OVERCOMING BILATERAL DISPUTES AS PART OF THE EU ACCESSION PROCESS

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Abstract

Bilateral disputes have presented a significant obstacle for EU enlargement, especially in the region of South-Eastern Europe. The disputes between Slovenia and Croatia, Macedonia and Greece, Turkey and Greece/Cyprus demonstrated the need for a more cohesive approach in order to avoid situations where bilateral issues could pose a threat to the enlargement policy. Moreover, future enlargement rounds may be endangered by additional disputes – Croatia and Serbia, Serbia and Kosovo, Albania and Serbia, etc. Historical, cultural and political issues often favour national interests, while the common European interest remains neglected. The idea for a "Europe whole, free and at peace" can be realized only with the necessary political will and courage, strong determination for completion of the European project, and continuous commitment to the process that has brought benefits to millions of European – the enlargement. Instead of maintaining the fear of "importing conflicts", the EU is the most appropriate actor that can contribute to solve them, using all the tools available in the accession process. Lessons learned, existing challenges, as well as potential outcomes are analyzed in this paper.

Key words

EU, North Macedonia, accession, bilateral, disputes

Introduction

Protecting the national interest is one of the roles which governments tend to favour over common interests shared with other nations. In the context of the European unification, several cases of using the veto power have interfered with the EU enlargement process, causing damage to the credibility of the EU. Denying the right of a candidate country to continue its integration path due to a bilateral dispute has not proven to encourage reforms in the accession process, nor has solved internal EU difficulties used as an alibi to delay the enlargement.

What are the origins of vetoing the enlargement process, and what are the consequences of a Member State using this right? With the 'Luxembourg Compromise' of 1966, the EU Member States agreed that if a very important national interest is at stake, the decision has to be adopted unanimously, thereby effectively creating the right of veto (Teasdale, 1993). Although this method has been eliminated in most of the areas where majority voting is needed, the enlargement decisions still require unanimity, allowing Member States to use the 'national interest' as an alibi for preventing a candidate country to move forward, even though required criteria have been met.

Without any specific bilateral dispute existing, France vetoed the accession of the United Kingdom in 1963, creating a situation that left the UK out of the EEC until 1973[48]. Another example, in a different set of circumstances, the Central and Eastern European countries that were part of the 2004/2007 enlargement round have experienced veto threats by the existing EU Member States. „Environment" was one of the most difficult chapters, providing a chance for Austria to dispute the safety of the 'Mochovce' Nuclear Power Plant in Slovakia, (Wesolowsky, 1998:20), as well as the decommission of its 'Jaslovské Bohunice' plant.[49] The safety of the 'Temelín' Power Plant in the Czech Republic was an issue raised by Austria,[50] as well as the 'Krško' Power Plant in Slovenia's accession (Linden, 2002).

[48] French President De Gaulle vetoed UK's accession due to the nature of its economy, free trade areas with other countries, differences with the founding Member States of the EEC, etc. Moreover, the British tradition of close relations with the US were perceived as a threat to the European unification.

[49] 'Nuclear deal spurned by Austria', The Slovak Spectator, 4 October 1999.

[50] Resolved with the 'Protocol on the Negotiations between the Czech and the Austrian Governments', led by Prime Minister Zeman and Federal Chancellor Schüssel with the participation of Commissioner Verheugen, was signed in the monastery of Melk, Austria on 12 December 2000.

Italy requested a compensation for a former Italian property in Istria, as well as other historical disputes – quoting "the national interest" as the reason to veto the start of negotiations with Slovenia in 1994 (Favretto, 2004) and right-wing politicians in Italy even called for a revision of the borders with Slovenia (Albioni and Greco,1996).

The Netherlands delayed the Stabilization and Association Agreement between the EU and Serbia, due to a lack of cooperation with the Hague Tribunal, and Romania raised the issue of the Romanian minority in Serbia, before this country received its candidate status in 2012[51].

