



Constitutional Challenges Ahead the EU Accession: Analysis of the Croatian and Turkish Constitutional Provisions that Require Harmonization with the *Acquis Communautaire*

Antonija PETRIČUŠIĆ* - Ersin ERKAN**

Abstract

This paper firstly attempts to establish the relationship of national law and the legal system of the EU. Secondly, it tries to compare relevant constitutional provisions by reference to the potential different understanding of the fundamental concepts between the Union and the candidate countries. This paper therefore investigates what kind of constitutional adjustments the accession process creates for the two candidate countries: Croatia and Turkey.

Keywords: Europeanization, Constitutional Reforms of Croatia and Turkey, Sovereignty, European Citizenship

INTRODUCTION

The accession to the European Union is a complex and enduring process that primarily requires harmonization of the legislation in order to meet standards of the legal system of the EU, so called *acquis communautaire*. This harmonization also requires great deal of number of institutional changes. The negotiations process requires that a candidate country provides her comprehensive reform commitment and/or plans for transposing and implementing the *acquis communautaire*. The negotiations process might imply possible difficulties in the legal harmonization process, particularly when it requires certain constitutional adjustments. The commitment to the legislative amendments itself is not sufficient enough, but it is also necessary for a candidate country to provide plans with regard to the administrative structures that would be in charge of transposition and/or implementation of the amended legislation. Alignment of the norms and practices with the *acquis* is scrutinized in regular progress reports, issued by the European Commission on a yearly basis. The achievement in the

* Mr.sc. Antonija Petričušić, Teaching and Research Assistant at the Chair of Sociology, Faculty of Law, University of Zagreb.

** Assist. Prof., Ersin Erkan, Yeditepe University, Journalism Department

progress should be measured in accordance with the actual decisions, and their adaptations and implementations.

Previous applicant countries also faced the problem of their constitutional structures and traditions reforms during the EU accession process. Rodin explains that "the constitutional frameworks of EU states members have adapted to the relations of interdependence and gone through a process termed a constitutional revolution."¹ On the other hand, "the legal and constitutional systems of the applicant countries, or potential applicants, have remained more or less unchanged and thus are insensitive to the demands that are being made by European integration."²

As it is known, applicant countries and the EU as well as all member States signs accession agreements which are draft documents that the candidate countries are bound to follow for an all-embracing social, economic and legal transformation. Accession agreements impose obligations to carry out complex and radical constitutional and legal reforms.³ Interestingly, Turkish example demonstrates that in spite of a number of important legal and constitutional changes before the Copenhagen summit of 2002 the Council was willing merely to grant a conditional date for the beginning of full accession negotiations "by the end of 2004."⁴ Croatia was, on the other hand, requested to take the necessary steps in capturing war crime suspects and in this way proving a full cooperation with the UN International Criminal Tribunal for the former Yugoslavia (ICTY). After the preconditions were fulfilled, the European Council decided to open accession negotiations with both Croatia and Turkey on 3 October 2005. Owing to Turkey's non compliance with its obligations related to

¹ Siniša Rodin, 'Pridruživanje Hrvatske Europskoj uniji: preobrazba pravnog sustava', in Katarina Ott (Ed.). *Pridruživanje Hrvatske Europskoj uniji: Izazovi ekonomske i pravne prilagodbe*, (Zagreb: Institute of Public Finance: Friedrich Ebert Stiftung, 2003), 213-216. See also Joseph Weiler, 'The Transformation of Europe', *Yale Law Journal* Vol. 100, 1991, p. 2403-83, p.2403.

² Rodin, *op.cit.* (2003), *ibid.*, 223.

