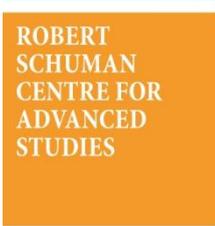




European
University
Institute



ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

WORKING PAPERS

RSCAS 2013/87
Robert Schuman Centre for Advanced Studies

The unbearable lightness of Europeanisation:
extradition policies and the erosion of sovereignty in
the post-Yugoslav states

Jelena Dzankic

European University Institute
Robert Schuman Centre for Advanced Studies

**The unbearable lightness of Europeanisation:
extradition policies and the erosion of sovereignty
in the post-Yugoslav states**

Jelena Dzankic

EUI Working Paper **RSCAS** 2013/87

This text may be downloaded only for personal research purposes. Additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the author(s), editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper, or other series, the year and the publisher.

ISSN 1028-3625

© Jelena Dzankic, 2013

Printed in Italy, December 2013

European University Institute

Badia Fiesolana

I – 50014 San Domenico di Fiesole (FI)

Italy

www.eui.eu/RSCAS/Publications/

www.eui.eu

cadmus.eui.eu

Robert Schuman Centre for Advanced Studies

The Robert Schuman Centre for Advanced Studies (RSCAS), created in 1992 and directed by Brigid Laffan since September 2013, aims to develop inter-disciplinary and comparative research and to promote work on the major issues facing the process of integration and European society.

The Centre is home to a large post-doctoral programme and hosts major research programmes and projects, and a range of working groups and *ad hoc* initiatives. The research agenda is organised around a set of core themes and is continuously evolving, reflecting the changing agenda of European integration and the expanding membership of the European Union.

Details of the research of the Centre can be found on:

<http://www.eui.eu/RSCAS/Research/>

Research publications take the form of Working Papers, Policy Papers, Distinguished Lectures and books. Most of these are also available on the RSCAS website:

<http://www.eui.eu/RSCAS/Publications/>

The EUI and the RSCAS are not responsible for the opinion expressed by the author(s).

Abstract

This research analyses the effect of Europeanisation on sovereignty in the post-Yugoslav states by examining the evolution of the different states' policies related to extradition of their own nationals. Extradition is an important aspect of these countries' political transformation, because the rule of law and regional co-operation are enshrined in the set of conditions these countries have to meet to enter the European Union (EU). The research thus looks at how the different post-Yugoslav states approach the extradition of their own nationals, and whether they have altered them in view of the requirements of the accession process. By doing so, this paper looks at the dynamics between the duty of the state to protect its citizens and the transformative power of Europeanisation in the Western Balkans.

Keywords

Citizenship, sovereignty, extradition, Europeanisation, EAW

1. Introduction

On 1 July 2013, Croatia became the 28th EU Member State. The Croatian ‘accession party’ was not attended by the German Chancellor Angela Merkel, who thus expressed her discontent with the change in Croatia’s approach to EU legislation at the dawn of EU membership. In fact, mere two days before the country became an EU Member State, the Parliament of Croatia adopted the amendments to its Law on Judicial Cooperation in Criminal Matters with the Member States of the EU, preventing the extradition of its own nationals to the EU Member States for crimes committed prior to 7 August 2002, the date of the enforcement of the European Arrest Warrant. Previously, the Croatian Law, similar to the laws of another 22 EU Member States, did not contain a temporal limitation on extradition and the country changed its Constitution in 2010 in order to be able to implement the EU’s legislation. The abrupt legislative changes followed Germany’s request of June 2013 for the extradition of Josip Perković, a former security agent, charged for the assassination of a Croatian political émigré in 1983. The underlying amendments, commonly referred to as *lex Perković*, reveal the underpinning questions of the paper. How far does Europeanisation reach when transforming the state-citizen link? How do the different countries respond to the challenges produced by the external requirements for adaptation and the domestic sovereignty concerns?

Starting from the above questions, this paper examines the interplay between the processes of Europeanisation and transition that the countries of the Western Balkans¹ are faced with. Contrary to some recent work on the nature of compliance in the Western Balkans (Noutcheva 2012; Freybourg and Renner 2010), it argues that policy transfer in constitutional matters, although the adaptation period is longer, has a deep transformative effect both through the institutional lock-in and the spill-over on other policy areas. That is, compliance in such areas is neither weak, nor fake. Rather, it is progressive and has the tendency to manifest itself the most in the years immediately preceding the accession to the EU. Hence the impact of Europeanization on the constitutional protection of nationals against extradition is transformative. This however does not imply that extradition will cease to be politically controversial. As the case of *lex Perković* illustrates, the tension between the legal and political dimensions of extradition is likely to persist in the Western Balkans, as has also been the case also in high-profile cases in the old EU Member States.

To elucidate this argument, the paper analyses horizontal and vertical effects of the process of Europeanisation on the post-Yugoslav states by examining the evolution of the different states’ policies related to extradition of their own nationals. The research puzzle revolves around several issues important both in the context of the evolution of the EU and within the frame of the comprehensive transformation of post-communist societies aspiring to EU membership, including: a) the consequences of the change in the nature of political conditionality of the EU; b) the underpinning tension between the internally impermeable and externally porous character of sovereignty in newly-established states; and c) horizontal manifestations of vertically derived norms as catalysts of the aspiration of the successor states of the former Yugoslavia to meet the accession requirements.

The criteria for EU accession have evolved so as to ensure not only a stable democratic political environment, but also regional cooperation and good neighbourly relations (Thessalonica Agenda 2003). In the aftermath of 9/11, the establishment of an area of freedom, security and justice in the EU has given birth to the European Arrest Warrant (EAW Framework Decision 2002/584/JHA), which has become a part of the EU *acquis* that the new Member States have to comply with. The EAW abolishes the political dimension of the traditional approach to extradition, and transforms it into a judicial process. By eliminating dual criminality in a number of areas and by allowing the surrender of

¹ The term Western Balkans includes the post-Yugoslav states (Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Macedonia, Montenegro and Kosovo) minus Slovenia plus Albania.

nationals,² the EAW dilutes the prerogative of the sovereign state in regulating the state-citizen link (nationality in international law); it curtails the state's jurisdiction to prescribe (surrendering state); but expands the territorial exclusivity of jurisdiction to enforce (requesting state).

The different successor states of the former Yugoslavia have different policies on extradition of their own citizens, and some (e.g., Slovenia in 2003, Croatia in 2010) have altered them in view of the requirements of the accession process. On the one hand, the state has the duty to protect its citizens, which is reflected in the constitutional order of the successor states of the former Yugoslavia (general prohibition of extradition of its own citizens – nationality exception). On the other hand, in the context of the Balkans, where facing the past, regional cooperation, and the reduction of trans-border crime are all conditions for entering the EU, extradition of the country's own citizens becomes an important tool for democratic consolidation and reconciliation among countries.

The change in the constitutional and legal norms related to the extradition of the country's own nationals in the post-Yugoslav states is viewed through the conceptual prism of Europeanisation. The latter is conceived as a multilayered process, which entails not only direct adaptation to EU's norms, but also an indirect transfer of EU's models through the activities of the Council of Europe and other organisations (Bulmer and Radaelli 2004). In this sense, Europeanisation relates not only to the legal and political dynamics within the EU (Börzel and Risse 2000), but it also has normative and legislative effects in societies faced with on-going institutional change (Noutcheva and Emerson 2004; Schimmelfennig et al. 2005). An often neglected fact in the academic literature is that many aspects of Europeanisation touch upon the very core of the recently restored (and often contested) sovereignty of the new states. Particular, the scholarly efforts on the post-Yugoslav states have concentrated on the dynamics of conflict, and post-communist reconstruction (Ramet 1996; Jović 2008; Woodward 1995 etc.), but not as much on Europeanisation. A value-added of this research is that, by evaluating the transformative power of Europeanisation in the EU's near abroad, it seeks to establish an analytical bridge between two ostensibly qualitatively dissimilar disciplines of area studies - Balkan states and the EU.

So far, the effects of Europeanisation on sovereignty by focusing on extradition policies have not been studied through a comparative prism that provides a comprehensive overview of the dynamics of change in all of the post-Yugoslav states. This research would classify the studied countries in line with their proximity to integration into the EU, which is also methodologically important, because research has shown that different incentives and factors operate in the aspiring members at different stages in the accession process. On grounds of the results of this study, it would be possible to analytically compare the qualitative difference in the effects of Europeanisation on the erosion of sovereignty in the countries aspiring to EU membership.

To approach this complex issue in the most comprehensive manner, the study adopts a cross-disciplinary approach, which blends insights from law and politics. Such an approach brings out lineages between the socio-political nature of polities and the specificities of their legal design. In other words, through a comparative legal perspective, this paper presents an analysis of the outcome of changes in the legal orders of new states and interprets them in the context of diminishing state sovereignty. As such, the paper does not present an in-depth study of the politics of extradition, although this issue is taken into account as regards the distinction between 'ordinary criminals' and 'war criminals'. In cases of 'ordinary criminals', the nationality exception is a lesser political concern than in cases of 'war criminals' who have been turned into national heroes. The politics of extradition is more significant in these latter cases as it can explain resistance to abolishing the nationality exception. In such instances, delivering war criminals to the international courts becomes a powerful bargaining chip used by political actors in order to get EU support at crucial moments in the accession process.