In the later steps in the enlargement process, including the early stages of the pre-accession, the following cases of veto can be identified in the region of South Eastern Europe: 1) Slovenia's veto on Croatia's accession; 2) Greece's and Cyprus' veto on Turkey's accession; 3) Greece's veto on Macedonia's accession.

Blocking the applicant country is legally framed in Art. 49 of TEU, where a unanimous decision of the Council is required to grant the status of a candidate country. Although the article does not require justification from the Member State using the veto, a flexible interpretation of the membership criteria is often used as an alibi. Opportunities to veto a candidate/acceding country in the later stages are numerous: opening and closing of every negotiating chapter, ratifying the accession agreement – meaning that there are more than 70 occasions to freeze the accession of the candidate country[52]. European institutions have not been able to set a mechanism that will prevent a Member State from abusing its right of veto, thereby allowing the national interests to endanger the common, European interest.

The credibility of the EU and the enlargement policy is seriously at risk and the tolerance of countries that use the veto right in order to solve their bilateral disputes contributes to this perception. The European Commission and the European Parliament have been persistent in favouring the common interest of the Union, as well as in their pro-enlargement positions, calling for a settlement of the bilateral disputes that are endangering the enlargement policy, and confirming that the 'Copenhagen criteria', and not unilateral actions, should be decisive in the process[53]. National governments, on

[51] '*Romania flexes muscle at EU meeting on Serbia*', EU Observer, 28.02.12.

[52] The number of chapters of the *acquis* negotiated is 35.

[53] Detailed positions can be found in the Progress Reports of the European Commission, its Enlargement Strategy Papers, as well as the resolutions of the European Parliament related to progress of the candidate countries involved.

the other hand, have remained consistent protecting the veto power, which is not compatible with the recommendations of the Commission and the Parliament. Supranational institutions do not possess the mechanism to override a veto from a Member State, but they do have the tools to express the European interest and protect their policies.

Border Dispute between Slovenia and Croatia

The dispute over the Gulf of Piran appeared after the independence of both former Yugoslav republics, since prior to the break-up of Yugoslavia, the internal borders between them were not applied to the sea. It involved issues about Slovenia's access to open sea in the Adriatic, as well as the exploitation of the natural heritage in the Gulf. After it became a Member State of the EU in 2004, Slovenia threatened to block Croatia's accession, if the dispute continued. Croatia started the membership negotiations in December 2005, and in the course of 2008 the dispute culminated with Slovenia blocking the opening of new chapters, effectively using the veto power.

In December 2008, the Slovenian Foreign Minister presented documents from seven negotiating chapters, which were the reason for the veto on behalf of Slovenia: in the „Agriculture" chapter, Slovenia protested that Croatia presented several villages in the disputed territory of the Dragonja River as part of Croatia, in „Food Safety" it was the area in the Adriatic Sea, in taxation it was the border crossing, in infrastructure – certain maps, including the disputed territory, in justice – maps enclosed in the documentation, in environment – mentioning the ZERP[54], etc. At a press conference, the Foreign Minister Žbogar stated that "Slovenia must protect its national interests"[55]. In June 2009 Slovenia blocked the closing of the „Statistics" chapter, and a month later, the closing of another chapter was blocked – „Freedom of movement of workers" – which meant 13 chapters were blocked.

It took a year before both sides agreed to hand over the dispute to an international arbitration, signing an Arbitration Agreement in Stockholm, in December 2009. Although the dispute was not finally solved, it lifted the

[54] In Croatian: Zasticeni ekolosko-ribolovni pojas – Ecological and Fisheries Protection Zone declared by Croatia in 2003, excluding its application from EU member states. One of the main items of the dispute.

[55] "Žbogar: Slovenija je morala zaščititi nacionalni interes" ("*Žbogar: Slovenia Must Protect its National Interest*"), STA (Slovenian Press Agency), 19 December 2008.

veto for Croatia's accession, leading to closing of all chapters in June 2011, and becoming a full Member State in June 2013.

