changes (or type 4, de-Europeanization). The Romanian case, a hidden part of the EU studies on conditionality and politicization suggested that public administration there had experienced a fair trial of reforms during the accession period (1999-2006), only to revert to a politicized behavior soon after the EU conditionality stopped.

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