² For a full list of the areas covered by the EAW, see EAW Framework Decision 2002/584/JHA.

In terms of structure, this paper is divided in three sections. The first two deal with the conceptual issues surrounding the transformation of Europeanisation and sovereignty in the post-Yugoslav space, and thus offer a contribution to the general political science literature. The third section is empirical and presents an analysis of the nationality exception in three categories of post-Yugoslav states – EU members, candidate countries, and potential candidates and contested states, with the aim of helping the understanding of the vibrant and transforming post-Yugoslav space. As such, this study will be particularly valuable for: a) the comparison of experiences with the new Member States in the period of accession; and b) the comparison of the effect of Europeanisation on judicial cooperation in criminal matters in the Member States of the EU.

2. The changing nature of Europeanisation

The concept of Europeanisation has attracted much academic attention in recent years, not the least because of the changes in the Member States of the EU that it has induced, but also due to the effects that it had on countries aspiring to EU membership, and to the states indirectly subject to adapting to EU policies and processes (Börzel and Risse 2012). In order to fully understand the transformation of sovereignty through extradition policies that have diluted the state-citizen link in the post-Yugoslav states, it is essential to highlight the specificities of the Europeanisation process in this region. That is, it is important to distinguish those forces that are in play in the EU accession process of the post-Yugoslav space, which due to the specific transitional trajectory of this region, have not been either present or pronounced in other manifestations of Europeanisation.

Writing about the traditional understanding of Europeanisation, Börzel and Risse (2012: 192) defined the concept as a set of ‘causal mechanisms through which EU policies, institutions and political processes impact upon the domestic structures of the member states’. As acknowledged by a number of contemporary Europeanisation scholars (Börzel and Risse 2012; Sedelmeier 2012; Elbasani 2012), the Eastern enlargement induced the need to apply the concept to the states that are required to adapt to the demands of accession by aligning their policies and institutions with the ones of the EU. Unlike the process of Europeanisation of the Member States, which is also affected by the bottom-up policy transfer from the Member State to the EU, Europeanisation of the aspiring members draws heavily on conditional incentives due to the asymmetry that is inherent to the process (Sedelmeier 2012). The states that are not EU members do not have the same leverage in affecting the development of EU’s policies and institutions. Rather, driven by the final incentive of membership the aspiring members ‘download’ EU’s policies and institutions and integrate them into their domestic political contexts. According to Europeanisation scholarship (Sedelmeier 2005; Sedelmeier 2012; Noutcheva 2012), the dynamics of these domestic political contexts, the degrees of requirement of institutional adaptation, and the effects thereof on the power balance among the domestic political actors will be crucial determinants of the ‘lock-in’ of EU policies in the acceding states. However, in the case of the post-Yugoslav space, several context-based specificities should be taken into account when attempting to understand the impact of Europeanisation, against the background of the top-down norm transfer in the countries concerned.

The first distinct trait of the effects of Europeanisation in the post-Yugoslav states is that the key aim of the process is to ‘foster peace, stability prosperity’ due to the turbulent past of the region (Börzel and Risse 2012: 195; also Börzel 2012). Different from Europeanisation that took place at the time of the Eastern enlargement, the process in the post-Yugoslav space entails the creation of regional transnational ties as a mechanism of stabilisation. While the development of transnational relations is somewhat inherent in the dynamics of Europeanisation in general, it gains particular salience in the context of the Western Balkans, as it has clearly been enshrined in the accession conditions. At the Thessalonica Summit of 2003, the EU reiterated its ‘determination to fully and effectively support the European perspective of the Western Balkan countries, which will become an integral part of the EU, once they meet the established criteria’ (Council of the European Union 2003). The *Thessalonica Agenda* envisaged the ‘promise of EU membership [as] the basis for all EU conditionality in the

region, from compliance with the Hague Tribunal to institutional reforms, from trade liberalisation to the unresolved strategic issues' (European Stability Initiative 2005: 2). This aspect of Europeanisation of the post-Yugoslav space is crucial for understanding the deep effects of the EU extradition policies in the aspiring countries. Due to the need to enhance the regional cooperation dimension, the erosion of the state-citizen link did not have a mere vertical dimension in terms of inducing compliance with the European Arrest Warrant, thus reinforcing the logic of consequences (incentives as the main driver of EU norm adoption). Rather, it had a horizontal spill-over by laying the pillars for the conclusion of bilateral extradition agreements among these states. This brings logic of appropriateness (socialisation as the main driver of EU norm adoption) to the context, as the reduction of transnational crime becomes a mechanism of strengthening regional cooperation.

The second characteristic of Europeanisation in the post-Yugoslav region is the varying degree of its effects due to the particular nature of sovereignty in this region. On the one hand, as Noutcheva (2005) rightly argues, the compliance with EU policies will largely depend on how actors shape their goals in spaces that are sovereign and non-sovereign. Unlike the Central and East European (CEE) states, whose sovereignty was firmly established after the fall of communism and gradually surrendered to the EU in the accession process, the post-Yugoslav states were faced with a different dynamic. In cases of Slovenia and Croatia, which are already EU member states, the nature of sovereignty has been similar to the CEE states. However, in Bosnia and Herzegovina, Serbia, Montenegro, Macedonia and Kosovo, the issue of sovereignty is a more complex one, due to the domestic and external challenges that these states are faced with and the multiple disintegrations that they have undergone since the breakup of the former Yugoslavia. In particular, in the contexts of limited sovereignty the domestic political actors shape their political preferences in line with the sovereignty priorities, rather than with the requirements of EU accession. As has been shown in a number of recent studies of conditionality in the Western Balkans (Noutcheva 2012; Džihic 2013; Bieber 2013; Freyburg and Richter 2010), sovereignty concerns have often hampered the compliance of these states with EU rules, either by creating obstacles to the adoption of policies, or by inducing fake compliance through formal policy transfer accompanied by the failure to implement such policies. On the other hand, looking at the role of the EU in the Western Balkans, scholars of the region have identified a tension between the EU integration process and the EU's striving to build a particular type of states, i.e., the process of EU Member State building (Bieber 2013; Chandler 2010). The process EU Member State building entails the development of institutionally adapted states that will be able to pool sovereignty pending their accession in the EU (Chandler 2010). Bieber (2013: 17) claims that the state building of the EU in the Western Balkans 'extends beyond a mere collection of institution-building measures: it focuses on core governing functions, and thus directly impacts on the sovereignty of a state.' The manifest tension between the aspiration of the domestic actors to reinforce the sovereignty of the newly emerged states and the erosive effects of Europeanisation on sovereignty imply that the absorption of EU policies and institutions in the post-Yugoslav space faces more obstacles than in the 2004 and 2007 enlargements.

The third characteristic of Europeanisation in the post-Yugoslav space is that – rather than being mere consequence of the EU's conditionality, Europeanisation is largely an umbrella concept, including but not limited to 'domestic adaptation to EU integration' (Graziano and Vink 2007: 7). Taken broadly, the concept can be applied to the study the institutional, political, economic and societal adaptation in the aspiring members. According to Noutcheva (2012) this adaptation takes place through three interrelated mechanisms: conditionality, socialisation and coercion. Conditionality is the mechanism through which the EU transforms the aspiring members into countries institutionally capable of integrating in the EU by using both incentives (for compliance) and sanctions (for non-compliance) (Grabbe 1999; Vachudova 2001; Noutcheva 2012). Socialisation refers to the process of social learning from the EU, based on the internalisation of norms and the development of new identities (Börzel and Risse 2003; Radaelli 2003; Schimmelfening and Sedelmeier 2004). Imposition is the less studied mechanism of Europeanisation, which entails elements of direct governance of the EU in the weak states aspiring to membership, such as Bosnia and Herzegovina and Kosovo (Juncos

2011). All of these mechanisms do not imply only the direct transfer of norms and values of the EU (EU-isation). They also entail the indirect impact of other international organisations (e.g., the Council of Europe, the OSCE, the World Bank, etc.) whose recommendations are often enshrined in the conditionality and imposition mechanisms and values in the socialisation mechanism of Europeanisation.