Following a scandal about an alleged document leakage in July 2015, involving a Slovenian judge at the arbitration panel, as well as other high ranking Slovenian government representatives, Croatia decided to withdraw from the Arbitration Agreement, due to a breach of the arbitration rules. Although an internal investigation of the Permanent Court of Arbitration found that no leakage had occurred, and that the breach of the Agreement did not prevent the tribunal to finish its task, Croatia remained on its position that the Agreement is not valid anymore.

In June 2016 the Arbitration Tribunal announced its decision, which was positively received by Slovenia, and not accepted by Croatia. The verdict granted 3/4 of the Gulf of Piran waters to Slovenia, as well as a passage to the open sea. Although the European Commission, as well as many EU Member States called for implementation of the verdict, Croatia continues to reject it, thereby maintaining the dispute open. Since both countries involved are Member States, the veto power that Slovenia used earlier is now irrelevant. Today, it is a bilateral issue between two Member States, with equal leverage on both sides – both are EU Member States.

Turkey blocked by Cyprus and Greece

Several historical, geographical, cultural, and other aspects have caused the dispute that prevents Turkey from moving forward with its European integration path. The 'Cyprus Question' has long been a burden of the bilateral relations between Turkey and Greece, but with Cyprus becoming a Member State of the EU, the issue became a barrier for Turkey to join the same alliance.

Greece was prepared to veto the enlargement with the Central and Eastern European countries if Cyprus was not included (Önis, 2001; Baun, 2000), or even if the Turkish Cypriot community was involved in the talks (Binyon, 1997). The Greek Prime Minister Simitis hinted at a possible veto saying that "Greece will use all measures offered in the framework of the European Union to achieve what it considers to be right" (Mortimer and Hope, 1997). If this veto had been realized, it would have torpedoed the entire Eastern Enlargement (Ramming, 2008). Cyprus started the negotiations in 1998, signed the Accession Treaty in April 2003, and became a full Member State in May 2004, although the accession to the EU was fundamentally incompatible

with the continuation of the island's division. Several years later, this was confirmed by the revealed confidential US cables, quoting the EU External Relations Commissioner at that time, Chris Patten, who noted that "some of the accession countries were foisted on the EU as part of a larger bargain", and that "the Greeks insisted on Cypriot admission as the price of agreeing to some of the northern European candidates"[56].

Turkey has had an Association Agreement with the European Economic Community in force since 1964, applied for membership in 1987, and became a candidate country in 1999. Negotiations were opened in 2005.

Currently, 16 out of 35 negotiation chapters are opened, and only one chapter is closed. Six chapters are blocked by Cyprus. The continued Turkish presence on the island is an effective barrier to the application of the *acquis*, as well as the implementation of the four freedoms of the common market. Although the Copenhagen criteria are evaluated in detail regarding the very chapter, Turkey's accession remains to depend on the solution of the dispute. "It's all about Cyprus". (Paul, 2011).

In early 2016, the EU – Turkey deal on the refugee crisis had the potential to unlock the negotiations, and also grant a visa-free travel for the Turkish citizens to the Schengen area. Nevertheless, developments in Turkey since the second half of 2016 have caused a further delay of progress, and no chapters have been opened or closed since then. In March 2019, the European Parliament adopted a resolution calling for suspension of the negotiations with Turkey.

Cyprus, a country which managed to enter the EU due to the threat for a veto – is now vetoing Turkey's accession. This bilateral dispute did not prevent Cyprus to enter – a situation that would have probably occurred if Turkey had become an EU member before Cyprus. This precedent endangered the credibility of the EU and the enlargement process as a whole. Namely, the rationale behind the EU policy not to import conflicts is exactly that: to prevent newcomers that have a bilateral dispute from abusing their membership rights, as leverage against the other side.

[56] Quoted in 'US Embassy Cables: Chris Patten Remarks on Putin's "Killer Eyes"', *The Guardian*, London, 1 December 2010.

Macedonia's Accession

After proclaiming its independence in 1991, the Macedonia was drawn into a bilateral dispute over its name. Greece, already a Member State of the European Union since 1981, required that the name of the country – 'Republic of Macedonia' – cannot be the same as the administrative regions containing the term 'Macedonia', and there is a need to distinguish between the country neighbouring Greece, and the region within Greece[57].