³ Turkey signed the Accession Agreement in 1963. Turkey's long road to EU accession started on 12 September 1963, when it became an associate member of the European Economic Community (EEC). Nevertheless, Turkey is EU candidate country since 1999. See also Harun Arikan, *Turkey and the EU: An Awkward Candidate for EU Membership* (Ashgate Publishing, 2003). However, the Stabilisation and Association Agreement between the European Union and Croatia entered into force in February 2005. Compare e.g. Article 69 of the Stabilization Association Agreement between the EU and the Republic of Croatia: "The parties ascribe important to the harmonization of existing Croatian legislation with the legislation of the Community. Croatia will endeavor to ensure the gradual harmonization of existing laws and any future legislation with the legal patrimony of the Community (the *acquis*)." See Stabilization and Association Agreement between the European Union and its Member States and the Republic of Croatia on 29 October 2001, 2005/40/EC, Official Journal of the European Union, 28 January 2005. The Turkish Accession agreement does not contain a similar clause, but Chapter IV of Decision 1/95 sets out the fields in which Turkey has to approximate its laws to those of the Community. This concerns in particular intellectual property law, competition law, trade defence instruments and taxation. In addition to this, the 1998 Cardiff Council invited the Commission and the appropriate Turkish authorities "to pursue the objective of harmonising Turkey's legislation and practice with the *acquis*."

⁴ Daniel Gros, Kemal Dervis, Michael Emerson, and Sinan Ulgen, 'The European Transformation of Modern Turkey', Centre For European Policy Studies, Brussels/Economics And Foreign Policy Forum, Istanbul, 2004, at <<http://www.ceps.be>>, 13.

the additional protocol to the Ankara Agreement in December 2006, the EU decided to freeze eight chapters of the negotiations, but to continue with the other chapters. Accession negotiations are based on the principle that candidates accept the *acquis* and apply it effectively upon accession.⁵

As supreme legal sources of the candidate countries, constitutions are often bound to changes in the accession process. Therefore, one of the critical points in the process of full membership to the EU is that the constitution is not to include any articles which could hinder the pre-accession reforms to be made. This paper will therefore investigate what kind of constitutional adjustments the accession process creates for the two candidate countries: Croatia and Turkey. Examining the assumption that the EU accession might tackle even the basic principles contained in the Constitution, the present paper will attempt to point towards the possible and probable Constitutional amendments that will be necessary to pass in Croatia and Turkey.

THE RELATIONSHIP BETWEEN THE NATIONAL LAW OF A CANDIDATE COUNTRY AND THE LEGAL SYSTEM OF THE EU IN THE ACCESSION PERIOD

The implementation of constitutional changes is necessary in order to become a Member State of the EU.⁶ However, a fear of losing or surrendering sovereignty to the EU has been fostered by (mostly right-wing or right extremists) politicians in a number of accession countries. While internal sovereignty is defined as the self-rule of a community on matters of domestic nature without interference of other states or external powers, the external sovereignty is referred to as a recognized capacity to engage relations with other actors in the international system.⁷ Even before the accession countries become Member States, "politics at EU level and politics at domestic level interact and change the conditionality-compliance dynamic."⁸ Applying Putman's 'logic of two-level game', such a loss of sovereignty local politicians, that due to sovereignty "interact as equals on the international arena attempt to 'hammer' compromises which they later try to 'sell' to their domestic constituencies."⁹

The necessity for the amendments in Turkey's constitutional and legal legislation required by the European Union has been debated since 1959 when Turkey applied for full membership of the Union that was then called as the

⁵ Tomislav Maršić, 'Assessing the negotiation experience: quick accession or good representation?', in Katarina Ott (Ed.) *Croatian accession to the European Union: the challenges of participation* (Zagreb: Institute of Public Finance: Friedrich Ebert Stiftung), p. 29-56, p. 31.

⁶ Sinisa Rodin, *op.cit.* (2003), 233.

⁷ Stephen Krasner, *Sovereignty: Organized Hypocrisy*, (Princeton: Princeton University Press, 1999), p. 20-25.

⁸ Gergana Noutcheva, 'EU Conditionality, State Sovereignty and the Compliance Patterns of Balkan States', Paper prepared for the 3rd Pan-European Conference on EU Politics (Istanbul: European Consortium for Political Research, Bilgi University, September 2006), p. 5.

⁹ Robert D. Putnam, 'Diplomacy and Domestic Politics: The Logic of Two-Level Games,' *International Organization* Vol. 42 No.3, 1988, p. 427-460.