The fourth trait of Europeanisation in the context of the post-Yugoslav states is process variation, which has two dimensions – the EU's adaptation and the local variation. First, the EU's stance towards enlargement has significantly changed after the entry of Bulgaria and Romania in 2007, thus making the final incentive of membership rather blurry for the Western Balkan states. That is, while the promise of membership exists, no clear timeframe is available to these countries, which has been considered one of the major obstructions to the effectiveness of Europeanisation (Trauner 2012). Second, also on the EU dimension, Noutcheva (2012) has noted the changes in the EU's approach towards conditionality and Europeanisation, both of which now entail elements of vagueness through which the EU seeks to oblige the candidates to do more. Yet, the lack of clarity of conditions is also likely to induce fake or partial compliance, due to the formal rather than substantive policy transfer. An illustrative example of this is the example of Croatia's EAW legislation, presented in the introduction. By contrast, the local variation in the effects of Europeanisation in the post-Yugoslav states is largely attributable to the different 'state of state building' in the respective countries (Bieber 2013), the divergence in their absorption capacities, their party politics (including inter-ethnic competition), and their institutional stability. Therefore, the effects of Europeanisation will not depend only on the degree of misfit between the EU and domestic policy and the adoption costs in terms of bargains among actors. They will also be affected by the degrees of clarity of the condition, the feasibility of its implementation, as well as the tangibility of the incentive(s) and reward(s) for compliance.

In a nutshell, the understanding of these traits of Europeanisation can help us unveil the intricacies of the process of change in citizenship regimes in these new states in the context of the tension between sovereignty epitomised by the state-citizen link and the adaptation to requirements for accession. As will be shown in the subsequent sections of the paper, somewhat contrary to the findings of Freyburg and Richter (2010), sovereignty concerns are eventually relinquished in order to comply with EU's policies as regards extradition. This is largely due to the external and internal benefits from such compliance. In terms of EU accession, the benefits of compliance entail 1) meeting the formal policy transfer as required through Chapter 23, and 2) enhancing regional cooperation by allowing horizontal interaction among states in tackling transnational crime. At the domestic level, the legitimisation of initial policies (e.g., allowing extradition of the state's nationals) induced through EU legislation has a spill-over effect in legitimating the horizontal consequences of such policies (e.g., executing bilateral extradition agreements) as it induces regional cooperation. However, the partial and differential effects of Europeanisation, as can be noted in the case of Croatia's EAW legislation, still show that in the turbulent post-Yugoslav region, the state-citizen link remains an important political concern.

3. Europeanisation and the porousness of sovereignty: extradition vs. citizenship

The Westphalian system of 1648 introduced the system of sovereignty based on nation-states as the main actors in international relations. For centuries, the notion of sovereignty introduced at Westphalia, entailing the state's principle of self-determination, its absolute rule over its territory and population, the legal equality of states, and non-intervention in the internal affairs of other states, was the core concept in analysing state behaviour in global politics. Yet, with the development with distinct channels of communication, followed by the spread of globalisation and the emergence of international, intergovernmental and transnational organisations, sovereignty has lost its central role in the study of international affairs (see Ong 2006; Krasner 1996; Sassen 1996). While the withering away of the states has not -or at least not yet- come into being, the process of European integration has

revealed the porous character of sovereignty in contemporary Europe. In the context of Europeanisation, as applied not only to the EU's Member States, but also to candidate countries, and other states affected by the EU, the dynamics of policy transfer from the EU level into the domestic arenas of the underlying countries entail a surrender of various aspects of the states' competences. Kostakopoulou (2002: 148), notes that the character of sovereignty is 'floating', i.e., that 'sovereignty is neither a thing to be possessed nor an addition of competences whose successive removal, like the leaves of an artichoke, could be constitutionally tolerated until it reached its heart, that is a hard core of the state's powers in the areas of "high politics" (e.g., immigration policy fiscal policy, foreign policy, defence matters)'. It is precisely this hollow nature of sovereignty that allows for its porousness in the EU integration process, even regarding the issues of citizenship that lay at the very heart of sovereign states.

In his seminal work *Citizenship and Nationhood in France and Germany*, Rogers Brubaker noted that 'citizenship is a last bastion of national sovereignty' (2009: 180). According to Brubaker, states have the prerogative in regulating the legal link between their territories and population. International legal instruments have only a marginal effect on that link, including the process of EU integration. Contrary to Brubaker (2009), this research asserts that the process of Europeanisation has had a transformative effect on the legal link between the state and the citizens not only in the post-Yugoslav space, but also beyond it, in the Member States of the European Union. This is due to three interrelated factors that operate under the umbrella of the process of Europeanisation.

First, as the contemporary study of Europeanisation entails the understanding of the effects of other European organisations, it is worth noting that in the post-Yugoslav space, the accession of states to the European Convention on Nationality has generated changes to the citizenship laws of the states concerned (see: Spaskovska 2010; Džankić 2010). In addition to this, both in the EU's Member States and in the post-Yugoslav space, the judgments of the European Court of Human Rights (ECtHR), such as *Rottmann v Freistaat Bayern* (C-135/08) or *Sejdic and Finci vs. Bosnia and Herzegovina* (C-27996/06 and C-34836/06) instigated legal changes, thus showing that citizenship is indeed affected by international and European norms.

Second, the introduction of the EAW Framework Decision in the *acquis* has required the change of national constitutions as regards the contractual relationship between individuals and the state. Writing about the link between the nature of the polity and its constitutionalisation Rubenstein and Lenagh-Maguire (2011:1) noted that '[c]itizenship is a prime site for comparisons between different constitutional systems, for the idea of citizenship, and the ideals it is taken to represent, go to the heart of how states are constituted and defined'. This idea of the construal and the identity of the state as captured in the constitutional definitions of citizenship have been of particular relevance after the fall of communism. Citizenship became particularly significant in those states which sought to establish the link between their (often new and contested) borders and the population living therein. The norms that arose within such a category of polities were tainted by what Hayden (1992: 655) termed as constitutional nationalism, i.e. 'a constitutional and legal structure that privileges the members of one ethnically defined nation over other residents in a particular state'. Granting such privileges to a certain ethnic community helped to consolidate the power of that ethnic community in the state. Yet in some polities, the constitutional definitions of citizenship were 'associated with a traumatic social, political or constitutional event', and hence were 'seen as protective against particular kinds of feared abuse' (Rubenstein and Lenagh-Maguire 2011:148). The the provision on non-surrender of the state's own nationals (the nationality exception) has thus been entrenched in the constitutional frameworks of the post-Yugoslav states, as a consequence of the conflicts that consumed this region throughout the 1990s.

In addition to being a mechanism for protecting the citizens of the state, the provisions forbidding the extradition of nationals have a deep normative dimension in terms of citizenship. Citizenship is defined as the 'right to have rights' (Arendt 1951: 294-295). This also entails the state's duty to protect those who are legally linked to it, which has been applied in public international law since the 1555

Declaration of the Parliament of Paris (Manton 1936: 12). Accordingly, ‘rights in this manner entail of course both ideas of membership (who has rights to the state) and the *étatisation* of the understanding of one’s relation to authority (which needs constitute rights and who is responsible for them)’ (Eckert 2011: 311). The argument here is that the state has the responsibility for enforcing the rights stemming from the contractual link between the individuals and the polity. Consequently, relinquishing such responsibility through the transposition of the EAW Framework Decision, states surrender elements of their sovereignty in citizenship matters to the EU level.

Third, the EAW changes the dynamics of citizenship between national and international law. In the domestic context, the legal link between the individuals and the state epitomises the rights and duties that the citizens have vis-à-vis the state, and vice versa – the ones that the state has towards its citizens. In the international law, the purpose of citizenship (i.e., ‘nationality’ in international law) is to ‘enable states to exercise clear jurisdiction over individuals’ (Blackman 1998: 1149). It is precisely this balance between the domestic conception of citizenship rooted in rights and duties, and the international focus on jurisdiction over individuals that has introduced the nationality exception in constitutional orders of many states. In international law, the nationality exception has traditionally been defended on grounds of four arguments, including: ‘1. the fugitive ought not be withdrawn from his natural judges; 2. the state owes its subjects the protection of its laws; 3. it is impossible to have complete confidence in the justice meted out by a foreign state, especially with regard to a foreigner; 4. it is disadvantageous to be tried in a foreign language, separated from friends, resources and character witnesses’ (Deen-Racsomány and Blekxtoon 2005: 317). Against the traditional defence of the nationality exception, the EAW has transformed extradition from a political into a judicial process in the EU’s Member states, which is where it changed the link between national citizenship and international law. That is, no formal extradition agreement is required in the areas covered by the EAW, which completely dilutes the political dimension of extradition in the EU context. In cases of post-Yugoslav states, in most of which the EAW is yet to become in force (apart from Slovenia, which is an EU Member State since 2004 and Croatia, which entered the EU in mid-2013), the changing dynamic between the domestic and international law is mirrored in the constitutional changes that have taken place under the aegis of EU accession. These issues are examined in more detail in the next section of the paper.