Macedonia was accepted as a UN Member State under the provisional reference (not a name) 'The former Yugoslav Republic of Macedonia',[58] although there is no legal basis for this act of the UN Security Council. According to the UN Charter and relevant ICJ rulings, the UN cannot impose additional conditions for the acceptance of a new Member State[59]. Both countries signed the Interim Accord in 1995, where Greece agreed "not to object to the application by or the membership of" of Macedonia in international, multilateral and regional organizations and institutions[60].

At the NATO Bucharest Summit in 2008, although it was confirmed that the country had fulfilled all the criteria to receive an invitation to join NATO, this was not realized due to the veto by Greece. Macedonia filed an Application to the International Court of Justice in 2008, and in December 2011, the Court ruled out that Greece violated its obligations from this international agreement[61].

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[57] The region of Macedonia is a geographical area of 67,714 km^2, which is divided among the Republic of North Macedonia, Greece, Bulgaria, Albania and Serbia (including a part in Kosovo). The current borders were mostly defined with the Treaty of Bucharest in 1913, meaning that the part of the geographical region of Macedonia, which is today in Greece, was not part of the contemporary Greek state until 1913. Furthermore, the official naming of the Greek administrative regions of 'Central Macedonia', 'West Macedonia' and 'East Macedonia and Thrace' occurred in 1987, during the first signs of dissolution of Yugoslavia. Before 1987, there was no official administrative region containing the term 'Macedonia', and there was only one political entity – the Democratic/People's/Socialist Republic of Macedonia.

[58] United Nations Security Council Resolution No. 817, 7 April, 1993.

[59] For an extensive legal analysis of this case see: Janev, I. (1999) Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System, *The American Journal of International Law*, Vol. 93, No. 1 (Jan., 1999).

[60] Article 11 of the Interim Accord between Greece and the Republic of Macedonia, signed on 13 September, 1995.

[61] International Court of Justice, Judgment of 5 December 2011, Application of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia vs. Greece).

The EU established diplomatic relations with Slovenia and Croatia in January 1992, while relations with Macedonia were established in December 1995. Although the Badinter Arbitration Commission[62] in 1991 delivered its opinion that Croatia and Macedonia fulfil the conditions to be formally recognized by the European Communities, the EC did not take steps in this direction, due to the objections of Greece.

Macedonia applied for a EU membership in March 2004, and received a positive opinion from the Commission in November 2005,[63] and a candidate status was given to the country at the Council meeting in December 2005.[64] A recommendation for beginning the negotiations was issued in October 2009.[65] Even in this occasion, where decisions are based solely on the progress made, it appeared that the Environment Commissioner, Stavros Dimas,[66] "expressed his opposition to the move in a letter sent to Brussels"[67].

Following years of repeated recommendations from the Commission, but no unanimous decision in the Council, internal political developments in Macedonia caused a government change, bringing to power a leftist government that signed a bilateral agreement with Greece, agreeing to almost all demands by the Greek side. Protests in both countries demonstrated the lack of popular support. In the North Macedonian case, the procedure to implement the agreement (requiring two thirds majority in the Parliament – which the governing coalition lacked) involved political pressure on opposition MPs, including judicial persecution, placement into custody, and alleged bribery.[68] Even the European Commissioner Johannes Hahn, suggested "a

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[62] Established by the EC Foreign Ministers at an Extraordinary Meeting in Brussels on 27 August, 1991, led by Robert Badinter, President of the French Constitutional Court, in order to examine the conditions for the new independent countries to be recognized by the EC.

[63] European Commission, *Opinion on the Application for Membership*, Brussels, 9 December, 2005.

[64] European Council, Presidency Conclusions, Brussels, 15-16 December, 2005.

[65] Enlargement Package 2009, Speech of Enlargement Commissioner Olli Rehn, Brussels, 14 October 2009.