European Economic Community (EEC). Since then, great deals of changes were realized particularly in 2002 and 2004.

However, the source of sovereignty and its use as well as the constitutional articles regulating the actions of executive, legislative and judicial powers in the Turkish Constitution contradict with the fact above. For instance, the Article 6(1) that defines the source and the use of sovereignty prescribes "Sovereignty is vested fully and unconditionally in the nation." It continues that "The Turkish Nation shall exercise its sovereignty through the authorised organs as prescribed by the principles laid down in the Constitution." Finally, Article 6(3) that bans the transference of the sovereignty (prescribes that "The right to exercise sovereignty shall not be delegated to any individual, group or class. No person or agency shall exercise any state authority which does not emanate from the Constitution") clearly constitute impediments for the EU membership. Furthermore, articles 7, 8 and 9 which refer to the authorities of organs to use sovereignty in the frame of division of powers.¹⁰ Without any changes directed at these articles, national sovereignty rights cannot be transferred to EU organs.

When we study the countries that became EU members in 2004, it becomes clear that the related countries mention constitutional delegation of sovereignty by referring to either directly to the EU or international organizations. Poland (Art. 90), Slovenia (Art. 138/5) and Czech Republic (Art.10) can serve as examples to countries that cite 'delegation of sovereignty by referring to international organizations' rather than the EU itself. On the other hand, Latvia (Art. 68), Hungary (Art. 2A) and Slovakia (Art. 7) are among the countries whose constitutional texts mention 'the transference of sovereignty to the EU' in their constitutions.¹¹

According to Baslar, whenever the EU organs decide and act for the common interests of the sovereign nations, sovereignty is still vested with the nation. Therefore, it would be sufficient to apply a partial delegation of sovereignty to the international organizations in to the Article 6 of the Turkish

¹⁰ Turkish Constitution Art. 7: 'Legislative power is vested in the Turkish Grand National Assembly on behalf of the Turkish Nation. This power cannot be delegated.' Turkish Constitution Art. 8: "Executive power and function shall be exercised and carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and the law." Turkish Constitution Art. 9: "Judicial power shall be exercised by independent courts on behalf of the Turkish Nation." (http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf)

¹¹ For example Article 2/A.(1) of Hungarian Constitution reads: "By virtue of treaty, the Republic of Hungary, in its capacity as a Member State of the European Union, may exercise certain constitutional powers jointly with other Member States to the extent necessary in connection with the rights and obligations conferred by the treaties on the foundation of the European Union and the European Communities (hereinafter referred to as 'European Union'); these powers may be exercised independently and by way of the institutions of the European Union." (<http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=94900020.tv&dbnum=62>) On the other hand, Article 7(2) of the Slovakian Constitution reads: "The Slovak Republic may, by an international treaty, which was ratified and promulgated in the way laid down by a law, or on the basis of such treaty, transfer the exercise of a part of its powers to the European Communities and the European Union. Legally binding acts of the European Communities and of the European Union shall have precedence over laws of the Slovak Republic. The transposition of legally binding acts which require implementation shall be realized through a law or a regulation of the Government according to Art. 120, para. 2., at http://www.vop.gov.sk/en/legal_basis/constitution.html.

constitution.¹² In addition to this, by advocating the idea of a common use of sovereignty rather than its delegation to the EU, Baslar argues that: "*the 'delegation' of sovereignty to the EU is not to delegate the right to exercise sovereignty to any individual, group or class. The ban that is emphasized in the Article 6 of the Constitution is not related to external sovereignty (independence) but to internal sovereignty. The Article 6 of the Turkish Constitution cannot be interpreted to mean that it is absolutely against the 'sharing' of sovereignty with an international organization or 'common use' of it.*" Besides, it should be known that according to the Consolidated Treaty on European Union (Art. 50) "*any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements*". According to the Treaty, the delegation of sovereignty, in fact, is not limitless or ambiguous. As a result, in the light of the study and analysis of the constitutions of the Member States which acceded the EU in and after 2004, we argue that there is no need for significant changes in Articles 6 and 9 of the Turkish Constitution and a basic environment for accession to the European Union can be formed by adding a clause that refers directly to the EU.¹³