4. Transformation of sovereignty: the post-Yugoslav experience with citizenship and extradition

The aspiration of the post-Yugoslav states to join the EU resulted in a number of changes in the legislative and institutional frameworks of the respective countries. As a consequence, the relationship between citizenship and extradition has become an important aspect of the countries’ political transformation. Changes in extradition policies have been generated through requirements of the accession process, particular as regards Chapter 24 – Justice, Freedom and Security, of which the EAW Framework Decision is an integral component. To better understand the variations in institutional adaptation, the countries analysed are divided in three groups – those that are already Member States of the EU (Slovenia and Croatia), those that are candidate countries (Montenegro, Serbia and Macedonia), and those that are potential candidates and at the same time contested states (Bosnia and Herzegovina and Kosovo).

The following analysis shows the degrees of approximation of the constitutional and legal provisions related to extradition to the EU’s requirements. By arguing that the process of Europeanisation erodes the link between the citizens and the state in the context of extradition in the post-Yugoslav states, this section shows that sovereignty, even in the most sensitive areas of the domestic policy fades away in light of EU accession even if states seek to preserve some of its elements. The degree of post-accession compliance, however, is not analysed here, due to the fact that

Slovenia is the only post-Yugoslav state that has been an EU member for a considerable amount of time, and generalisations based on a single case are not methodologically justified.

4.1. Post-Yugoslav EU Members: Slovenia and Croatia

Slovenia has been a Member State of the EU since 2004. Following the break-up of Yugoslavia, Slovenia constitutionalised its state and introduced an ethnic citizenship regime (see Medved 2010). In line with the need of the state to protect its citizens from the wars ravaging its surroundings, the December 1991 Constitution of Slovenia posited a ban of extradition of the country's nationals in article 47, stipulating that 'Citizens of Slovenia may not be extradited to a foreign country. Foreigners may be extradited only in cases foreseen by international contracts which obligate Slovenia'. Hence in the period preceding the accession of Slovenia to the EU, extradition matters were governed by international agreements which the country signed pursuant to its national law. In 1994, Slovenia ratified the European Convention on extradition and two of its additional protocols, which allowed the conclusion of bilateral extradition treaties with Austria, Albania, Bulgaria, Croatia, France, Germany, Hungary, Italy, Macedonia, Romania and Turkey, Bosnia and Herzegovina and The Federal Republic of Yugoslavia (see Šugman 2009). The bilateral agreements thus concluded contained the nationality exception.

The screening of the Slovenian legislative framework for extradition showed that these were not in compliance with the requirements for the adoption of the EAW. As the latter required mutual recognition of the court judgements as pertaining to both foreigners and nationals, the transposition of the EAW decision was premised on changing the existing provisions related to extradition. This triggered a political debate on the mechanisms required for the Slovenian legislative framework to transpose the EAW Framework Decision, either as a special statute or through amendments to the Criminal Code, as the latter – in addition to the Constitution regulated extradition matters. Šugman (2009) notes that the decision to adopt the special act 'The European Arrest Warrant and Surrender Procedures between Member States Act' (EAWSP) (*lex specialis*) in March 2004 was guided by the existing national extradition legislation (*lex generalis*), whose provisions were to be retained for cases of extradition to third countries. Yet this act was also conditioned with constitutional amendments as it was not in conformity with the nationality exception enshrined in the 1991 Constitution of Slovenia.

The March 2003 Constitutional Act Amending the First Chapter and Articles 47 and 68 of the Constitution of the Republic of Slovenia changed article 47 of the highest legal act of this country. While retaining the general prohibition of extradition following the amendments to the Constitution, Slovenia now allows extradition arising from obligations by a 'treaty by which, in accordance with the provisions of the first paragraph of Article 3a, Slovenia has transferred the exercise of part of its sovereign rights to an international organisation' (article 47). Pursuant to article 3a, adopted through the same constitutional amendments introducing changes to article 47, Slovenia may transfer part of its sovereignty to international organisations 'based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values'. The way in which the EAW has affected the state-citizen link in Slovenia is indicative of the effects of Europeanisation on sovereignty, in that the general prohibition of extradition of the state's nationals has not been abolished. Rather, the constitutional provisions make an explicit reference to sovereignty transfer to international organisations which become the beholders of a part of this country's sovereignty. Therefore, while retaining the general nationality exception, Slovenia did not limit the extradition of nationals only to the EAW. In a similar fashion, the post-Yugoslav constitution of Croatia, adopted in December 1990, also stipulated that '[a] citizen of the Republic of Croatia may not be banished from the republic, neither can he be deprived of his citizenship, nor can he be extradited' (article 9). This provision was highly contentious in the case of Croatia, which was actively involved in the wars of Yugoslav disintegration, thus implying that some of the country's nationals could be indicted for war crimes. In order to facilitate the cooperation with the International Criminal Tribunal for the Former Yugoslavia

(ICTY), in 1996 Croatia adopted a Constitutional Law on the Cooperation of the Republic of Croatia with the International Criminal Tribunal, which allowed the surrender of individuals domiciled in Croatia to the court. In the Croatian legal context, the adoption of this law implied a significant change, as it differentiated two procedures related to criminal proceedings – surrender and extradition. While the former was reserved for the transfer of the indicted individuals to the ICTY and thus was applicable to the Croatian nationals, the latter applied in cases of extradition to other countries and contained the nationality exception. In other words, Croatian nationals could only be extradited to the ICTY.

Europeanisation in the context of surrender has had the deepest effects in terms of the capture and transfer of general Ante Gotovina, a general of the Croatian army indicted for crimes against humanity in operation ‘Storm’ in 1995,³ to the ICTY in 2005. At the European Council of December 2004, cooperation of Croatia with the ICTY was set as the precondition for the start of the accession talks with the EU in March 2005. Given Croatia’s failure to capture and surrender Gotovina by that date, the EU delayed the opening of the accession negotiations (Bideleux and Jeffries 2006). When the accession talks were opened, the EC’s Progress Report (2005: 3), referring to Gotovina, stipulated that ‘[o]n October 2005 the Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) stated that Croatia was fully cooperating with the Tribunal. This full cooperation with ICTY needs to be maintained and the last remaining indictee must be located, arrested and transferred to The Hague’. This triggered an enhanced cooperation of the Croatian authorities with the Interpol, leading to the eventual capture of Gotovina in Tenerife (Spain) in December 2005, and his subsequent surrender to the ICTY, which allowed the country to further progress in its EU accession process.

In the context of extradition, the Europeanisation had far deeper effects on Croatia as it required major constitutional changes. The Screening Report for Chapter 24 revealed that the Croatian domestic legislation does not allow the transposition of the EAW Framework Decision due to the nationality exception. Similar to Slovenia, the adoption of any legal act allowing the transposition of the EAW decision into the national legal framework may have resulted as unconstitutional (see Andrassy 2007). In order to comply with the requirements of accession, Croatia amended its Constitution in 2010. An important aspect of this constitutional change has been the amendment to article 9, defining Croatian citizenship and the nationality exception in the context of extradition. Until 2010, Croatia had a full prohibition of extradition of its own citizens. Following the constitutional change of 12 June 2010, Croatia retained the general prohibition of extradition, but it now can extradite its citizens ‘when a decision on extradition or surrender has been adopted in line with an international agreement or in line with the legal practice of the European Union’ (art.9). At present, the part of this amendment related to extradition by an international agreement has come into force, while the second part of the amendment – related to extradition in line with the legal practice of the European Union have come into force on 1 July 2013 - the day Croatia has become an EU Member State. The constitutional change in Croatia is a clear example of the effect of Europeanisation on the country’s legislative framework. In effect, in vindicating the need to change article 9, Croatian policy-makers have cited the need to harmonise their Constitution with the requirements of Chapter 24 (see: Čule, Mišerda and Oradović 2012).

However, the example of the June 2003 amendments to the Law on Judicial Cooperation in Criminal Matters with the Member States of the EU (*lex Perković*), explained in the introduction, is indicative of the limits of Europeanisation in the new states of South-eastern Europe. While on the one hand the 2009 constitutional amendments reinforce the argument on the power of Europeanisation in the accession countries, the 2013 amendments affirm the tendency of states to hold on to sovereignty matters as pertains to the sovereignty embedded in the state-citizen link. In this sense, we can claim

³ Operation Storm was a military offensive of the Croatian Army against the self-proclaimed Republika Srpska Krajina in the territory of Croatia. It resulted in the exodus of ethnic Serbs from this part of Croatia.

that the power of Europeanisation in transforming the candidate countries is bound to encounter obstacles.

In addition to this, Croatia has retained the nationality exception with respect to extradition to the third countries, whereby matters of criminal justice are regulated through the international legal framework. Since 1994, Croatia has been a party to the European Convention on Extradition and its additional protocols, which enabled the country to conclude bilateral extradition agreements with a number of countries, including the post-Yugoslav states. In light of the requirements of the EU to enhance regional cooperation and reduce trans-border crime, in 2010 Croatia concluded an Agreement on Extradition with Serbia. The first extradition on these grounds took place in August 2010, when Croatia extradited to Serbia Srećko Kalinić, convicted of conspiracy in the murder of the Serbian Prime Minister Zoran Djindjić in 2003 (B92 2010, web). In this respect, in the case of Croatia, we can notice the differential impact of Europeanisation as pertaining to the Member States and the one pertaining to the diffusion of the process. That is, while the EAW requirement changed the legislation of this country and significantly affected the state-citizen link through constitutional changes, it did not change the country's legislation vis-à-vis third countries. Still, the EU's requirement for regional cooperation, including cooperation in criminal matters, intensified the conclusion of bilateral extradition agreements between Croatia and the other post-Yugoslav states thus showing that Europeanisation does have horizontal spill-over effects.