[66] European Commissioner for Environment (2004-2009) held several ministerial posts in the Greek government: Foreign Affairs (2012), Industry, Energy and Technology (1990-1991), Agriculture (1989-1990), Trade (1980-1981).

[67] 'Skopje urged to settle name issue with Greece', *Neoskosmos Newspaper*, 19 October 2009.

[68] More on this in: Martens, M. (2019) *Außenpolitik mit schwarzen Kassen (Foreign Policy with Black Cash Registers*), Frankfurter Algemeine Zeitung, 24.04.2019

mix of ratio and Balkans",[69] in order to pass the constitutional changes, after the referendum to approve them failed in September 2018[70].

After the agreement had been ratified in both countries, the EU failed to open negotiations that had previously been blocked, due to the lack of progress in the reforms processes. Even though the dispute has been solved, different reasons prevent the breakthrough in this case. Also, the North Macedonian case demonstrates that when a country's accession is vetoed, it is more likely that it will fall into backsliding on its European path.

Conclusion

The European enlargement process is formally based on fulfilling the membership criteria, and the progress is following the implementation of the EU standards in the candidate/acceding country. Nevertheless, as in all other policies, the national interests of the Member States play a significant role, including the bilateral relations with the candidate countries. Given the examples above, we can conclude that solving the disputes during the negotiation process is not always possible, meaning that the EU does not possess the mechanism to protect the enlargement process from Member States using the right of veto, due to their national interests. Supranational institutions have been in favour or enlargement, although the disputes have not been fully settled, but intergovernmental bodies remain committed to protect the national governments' interests.

The strategy of blocking the accession of a country until the dispute is solved has not always proven to be successful: Croatia managed to become a Member State without solving the dispute with Slovenia, and the Slovenian leverage of being a Member State is gone. Greece managed to put enormous pressure on Macedonia, although the lack of national consensus for the agreed solution, in both countries, raises questions about its sustainability with future governments. Moreover, the lack of progress in the North Macedonian accession after the agreement demonstrates the insufficient capability of the Union to act quickly in order to avoid backsliding in the reforms – a

[69] Quoted in Schwartz, A. (2018) *„Ich glaube an einen Mix aus Ratio und Balkan" ("I am thinking of a Mix of Ratio and Balkans")*, Kurrier, 05.10.2018

[70] Only 36.3% of the North Macedonian voters voted on the referendum, thereby not fulfilling the legal requirements for it to succeed. Even in this low turnout, pressure on voters was noted, as well as unusually high frequency of voters in the last two hours, especially in the Albanian-populated regions.

situation that is always appearing when a country is not given the deserved reward after painful political decisions. The same goes for Turkey, which has slowly moved away from the EU negotiations since the veto did not produce the desired outcome in the dispute with Cyprus and Greece. On the contrary, the dispute over Cyprus is not solved, and the candidate country is moving backwards in terms of fulfilling the membership criteria.

Future enlargement rounds will certainly include blocking strategies, especially in the Balkans, where all countries have some sort of a dispute with at least one of its neighbours. Croatia has already raised concerns over the treatment of the Croatian minority in Serbia, the laws on war crimes, as well as in areas of education and culture, following the same pattern as Slovenia – a country that was blocked in its accession becomes the blocking country after it becomes a Member State. Montenegro, if it enters the EU before Serbia, may also block its accession, and Serbia itself may block Albania's accession due to bilateral issues, or issues over Kosovo.

Setting the precedent that the veto can be used in order to protect the national interest in a bilateral dispute jeopardizes the essence of the European unification, and its commitment to contribute to "peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples..."[71].

Issues arising from a different historical, cultural, or political background have always existed in the region of the Balkans, and the only sustainable solution for all arising disputes is the full integration of the region into the EU. Veto powers, on the other hand, remain a tool in the hands of a Member State, but the EU must find a solution to this complex problem, so that the common European interest can outweigh the national interests.

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[71] Art. 3 of the Consolidated versions of the TEU and TFEU (ex Art. 2 of TEU)

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