Croatian Constitution also contains a provision that refer to sovereignty in its Preamble and in Article 2. The Article reads: "(1) *The sovereignty of the Republic of Croatia is inalienable, indivisible and untransferable. (2) The sovereignty of the Republic of Croatia includes its land area, rivers, lakes, canals, internal maritime waters, territorial sea, and the air space above these. (3) The Republic of Croatia shall exercise its sovereign rights and jurisdiction in the maritime areas and the seabed and subsoil thereof of the Adriatic Sea outside the state territory up to the borders with its neighbours in accordance with international law. (4) The Croatian Parliament (Sabor) or the people directly shall, independently and in accordance with the Constitution and law, decide: on the regulation of economic, legal and political relations in the Republic of Croatia; on the preservation of natural and cultural wealth and its utilization; on association into alliances with other states. (5) The Republic of Croatia may conclude associations with other states, retaining its sovereign right to decide on the powers to be delegated and the right freely to withdraw from such associations.*"¹⁴ Obviously, the Croatian constitutional provisions on sovereignty have much broader scope than the Turkish ones.

Apart from the questioning the loss of sovereignty in the pre-accession period, another important legal question arises. Namely, the legal systems of candidate countries have to be adjusted for the application of the supranational, European legal sources. Therefore, an interface between national and European law should be put in place, preferably giving a legal definition to the status of European law in the national legal system, and allowing for direct

¹² Kemal Baslar, 'Avrupa Birliği'ne Katılım Sürecinde Türk Anayasası'nın Uyumlaştırılması Sorunu', <http://www.turkishweekly.net/turkce/makale.php?id=51> (January 28, 2005), 5

¹³ In the case of Turkey, as the process of negotiations is open-ended, there exists no urgent cause as to the delegation of sovereignty rights in the short term. Nevertheless, it would be convenient to put a special clause in the 1982 constitution concerning a referendum to be held at the phase of becoming a full member to the European Union. Baslar, *op.cit.*, p. 7.

¹⁴ The Constitution of the Republic of Croatia, the consolidated text published in the Official Gazette, No. 41/01 of May 7, 2001 together with its corrections published in the Official Gazette No. 55 of June 15, 2001.

implantation of Community law and so called 'association law'.¹⁵ Former applicant countries have addressed these problems in different ways, and there are considerable differences in the provisions concerning the status of treaties in their legal systems.¹⁶

European Community Law takes primacy over Member States domestic laws, at every level, including the constitutional law of Member States.¹⁷ Nevertheless, in spite of the position of the ECJ¹⁸ that endorses the primacy of Community law, some states indeed respect full primacy of Community law, whereas others admit partial primacy of the Community law, which is limited by constitutional law (such countries are for example Italy, Belgium, Denmark and Germany); and finally there are countries which assume that their constitutional law takes primacy over Community law "either predominantly or in principle"¹⁹, those countries being France and Greece.

Besides, experiences of countries which became candidates for the European Union can be taken account of. As an illustration, Romanian Constitution which was modified within the frame of adaptation to the EU *acquis* assigned superiority to the human rights treaties (Art. 20(2)) as well as the jurisprudence of the European Court of Justice (Art. 148(2)).²⁰ Similarly, Article 7(2) in the Slovak Constitution accepts the superiority of the EU *acquis* while Article 7(5) recognizes superiority of the international treaties concerning basic human right and freedoms.²¹

¹⁵ Rodin, *op.cit.* (2003), 235-236.

¹⁶ *Ibid.*

¹⁷ Christoph Grabenwarter, 'National Constitutional Law Relating to the European Union', in Armin von Bogdandy and Jürgen Bast, *Principles of European Constitutional Law* (Hart Publishing, 2006), p. 97.