4.2. Post-Yugoslav EU candidates: Montenegro, Serbia and Macedonia

The dynamics of Europeanisation are manifested differently in countries that are candidates for EU accession. This is due to two predominant reasons. First, although the final incentive for compliance is the 'reward' of accession, unlike in the cases of Slovenia and Croatia, the timeline for accession is unclear, which has had a protracting effect on the transposition of EU legislation in the domestic context (see Trauner and Renner 2009). Second, although compliance is imminent in these countries, its dynamics will also be affected by the domestic context, which is far less consolidated than in those post-Yugoslav countries that have already become EU Member States. Currently, from among the post-Yugoslav family Montenegro, Serbia and Macedonia hold the candidate country status. The three countries are at different stages of the EU accession process and have diverse domestic concerns, which has reflected on their policies related to extradition of their own nationals.

After the break-up of the former Yugoslavia, Serbia and Montenegro established the last Yugoslav federation – the Federal Republic of Yugoslavia (FRY) – in 1992. The Constitution of the FRY, adopted in April 1992, also contained the nationality exception in article 17, which stipulated that '[a] Yugoslav citizen may not be deprived of his citizenship, deported from the country, or extradited to another state'. Equally, the constitutions of the constituent republics of the FRY – Serbia and Montenegro – had different constitutional provisions related to the extradition of their own nationals. While the 1992 Constitution of the Republic of Montenegro contained no explicit nationality exception, the 1990 Constitution of the Republic of Serbia provided that '[a] citizen of the Republic of Serbia may not be deprived of his citizenship, exiled or extradited' (article 47). The provisions in the federal and the Serbian legislation, created as a mechanism for protecting the citizens of the FRY, which took part in the wars of Yugoslav disintegration. As in the case of Croatia, the participation of the FRY citizens in the Yugoslav conflicts, resulted in a significant number of the FRY citizens being indicted for war crimes before the ICTY. The most notable example is the former president of the FRY – Slobodan Milošević – who was extradited to the ICTY in 2001. The decision was adopted on grounds of the Decision on cooperation with the Hague Tribunal, although the FRY constitution at the time contained the nationality exception. The extradition of Milošević was executed under significant international pressure on the new FRY authorities to affirm their democratic orientation (Vreme 2001). Yet, the FRY, which was a largely dysfunctional federation (see: van Meurs 2003; Morrison 2007) was transformed in the common state of Serbia and Montenegro in 2003, and finally dissolved in June 2006 following the Montenegrin independence referendum on 21 May the same year. Both countries,

following their independence have confirmed their aspiration to join the EU. Due to the specificities of their domestic contexts and the particular requirements of accession, the post-independence extradition policies of Serbia and Montenegro have played out differently than in their republican constitutions within the FRY.

In particular in the case of Serbia, the cooperation with the ICTY has been emphasised as a precondition for the country's progress in the EU accession process. According to Mäki (2008: 51), the European Council made 14 references to the necessity for full cooperation with the ICTY in the case of Serbia from 1997 to 2007, and 2 of those references were made immediately following the independence of Serbia in 2006. Owing to this requirement, the new Constitution of Serbia has introduced a change in the relationship between citizenship and extradition compared to the 1990 Constitution. As noted above, the article 47 of the 1990 Constitution contained the nationality exception. The corresponding article of the 2006 Constitution stipulates that 'The citizen of the Republic of Serbia may not be exiled, deprived of his or her citizenship, or the right to change this citizenship' (art.38). That is, the new Serbian Constitution does not provide an explicit prohibition of extradition, as did its predecessor. However, the matters related to the nationality exception are found in the 2007 Criminal Code of Serbia, which stipulates that the condition for extradition is that the individual whose surrender is requested is not a national of Serbia (article 517, para 1, pt 1). The same provision nonetheless allows for the surrender of the Serbian nationals to the 'international court that has been recognised through an international agreement' (Criminal Code of Serbia 2007, article 517, para 2, pt 1). The implications of these provisions are twofold. As regards the practical issues, they imply that the nationality exception does not apply in the context of cooperation with the ICTY. In addition to this, the extradition matters in Serbia are a legal rather than a constitutional matter. The latter signifies that although the 2007 Criminal Code of Serbia is not in line with the EAW decision, the adaptation of the law to the requirements of accession will be smoother than the adaptation of the constitution would have been. On top of this, the fact that as a consequence of the requirement for cooperation with the ICTY in the context of EU accession Serbia has already abolished the constitutional provision on the nationality exception reveals the effects of Europeanisation on the state-citizen link in this post-Yugoslav state.

Unlike in the case of Serbia, the EU had not been as persistent in requiring Montenegro's cooperation with the ICTY. The most likely reason for that is that, following the split in the ruling Democratic Party of Socialists (DPS) in 1997, the Montenegrin elite sought to distance themselves from Milošević and the wartime activities in the former Yugoslavia that they themselves incited throughout the 1990s (see Morrison 2013). However, unlike the 1992 Constitution of Montenegro, which did not contain a prohibition of extradition of its own nationals, the post-independence constitution does. Article 12 of the 2007 Constitution of Montenegro stipulates that 'Montenegrin citizen shall not be expelled or extradited to other state, except in accordance with the international obligations of Montenegro'. The reason for such a reversal of the state-citizen link in the case of Montenegro is largely attributable to the domestic political context. Namely, the wars of Yugoslav disintegration, and the economic embargo to the FRY, generated 'the schemes the elites in the Yugoslav republics used to develop and stimulate smuggling operations' (Hajdinjak 2002: 5). At that time, smuggling channels in Montenegro were developed in order to supply commodities such as oil and cigarettes. The illicit trade generated revenues of over one million dollars per day for oil, and two million dollars per day for cigarettes (Hajdinjak 2002: 15-17). Initially, the revenues from cigarette and oil smuggling were used as Montenegrin contribution to the Serbian operations in Bosnia and Herzegovina, thus fuelling Serbian nationalism. As the profits increased, their major share was retained by the people involved in smuggling, which included the top level politicians in Montenegro (Ivanović 1999). Among these politicians, the Prime Minister of Montenegro – Milo Đukanović – was indicted by the Anti-Mafia Bureau in Naples (Italy) for cigarette smuggling. In 2004, the Anti-Mafia Bureau requested the arrest of Đukanović, and the question was raised whether at the time he enjoyed diplomatic immunity since Montenegro was not an independent state, or whether he could be prosecuted. Even though the charges against Đukanović were dropped in March 2008, the possibility

of extraditing high profile politicians motivated the domestic legislators to introduce the constitutional prohibition of extradition. However, the most recent screening of the legislative framework in the context of Montenegro, which has started its EU negotiations in July 2012, confirms that constitutional changes will be required as regards the transposition of the EAW. According to the Screening Report,

Montenegro needs to implement the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the EU and its protocols and, at least, to implement the provisions of the Convention of March 1995 on simplified extradition procedures between the Member States of the EU, in order to process the transposition of Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedure between Member States. The constitution of Montenegro also limits the extradition of Montenegrin nationals to third countries in criminal proceedings, unless there is an international agreement enabling it (Screening Report Chapter 24 2012, 21).

Indeed, while article 12 of the 2007 Constitution of Montenegro stipulates the general prohibition of extradition, it also allows handing over of the Montenegrin citizens 'in line with the international obligations of Montenegro'. At present, Montenegro has concluded agreements with Macedonia, Croatia, Serbia, and Bosnia and Herzegovina, while the agreement with Kosovo is being negotiated at present. Given the EU's requirement for enhanced regional cooperation, all of these agreements now include a provision on the extradition of the country's own nationals, although the original agreement concluded with Serbia in 2009 contained the nationality exception. According to Milošević (2012,web), the conclusion of these agreements has been positively assessed by the European Commission in the context of 'good neighbourly relations', which is indicative of the transformative power of Europeanisation.

A very similar dynamic took place in Macedonia, whose 1991 Constitution contained the most restrictive provision related to extradition to the country's nationals. In fact, article 4 of the 1991 Macedonian Constitution prescribed that '[c]itizens of the Republic of Macedonia may not be deprived from their citizenship, exiled or extradited to another country'. This fact made Macedonia the only successor state of the former Yugoslavia that had a full nationality exception engrained in its Constitution. In the context of regional relations, the most manifest consequence of the Macedonian nationality exception was the impossibility of the country to conclude bilateral extradition agreements that would allow the extradition of Macedonian citizens. This fact has been raised as an important concern in the case of the Western Balkan states, where 'dual citizenship is an obstacle in the implementation of criminal justice' (Manasiev and Djokic 2010, web). Indeed, with the break-up of the former Yugoslavia, whereby the mobility of population from one republic to another was common, many individuals obtained the right to dual citizenship after the republics became independent. This issue became highly contentious in the case of criminals, who would use their dual nationality in order to avoid extradition and prosecution.

As a result of the EU's pressures to reduce transnational crime networks in the Balkans, the Macedonian Parliament embarked on the process of constitutional reform, justified by the 'increase of transnational organised crime and the fact that the perpetrators of these crimes are able to avoid sanctions thus misusing the nationality exception' (Комисија за уставни прашања 2011: 1). Further justifications for the constitutional amendments in Macedonia were the constitutional amendments on this matter that took place in other post-Yugoslav states, such as Serbia and Croatia. Explaining the need to reconsider the nationality exception in the Macedonian Constitution, the then Minister of Justice of Macedonia – Mihajlo Manevski – stated that 'several states in the region have amended their constitutions and introduced the European Arrest Warrant, while also allowing the possibility to sign bilateral agreements for extradition of their own nationals in the area of organised crime (Manevski in Комисија за уставни прашања 2011: 1).

The direct consequence of this motion, primarily driven by the EU's requirement to enhance regional cooperation has been the 2011 XXXII Amendment to the Constitution of Macedonia regarding the nationality exception. While the exception has not been completely abolished, article 4

(para 2) provides that ‘a citizen of the Republic of Macedonia cannot be surrendered to another state, except on grounds of a ratified international agreement, following a court decision’. This constitutional amendment allowed Macedonia to sign bilateral extradition agreements that do not contain the nationality exception with Montenegro, Serbia, Croatia, and Bosnia and Herzegovina, which has positively been assessed in the EC’s progress reports as regards bilateral regional cooperation (European Commission 2013, web). Although shortly following the constitutional change the Macedonian Foreign Affairs Ministry international law state counsellor Goran Stevchevski stated that ‘Macedonia accepted implementing the EU’s European arrest warrant’ the amendments to the Macedonian constitution are unlikely to suffice for the transposition of the EAW in the domestic legislation (Lutovska SE Times 2011). That is, the nationality exception is still part of the Macedonian constitutional order, in a similar fashion as Montenegro a present, and Croatia before the 2010 amendments. The amended provision enables the country to conclude international agreements covering the extradition of its own nationals. However, once it opens the accession negotiations, which have been at a stalemate due to the name issue with Greece, Macedonia is likely to face difficulties in transposing the EAW as the latter does not constitute an international agreement. Adopting a law that would transpose the EAW into the Macedonian legislation may be deemed unconstitutional on grounds of article (para 2) of the Constitution. Hence the screening of compliance of the Macedonian legislation is likely to result in observations similar to the ones in the case of Montenegro – the requirement for further constitutional changes in the context of EU accession.

The above examples indicate that in cases of those post-Yugoslav states that are candidates for EU membership, the dynamics of Europeanisation are slightly different to those in Slovenia and Croatia. Indeed, both Slovenia and Croatia had to introduce constitutional amendments in order to implement the EAW, but this did not happen in either of the countries until one year before the accession was scheduled. As Serbia, Montenegro and Macedonia are faced with a yet unclear accession timeline, the fact that two of the three states concerned have amended some aspects of their constitution in the context of EU’s requirements highlights the transformative power of Europeanisation in this region. Two caveats are however highly significant here. First, it is likely that in light of the EAW, further adaptation will be required in Macedonia and Montenegro, both of which still retain the nationality exception in their constitutions. Second, the amendments that have taken place regarding the extradition of the country’s own nationals in the post-Yugoslav candidates have been driven by the dynamics of Europeanisation, yet in its lighter form. That is, it was not directly the transposition of the EAW that has driven the constitutional changes in Serbia, Montenegro and Macedonia so far. Rather, it has been the changed approach of the EU to this region, and the emphasis on regional cooperation and the reduction of transnational crime in the post-Yugoslav space. Similar forces are at work in the post-Yugoslav potential candidates and contested states – Bosnia and Herzegovina and Kosovo.

4.3. Post-Yugoslav potential candidates and contested states: Bosnia and Herzegovina and Kosovo

From among the post-Yugoslav states, Bosnia and Herzegovina and Kosovo are the only ‘potential candidate countries’ for EU accession.⁴ In addition to this, these two states have had the experience of direct conflict in their territories, and their statehood is largely unconsolidated. The Dayton-Paris agreement, concluded in 1995, ended the war in Bosnia and Herzegovina but it also posed the pillars for the establishment of Europe’s most complex state. Bosnia and Herzegovina is composed of two entities (the Federation of Bosnia and Herzegovina and the Serb Republic) and the neutral, self-governing territory of the Brčko District that belongs to both entities. The Federation of Bosnia and Herzegovina is politically divided into ten cantons, while the Serb Republic has none. Both entities are then further divided into municipalities. Such a multi-tiered mode of governance was successful in halting the armed conflict, but it produced sharp ethnic divisions and manifestly closed arenas for the exercise of institutional and legal changes. On the other hand, from the end of the conflict in 1999

⁴ Slovenia and Croatia are EU Member States, while Macedonia, Montenegro, and Serbia are official ‘candidate countries’.

until its independence, Kosovo was governed by the United Nations Mission in Kosovo (UNMIK, UNSCR 1244), which had the main goal of preserving peace in the unstable Balkan region. Kosovo declared independence from Serbia in February 2008, but its independent statehood is not officially recognised by a number of countries, and Kosovo is not a UN member. Yet, ‘without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence’ Kosovo is listed as a potential candidate for EU accession and is thus subject to the conditions for accession and the Europeanisation process (European Commission 2013, web). Given that these two post-Yugoslav states are under international supervision (see Shaw 2010), their legislative frameworks contain a looser approach to the state-citizen link.

The Constitution of Bosnia and Herzegovina does not contain a prohibition of extradition for the country’s own nationals. This mirrors the country’s turbulent recent past, the requirements for cooperation with the ICTY. It also reflects the fact that the Constitution of Bosnia and Herzegovina has been adopted as Annex IV of the Dayton Peace Agreement, which implies that it contains a number of internationally enforceable principles. As a consequence, the Constitution stipulates an obligation for the country to cooperate with international mechanisms and bodies established for Bosnia and Herzegovina (art. 2, pt.8). Moreover, article 203 of the Criminal Code of Bosnia and Herzegovina stipulates an obligation of extradition to the international criminal tribunal. In fact, ‘[a]n official person in the institutions of who refuses to act upon the order of international criminal tribunal to arrest or detain or extradite to the international criminal tribunal a person against whom the proceedings have been initiated before the international criminal tribunal [...] shall be punished by imprisonment for a term between one and ten years’. However, in terms of extraditing its own citizens to other countries, the legislation of Bosnia and Herzegovina appears more complex, because the article 415 of the Criminal Procedure Code of Bosnia and Herzegovina stipulates the nationality exception in that extradition will be allowed provided ‘that a person whose extradition has been requested is not a citizen of Bosnia and Herzegovina’. As in the case of Serbia, which does not have a constitutional, but a legal ban on extradition, it is likely that this provision of the Criminal Procedure Code of Bosnia and Herzegovina will need to be amended. Notwithstanding, in the context of regional cooperation, the non-existence of a general constitutional prohibition of extradition, and the provision in article 415 allowing the conclusion of international agreements overriding the nationality exception has allowed Bosnia and Herzegovina to conclude full extradition agreements with Serbia, Macedonia, Croatia and Montenegro. Given that Bosnia and Herzegovina has not recognised the independent statehood of Kosovo, no agreement is being negotiated at present. Following the conclusion of the underlying agreements, Jusuf Halilagić - BiH justice ministry secretary highlighted the importance of extraditing the state’s own citizens because ‘a[t] least two-thirds of Bosnian citizens hold dual nationality -- and therefore two passports -- which provides a good opportunity for abuse’ (Alić SE Times 2012, web). Hence similar to the other countries analysed, the erosion of the state-citizen link in the context of extradition in Bosnia and Herzegovina, has been driven by this country’s aspiration to progress in the EU accession process by enhancing regional cooperation and good neighbourly relations, while reducing transnational crime in the post-Yugoslav space.

Unlike Bosnia and Herzegovina, the 2008 Constitution of Kosovo also establishes a relationship between extradition and citizenship. Article 35 of the Constitution asserts that ‘[c]itizens of the Republic of Kosovo shall not be extradited from Kosovo against their will except for cases when otherwise required by international law and agreements’. This brings the constitutional provision of Kosovo related to extradition in line with the ones of the other successor states of the former Yugoslavia that have a general prohibition of extradition, but may extradite their own citizens in line with bilateral agreements, or international treaties. So far, Kosovo has concluded an extradition agreement with Macedonia, but article 6 of the Agreement on Extradition between the Republic of Kosovo and the Republic of Macedonia foresees the nationality exception. However, under the same vertical pressures for enhancing regional cooperation and reducing trans-border crime, and the concerns that Kosovo ‘remains a haven for fugitives dodging surrender requests in the region’ (Jovanovska 2011, web), Kosovo is currently negotiating extradition agreements with other countries

in the region. Hence it is likely that the state-citizen link in this new post-Yugoslav state will be further eroded under the aegis of Europeanisation.