¹⁸ See e.g. Judgment of the Court of Justice, *Costa v ENEL*, Case 6/64 (15 July 1964). This judgment showed that the EEC Treaty has created its own legal system which has become an integral part of the legal systems of the Member States, and that Community law takes precedence over national law. In the Case 106/77 *Simmenthal II* the ECJ interpreted article 189 of the EEC Treaty and the effects of the direct applicability of community law if it is inconsistent with any provisions of national law which may conflict with it .

¹⁹ Christoph Grabenwarter, *op. cit.*, p. 97-104.

²⁰ Article 148(2) of Romanian Constitution reads: "As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act." Article 20(2) reads: "Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions.", at http://www.dreptonline.ro/en_resources/en_romanian_constitution.php.

²¹ Article 7(2) of Slovakian Constitution reads: "The Slovak Republic may, by an international treaty, which was ratified and promulgated in the way laid down by a law, or on the basis of such treaty, transfer the exercise of a part of its powers to the European Communities and the European Union. Legally binding acts of the European Communities and of the European Union shall have precedence over laws of the Slovak Republic. The transposition of legally binding acts which require implementation shall be realized through a law or a regulation of the Government according to Art. 120, para. 2." Article 7(5) reads: "International treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws.", at http://www.vop.gov.sk/en/legal_basis/constitution.html.

Article 90 of the Constitution of Turkey prescribes the monistic approach for the incorporation of international law into the domestic legal system. It is a well known fact that the principle of superiority of the Union's jurisprudence contradicts with the last clause of Article 90 which does not allow any superiority to international treaties in general, Union *acquis* in specific.²² Since the related article assigns superiority only to international treaties about basic rights and freedoms. 90(5) it reads: "International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail."

Similar to the Constitution of Turkey, the Croatian Constitution foresees the monistic approach. The Article 140 of the Constitution prescribes following: "International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law." The Croatian Constitution in other words foresees that ratified treaties constitute part of the national legal system and supra-statutory legal force is guaranteed for them. However, the constitution says nothing of the direct implementation of EU treaties.²³

Nevertheless, the possibility of the direct application of EU treaties will need to take place in Croatian judiciary, and the Croatian courts will need to allow the EU treaties to have immediate effect as of the moment of the EU accession. This "departure from [this] dualist practice has proven to be a difficult task and dualist remnants have not been fully eradicated from Croatian legal system up to date" because "former Yugoslav constitution [...], like constitutions of most other Central and East European states, adhered to a strict dualist system. Former communist countries found the dualist principle to be a practical device for isolating themselves from unwanted effects of international human rights instruments which were often considered an 'interference with internal affairs'. In an attempt to depart from such practice and to fully embrace international

²² In the preparation process of the Law No. 5170 and dated May 7, 2004 which made amendments in ten articles of the Constitution, it was thought to provide superiority for all the international treaties before 2004; however, due to the pressure from the public, the principle of superiority only for the international treaties about "the basic rights and freedoms" was accepted. The Law Draft on Changing Certain Articles in the Turkey Republic Constitution, (Term: 21, Legislative Year: 3, T.B.M.M. (Number: 773). On the other hand, it is clear that although the related amendment was exercised with the aim of regulating the Constitution and National laws in accordance with EU *acquis* and Copenhagen Criteria, accepting superiority only for the ones about the basic rights and freedoms out of all international treaties does not have that much of a meaning.

²³ Anneli Albi, 'Impact of European Integration on National Constitutions and Parliaments' (The Hague: 'Impact of EU Accession on the National Legal Orders of Candidate Countries - National Report of Croatia', The Hopes and Fears of New Member States and (Pre)candidate Countries: Views on the EU Constitution, 13 October 2004), p. 9.

human rights standards Croatian Constitution of 1990 has put an end to the dualist approach."²⁴

Under the current constitutional measures in Croatia and Turkey, "unconditional primacy of European law over the constitution is not compatible with the current constitutions in these countries."²⁵ Rodin suggests two possible solutions to this problem:

*"One could be found in more precise constitutional definition of self-executing effects of international treaties and secondary treaty law. Provision to such effect would restate the constitutional principle of legal monism and provide clear instructions for courts and public administration. Such an amendment could specify that provisions of international treaties and secondary treaty law which are clear, unconditional and do not require further implementation, that are legal basis of individual rights or that in other way create legal effects should be applied directly by courts and public administration. Advantage of this approach is that it affirms constitutional choice of legal monism and applies not only to Community Law but to much broader array of international sources, such as the law of the European Convention on Human Rights and Fundamental Freedoms. At the same time its disadvantage may be in lack of more EU-specific regulation. However, the latter could be remedied by appropriate legislation. Second solution would be in distinguishing Community Law from international law and making specific provisions to this effect. An advantage of such approach is that it can be more sensitive to differences in application of Community rules in pre- and post-accession periods. Another advantage is making a clear watershed between international and Community Law what is the current reality."*²⁶

Apart from adjusting their Constitutions to allow for the primacy of the Community law; both countries will have to face numerous other amendments of the constitutions. The following paragraphs will try to indicate in which directions those changes would need to go.

²⁴ Siniša Rodin, 'Requirements of EU membership and legal reform in Croatia' in *Politička misao: Croatian Political Science Review* Vol. 38, 2001, p. 98.

²⁵ Armin von Bogdandy and Jürgen Bast, *Principles of European Constitutional Law*, Hart Publishing, 2006. Compare also Siniša Rodin, Tamara Čapeta and Dario Mihelin, 'Croatia - National Report', in Kellermann, Alfred ; Czuczai, Jenő ; Blockmans, Steven ; Anneli Albi, (Eds.), *The Impact of EU Accession on the Legal Orders of New EU Member States and (Pre) Candidate Countries: Hopes and Fears* (Hague : T.M.C. Asser Press, 2006, p. 465-489. Actually, the country especially for Turkey to model is Czech Republic. Because the former condition of the Article 10 of the Czech Constitution before the amendment in 2001 was quite similar to Article 90(5) of the 1982 Constitution of Turkey. That is to say, it used to accept superiority for international treaties as to human rights. With the amendment it underwent three years before the full membership to the EU (2001), Article 10 of the new Czech Constitution was as follows: "Promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order; if a treaty provides something other than that which a statute provides, the treaty shall apply.", at http://angl.concourt.cz/angl_verze/constitution.php.

²⁶ Siniša Rodin, *op.cit.* (2001), 99.

FUNDAMENTAL RIGHTS: IS THE CONCEPT EQUALLY UNDERSTOOD BY THE COMMISSION AND BY THE APPLICANT STATES?

Human rights, democracy and the rule of law are core values of the European Union being enshrined as a constitutional principle in the Article 6(1) of the consolidated Treaty on European Union that establishes the Union "on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law." Accordingly, Article 49 of the consolidated Treaty stipulates that "[a]ny European State which respects the principles set out in Article 6(1) may apply to become a member of the Union." Fundamental rights have been reinforced by the adoption of a Charter of Fundamental Rights.²⁷

The Nice European Council decided to supplement Article 7 of the EU Treaty with a mechanism for preventing violations of fundamental rights. The Commission, the European Parliament or one third of the Member States may request that the Council determine the existence of a risk of a breach of fundamental rights. After obtaining the consent of the European Parliament and having heard the Member State in question, the Council may determine by a majority of four fifths that there is a clear risk of a serious breach of fundamental rights. The Council may then make appropriate recommendations to the Member State. The Nice Intergovernmental Conference also decided that the Court of Justice would have jurisdiction only in disputes concerning procedural provisions under Article 7 of the EU Treaty and not in assessing the justification for decisions taken pursuant to that provision.

Respect for human rights is a prerequisite for countries seeking to join the Union and a precondition for countries who have concluded trade and other agreements with it. The political criteria for accession to be met by the candidate countries, as laid down by the Copenhagen European Council in June 1993, stipulate that these countries must have achieved "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities." Croatia, likewise the other Western Balkan countries, is in addition to political criteria bound by the conditions defined by the Stabilisation and Association Process that requires full cooperation with the ICTY, prosecution of war crimes, regional cooperation and refugee return.