5. Conclusion

This paper examined the interaction between the processes of Europeanisation and political transition in the post-Yugoslav states by focusing on the transformation of the nationality exception in extradition procedures. The analysis focused on three interrelated questions, including: the effects of the change in the EU's approach to accession to the Western Balkans compared to the CEES; the transformation of sovereignty in the new states under the effects of Europeanisation through EAW and Chapter 24 (vertical effects on sovereignty); and the conclusion of bilateral extradition agreements not containing the nationality exception as a mechanism for ensuring regional cooperation and good neighbourly relations (horizontal effects of Europeanisation). The study of these issues proves to be important not only for understanding the post-Yugoslav political space, but also for unveiling the changing nature of Europeanisation.

The first part of the paper highlighted the changing nature of the concept of Europeanisation and four particular traits that are characteristic for this process in the post-Yugoslav space, and its relevance for understanding the deep effects of the EU's extradition policies. The differences in the manifestation of Europeanisation in this region compared to the old Member States, the CEES states, and other countries affected by the process, is vested not only in the specificities of the region, but also in the transformation of the EU's approach to enlargement and accession. Indeed, the first characteristic of Europeanisation is to stabilise this post-partition and post-conflict region. The second trait of Europeanisation of the post-Yugoslav states is the tension between the newly acquired sovereignty in these states (and the domestic actors' tendency to retain it) and the aspiration of the EU to use the accession process to build states that are able to surrender elements of their sovereignty as a price for membership. The third characteristic of Europeanisation in the post-Yugoslav states is its multivalence, as the process depends not only on the formal criteria for EU accession, but also on a wide array of complementary effects including the suggestions and recommendations of the CoE and other organisations. The fourth aspect of Europeanisation in this region is its two-tiered nature, composed of the dynamic of learning and adaptation between EU accession as a process, and the local variation in the 'state of state-building' in the post-Yugoslav space (Bieber 2013). Understanding the different traits of Europeanisation in the post-Yugoslav space helps us to delve into the transformation of the state-citizen link in the context of adapting to the EU's extradition policies, which in the post-Yugoslav political space had both vertical (legal adaptation) and horizontal consequences (conclusion of bilateral agreements).

The second part of the paper looked in more detail in the state-citizen link through the lenses of the porous nature of sovereignty in the EU. By exploring the changes in the prerogative of the sovereign state to regulate its citizenship, this paper has asserted – contrary to many contemporary studies of citizenship – that the multivalent nature of Europeanisation has induced significant changes to the state-citizen link in both the EU Member States and in the candidate countries. While the broad changes to the regulation of citizenship have been induced through the state's accession to instruments such as the ECN and the ECtHR rulings, the EAW has substantially changed the nature of membership in a polity. That is, while the citizens have transferred a part of their sovereignty in constituting the state in return for the rights and duties of membership, the state no longer offers them exclusive protection through the nationality exception.

The final part of the paper offered an empirical analysis of the transformation of extradition policies in the post-Yugoslav space. Methodologically, the section looked at three categories of states – EU members, candidate countries, and potential candidates and contested states. This helped us to look at pre-accession compliance with the EU's requirements in the field of justice, freedom and security as regards the implementation of the EAW Framework Decision in conjunction with the

requirements for regional cooperation and good neighbourly relations implemented in the Western Balkans. The study unveiled that the initial constitutional changes to allow extradition may be limited, but that in the pre-accession period these suffice to conclude bilateral extradition agreements that do not contain the nationality exception. In turn, these agreements are seen as a commitment of the post-Yugoslav states to regional cooperation and good neighbourly relations, thus revealing the diffusive effects of Europeanisation. Major constitutional and legal adaptations to the requirements for accession in Chapter 24, containing the EAW, are more likely however in the last stages of accession due to its implications on state-citizen link and the very recent experience with state sovereignty in the studied countries. Even so, these changes may contain ‘last minute’ provisions that preserve the state-citizen link, as seen by the recent Croatian experience. In sum, however, the combination of the vertical and the horizontal effects of the EU accession on extradition and citizenship in the post-Yugoslav space shows that Europeanisation is indeed marked by an ‘unbearable lightness’ – the capacity to transform and be transformed.

Bibliography

- Alic, Anes. 2012. "Serbia, BiH agree on criminal extradition treaty". SE Times. Accessed 14 February 2013.
http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/05/28/feature-02
- Andrassy, Irena. 2007. "Constitutional Implications of EU Membership: An Overview of Constitutional Issues In The Negotiating Process - The Croatian Perspective." *Paper presented at Conference 'Constitutional Implications of EU Membership'*, held in Zagreb on 20 April 2007.
- Arendt, Hannah. 1951. *The Origins of Totalitarianism*. New York: Harcourt Brace Jovanovich.
- Bideleux, Robert and Ian Jeffries. 2006. *The Balkans: A Post-Communist History*. London: Routledge.
- Bieber, Florian. 2013. "Building Impossible States? State-Building Strategies and EU Membership in the Western Balkans". In *EU Conditionality in the Western Balkans*. Florian Bieber (ed.), 9-29. London: Routledge.
- Blackman, Jeffrey. 1998. "State Successions and Statelessness: The Emerging Right to an Effective Nationality under International Law". *Mich. Journal of International Law* 19: 1141 - 1191
- Börzel, Tanja. 2012. "When Europeanization Hits Limited Statehood. The Western Balkans as a Test Case for the Transformative Power of Europe." In *EU Enlargement and Europeanization in the Western Balkans*. Ed. A. Elbasani. London and New York: Routledge.
- Börzel, Tanja A. and Risse, Thomas. 2000. "When Europe Hits Home: Europeanization and Domestic Change." *European Integration online Papers (EIoP)* 4/15. Accessed 14 August 2011.
<http://eiop.or.at/eiop/texte/2000-015a.html>
- Börzel, Tanja, and Thomas Risse. 2012. "When Europeanisation meets Diffusion: Exploring New Territory". *West European Politics* 35/1:192-207.
- Brubaker, Rogers. 2009. *Citizenship and Nationhood in France and Germany*, 2nd ed. Cambridge, MA: Harvard University Press.
- B92. 2010. "Sretko Kalinic izrucen Srbiji".B92. Accessed 22 January 2013.
http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=08&dd=25&nav_category=120&nav_id=454009
- Chandler, David. 2010. "The EU and Southeastern Europe: the rise of post-liberal governance." *Third World Quarterly* 31/1: 69-85.
- "Constitutional Act Amending the First Chapter and Articles 47 and 68 of the Constitution of the Republic of Slovenia". 2003. *Official Gazette of the Republic of Slovenia* 24/03.
- "Constitutional Law on the Cooperation of the Republic of Croatia with the International Criminal Tribunal". 1996. *Official Gazette of Croatia* 32/96.
- "Constitution of Bosnia and Herzegovina". 1995. *Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina Criminal Code of Bosnia and Herzegovina*.
- "Constitution of the Federal Republic of Yugoslavia." 1992. *Official Gazette of the Federal Republic of Yugoslavia* 1/92.
- "Constitution of the Republic of Croatia". 1990. *Official Gazette of Croatia* 55/90.
- "Constitution of the Republic of Kosovo". 2008. *Official Gazette of the Republic of Kosovo* 1/08.
- "Constitution of the Republic of Macedonia". 1991. *Official Gazette of the Republic of Macedonia* 1/91.

- “Constitution of the Republic of Serbia”. 1990. *Official Gazette of the Republic of Serbia* 1/90.
- “Constitution of the Republic of Serbia”. 2006. *Official Gazette of the Republic of Serbia* 1/06.
- “Constitution of the Republic of Slovenia”. 1991. *Official Gazette of the Republic of Slovenia* 1/91.
- Council of the European Union 2003. “Thessaloniki European Council 19 and 20 June 2003 - Presidency Conclusions.” Accessed 16 May 2012. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/76279.pdf.
- “Criminal Code of the Republic of Serbia”. 2009. *Official Gazette of the Republic of Serbia* 72/09.
- “Criminal Procedure Code of Bosnia and Herzegovina”. 2003. *Official Gazette of Bosnia and Herzegovina* 3/03.
- Čule, Sonja, Tamara Mišerda and Bojan Obradović. 2012. “Extradition in Croatian legislation and legal practice”. Accessed 14 March 2013. <http://www.ejtn.net/Documents/Themis%202012/THEMIS%202012%20ERFURT%20DOCUMENT/Written%20paper%20Croatia%20Team%201.pdf>.
- Deen-Racsmany, Zsuzsanna and Rob Blekxtoon. 2005. “The Decline of the Nationality Exception in European Extradition? The Impact of the Regulation of (Non-)Surrender of Nationals and Dual Criminality under the European Arrest Warrant.” *European Journal of Crime, Criminal Law and Criminal Justice* 13/3: 317-364
- Džankić, Jelena. 2010. *Lineages of Citizenship in Montenegro*. CITSEE Working Paper 2010/14. November. Edinburgh: School of Law, University of Edinburgh.
- Džihić, Vedran. 2013. “Incentives for Democratisation? Effects of EU Conditionality on Democracy in Bosnia and Herzegovina”. In *EU Conditionality in the Western Balkans*. Florian Bieber (ed.), 29-53. London: Routledge.
- “EAW Framework Decision”. 2002. *Official Journal of the European Communities* 2002/584/JHA.
- Eckert, Julia. 2011. “Introduction: subjects of citizenship”. *Citizenship Studies* 15/ 3–4: 309–317
- Elbasani, Arolda. 2012. “Europeanization Goes Western Balkans: EU Enlargement, Domestic Challenges and Patterns of Institutional Change.” In: *EU Enlargement and Europeanization in the Western Balkan*. Ed. A. Elbasani. London and New York: Routledge.
- Emerson, Michael and Noutcheva, Gergana. 2004 “Europeanisation as a Gravity Model of Democratisation”. *CEPS Working Documents* No. 214. Brussels: CEPS.
- European Commission. 2005. “Croatia 2005 Progress Report.” Accessed 25 March 2013. http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1424_final_progress_report_hr_en.pdf
- European Commission. 2013. “EU Enlargement.” Accessed 14 August 2011. http://ec.europa.eu/enlargement/index_en.htm.
- Freyburg, Tina and Solveig Richter. 2010. “National Identity Matters: The Limited Impact of EU Political Conditionality in the Western Balkans.” *Journal of European Public Policy* 17/2: 262-280.
- Grabbe, Heather. 1999. “A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants.” *EUI/RSCAS Working Paper* 99/12. Florence: EUI.
- Hayden, Robert. 1992. “Constitutional Nationalism in the Formerly Yugoslav Republic.” *Slavic Review* 51/4: 654–673.
- Jovanovska, Slobodanka. 2011. “Net Closing In On Fugitive Balkan Criminals”. BIRN. Accessed 11 January 2013. <http://www.balkaninsight.com/en/article/net-closing-in-on-fugitive-balkan-criminals>

- Jović, Dejan. 2008. *Yugoslavia: A State That Withered Away*. Pennsylvania: Purdue University Press.
- Комисија за уставни прашања. 2011. Predlogot za pristapuvanje kon izmena na Ustavot na Republika Makedonija, podnesen od Vladata na Republika Makedonija. Vlada na Republika Makedonija 09 - 284/1.
- Kostakopoulou, Dora. 2002. "Floating Sovereignty: A Pathology or a Necessary Means of State Evolution". *Oxford Journal of Legal Studies* 22: 135-156.
- Krasner, Stephen. 1999. *Sovereignty: Organized Hypocrisy*. Princeton, NJ: Princeton University Press.
- Lutovska, Klaudija. 2011. "Macedonia seeks extradition of criminals". *SE Times*. Accessed 14 February 2013. http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/05/19/feature-02
- Manasiev, Aleksandar and Branislav Djokic. 2010. "With two passports, Balkan criminals go free". *EU Observer*. Accessed 22 January 2013. <http://euobserver.com/news/29862>
- Mäki, Johannes-Mikael. 2008. "EU Enlargement Politics: Explaining the Development of Political Conditionality of 'Full Cooperation with the ICTY' towards Western Balkans". *Politička misao* 14/5: 47–80.
- Medved, Felicitia. 2010. "Slovenia – Country Report." *EUDO Working Paper*. Florence: EUI.
- Milošević, Milena. 2012. "Montenegro, Bosnia Sign Extradition Deal". *Balkan Insight*. Accessed 14 February 2013. <http://www.balkaninsight.com/en/article/montenegro-and-bosnia-sign-extradition-agreement>
- "Montenegro: Screening Report Chapter 24". 2012. *European Commission*. Accessed 11 March 2013. http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/20130218_screening_report_montenegro_ch24.pdf
- Morrison, Kenneth. 2007. *Montenegro: A Modern History*. London: IB Tauris.
- Morrison, Kenneth. 2013. "Montenegro: A Polity in Flux 1989 – 2000." In *Confronting the Yugoslav Controversies: A Scholar's Initiative*, 2nd ed. 426-456. Ingraio and Emmert (eds). West Lafayette: Purdue University Press.
- Noutcheva, Gergana. 2012. *European Foreign Policy and the Challenges of Balkan Accession*. London and New York: Routledge.
- Ong, Aihwa. 2006. *Neoliberalism as Exception: Mutations in Citizenship and Sovereignty*. Durham, NC: Duke University Press.
- Radaelli, Claudio. 2003. *The open method of coordination: A new governance architecture for the European Union?* Stockholm: Swedish Institute for European Policy Studies.
- Ramet, Sabrina. 1996. *Balkan Babel: The Disintegration of Yugoslavia from the Death of Tito to Civil War*, 2d ed. Boulder: Westview Press.
- Rottmann v Freistaat Bayern (C-135/08)*
- Rubenstein, Kim and Lenagh-Maguire, Niamh. 2011. "Citizenship and the boundaries of the constitution". In *Comparative Constitutional Law*. Tom Ginsburg and Rosalind Dixon (eds), 143-169. Cheltenham, UK and Massachusetts: Edward Elgar Publishing.
- Sassen, Saskia. 1996. *Losing control: sovereignty in an age of globalization*. Columbia University Press, New York.
- Scheppele, Kim Lane. 2004. "Constitutional Ethnography: An Introduction." *Law and Society Review* 38: 389-406.

- Schimmelfennig, Frank and Sedelmeier, Ulrich. 2004. "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe." *Journal of European public policy* 11/4: 661-679.
- Schimmelfennig, Frank and Ulrich Sedelmeier, eds. 2005. *The Europeanization of Central and Eastern Europe*. Ithaca, NY: Cornell University Press.
- Sejdic and Finci vs. Bosnia and Herzegovina* (C-27996/06 and C-34836/06)
- Sedelmeier, Ulrich. 2012. "Is Europeanisation through conditionality sustainable?: lock-in of institutional change after EU accession." *West European politics* 35/1: 20-38.
- Shaw, Jo. 2010. "The constitutional mosaic across the boundaries of the European Union: citizenship regimes in the new states of South Eastern Europe". *CITSEE Working Paper Series* 2010/08. Edinburgh: University of Edinburgh, School of Law.
- Spaskovska, Ljubica. 2010. "In Search of a Demos: Transformations of Citizenship and Belonging in the Republic of Macedonia". *CITSEE Working Paper Series* 2010/11. Edinburgh: University of Edinburgh, School of Law.
- Šugman, Katja. 2009. "Country Report for: Slovenia". Accessed 25 March 2013. http://www.asser.nl/EAW/countryreports.aspx?country_id=195&site_id=8&level1=10789&level2=10838&level3=10899
- Trauner, Florian. 2012. "Deconstructing the EU's Routes of Influence in the Western Balkans." *Journal of European Integration* 31/1: 65-82.
- Trauner, Florian and Stephan Renner. 2009. "Creeping EU Membership in South-east Europe: The Dynamics of EU Rule Transfer to the Western Balkans". *Journal of European Integration* 31/1: 449-465
- "Ustav Crne Gore." 2007. *Službeni List Crne Gore* 1/07.
- "Ustav Republike Crne Gore." 1992. *Službeni List Republike Crne Gore* 1/92.
- Vachudova, Milada. 2001. "The leverage of international institutions on democratizing states: Eastern Europe and the European Union." *RSCAS Working Paper* 01/33. Florence: EUI.
- Van Meurs, Wim. 2003. "The Belgrade Agreement: Robust Mediation between Serbia and Montenegro." In *Montenegro in Transition: Problems of Identity and Statehood*, edited by Florian Bieber, 63-82. Baden-Baden: Nomos Verlagsgesellschaft.
- Vreme. 2001. "Haški putnik". *Vreme*. Accessed 22 January 2013. <http://www.vreme.com/cms/view.php?id=290982>
- Woodward, Susan L. 1995. *Balkan Tragedy - Chaos and Dissolution after the Cold War*. Washington, D.C: The Brookings Institution.
- "XXXII Amendment to the Constitution of Macedonia." 2011. *Official Gazette of the Republic of Macedonia* 49/11.

Author contacts:

Jelena Dzankic

Robert Schuman Centre for Advanced Studies, European University Institute

Villa Paola 204 Via dei Roccettini, 9

50014 San Domenico di Fiesole (FI)

Italy

Email: Jelena.Dzankic@eui.eu