The Commission assessed that with some specific exceptions, civil and political rights continue to be reasonably well respected in Croatia.²⁸ Besides, the position of minorities in Croatia continues to improve.²⁹ Croatia acceded to the Council of Europe in 1996 and ratified the European Convention on Human Rights in 1997 as well as majority of its Protocols. Under Article 140 of the Constitution, international treaties are part of the internal legal order of the Republic of Croatia and apply over ordinary national legislation. Croatia has put in place a number of legislative provisions to guarantee respect for human

²⁷ The Charter of Fundamental Rights of the European Union proclaimed at the Nice European Council in December 2000.

²⁸ European Commission, *Croatia 2009 Progress Report*, 12

²⁹ European Commission, *Croatia 2009 Progress Report*, 16

rights. The Constitution deals with fundamental freedoms and rights. The Constitution deals with fundamental freedoms and rights. These rights are underpinned by certain international conventions, foremost of which is the European Convention for the Protection of Human Rights and its main additional protocols, ratified by Croatia in 1997. Individuals may take their case to the European Court of Human Rights if they consider that their rights under this Convention have been violated.

Respect of fundamental freedoms and protection of human rights, including women's rights, trade union rights, minority rights and problems faced by non-Muslim religious communities have constituted an impediment for the Turkish accession progress on a number of years.³⁰ Turkey has acceded to several international human rights instruments, for example it was one of the first nations to ratify the Universal Declaration of Human Rights in April 1949. However, it has not signed the Framework Convention for the Protection of National Minorities or the Statute of the International Criminal Court. In spite of the fact it ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,³¹ Turkey has not yet submitted its country reports on the implementation of the Covenants. The supremacy of international sources of law prescribing fundamental rights and liberties was also established with the Constitutional amendments of May 2004.³²

There are authors who claim that the Europeanization of law "means above all a bridging of the legal culture gap that has been brought about by many years of detachment from the European and world mainstream."³³ This might have indeed been a case in both Croatia and Turkey. A number of constitutional amendments in Turkey that happened under the prospect of the negotiations opening demonstrate that the power of Europeanization played a key role.³⁴ Constitutional amendments from October 2001 were not restricted to political rights, but extended over a large area of socio-political life. For example, "some of them were real constitutional reforms, such as the shortening of pre-trial detention periods, the limitation of the death penalty to times of war and terrorist crimes, changes that made the prohibition and dissolution of political parties more difficult, and expansion of the freedom of association and strengthening of civil authority in the National Security Council. After the

³⁰ European Commission, *Turkey 2009 Progress Report*, 15, 20, 22.

³¹ Turkey declared reservations to both ICCPR and ICESCR: "The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes." "The Republic of Turkey reserves the right to interpret and apply the provisions of the paragraph (3) and (4) of the Article 13 of the Covenant on Economic, Social and Cultural Rights in accordance to the provisions under the Article 3, 14 and 42 of the Constitution of the Republic of Turkey." See European Commission, *Turkey 2005 Progress Report*, p. 37.

³² Daniel Gros *et al*, *op. cit.*, 19.

³³ Rodin, *op.cit.* (2003), 244.

³⁴ Heather Grabbe, 'How does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity', *Journal of European Public Policy* Vol. 8 No. 6, 2001, p. 1013-1031.

constitutional amendments, the new Civil Code entered into force on 1 January 2002, introducing significant changes in the area of gender equality, protection of children and vulnerable persons."³⁵

Three 'Harmonisation Packages' followed, after the Copenhagen European Council of December 2002, that "not only aimed to translate the preceding constitutional amendments into action by harmonising Turkish law with them, but also introduced further reforms particularly in the fields of human rights/protection of minorities, freedom of expression and freedom of association. The most notable of these were the easing of restrictions on broadcasting in and the right to learn 'different languages and dialects traditionally used by citizens in their lives', namely Kurdish."³⁶ Another set of amendments to the Constitution happened in May 2004, "*harmonising the Constitution with the previous democratisation packages. However, more significant amendments clearly establishing civilian primacy in the National Security Council, reform of the judiciary and extending guarantees for the freedom of the press were also approved by the Parliament.*"³⁷ The eighth democratisation package of July 2004 repealed "*the provision that allowed for the nomination of a member of the High Audio-Visual Board by the Secretariat General of the National Security Council.*"³⁸

In spite of the numerous former constitutional amendments, a new constitution should replace the current one, which was drafted by a handful of generals after a bloody coup d'état in 1980, and therefore it is expected "that debate on the new constitution will be the top political issue of 2010"³⁹ Extensive constitutional reforms have been carried out since the date Turkey was given candidate status (1999) especially in 2002 and 2004. Today, AK Party (Justice and Development Party) Government is trying to accelerate the EU reforms which it has retarded since 2005 when the negotiations were let to start. Making a new constitution or a small constitutional amendment package in 2010 is on the agenda of the government. As a first step to resume the (constitutional) reforms they paused for a variety of reasons, the government presented a law draft which would lower the referendum time from 120 days down to 60 days to the parliament with the aim of shortening the amendment process of certain articles or the process of making a new constitution (because they do not have enough qualified majority vote to change the constitution).⁴⁰ For the time being, it is unlikely that all parliamentary parties will be willing to support the changes of the constitution put forward by the ruling AK Party. It is expected that the government will open up to public debate the new draft constitution. The introduction of a new ombudsman law, which is of crucial importance in the EU harmonization process, also depends on the adoption of the new constitution."⁴¹

³⁵ Daniel Gros, *et al*, *op. cit.*, p. 17-18.

³⁶ *Ibid.*

³⁷ *Ibid.*, p. 19.

³⁸ *Ibid.*, p. 19-20.

³⁹ Abdullah Karakuş, 'Anayasa değişikliği mini paketlerle yapılacak', *Milliyet* 16 January 2010.

⁴⁰ 'Referandum süresi 60 güne indi', *Milliyet* 20 January 2010.

⁴¹ *Ibid.*

GAP TO BE CERTAINLY FILLED: THE RIGHTS EMERGING OUT OF THE EUROPEAN CITIZENSHIP

Introduction of European Citizenship in 1992 was meant to enhance the democratic process within the European Union, thus making the Union's institutions closer to the nationals of Member States. The European citizenship was established in the Maastricht Treaty on the European Union in 1992 marking a transition from Europe of workers to Europe of citizens. The Maastricht Treaty declared that every person holding the nationality of a member state shall be a citizen of the Union. Citizenship of the Union, it was explicitly added, shall complement and not replace national citizenship. Citizenship of the European Union grants to its holders the right to move and reside freely within the territory of the member states; the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their member state of residence, under the same conditions as nationals of that state; the right to enjoy, in the territory of a third country in which the member state of which they are nationals is not represented; the protection of the diplomatic and consular authorities of any member state on the same conditions as the nationals of that state; the right to petition the European Parliament; to apply to the European Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Constitution's languages and to obtain a reply in the same language.⁴² The 1997 Treaty of Amsterdam extended citizens rights by introducing a new anti-discrimination clause on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation to the Treaty. It is obvious that the clauses in either constitutions of or other related laws which may or will create discrimination and differences between citizens of member States and citizens of the EU.

The right to apply to the "European Ombudsman" in the Treaty on European Union needs to be added to Turkish Constitution. It is another obligation for the state to form a national ombudsman institution in this respect. For example, Romania founded its Ombudsman institution with an amendment made in 2003, before it became a member of the Union (Art.55). Croatia, established Ombudsman as a constitutional foundation which was elected by the Parliament for eight years (Art.92). Furthermore, in case of Turkey, the right of petitioning which is presented to the citizens in the Article 74 has to be expanded so that it could also cover EU citizens.

According to the EU *acquis*, in relation with the EU citizens' right to settle, they must have the right to vote and the right to hold office in the local

⁴² Several articles (Art.18-25) in the specific part of Consolidated Treaty on European Union that regulates and defines the terms of Union Citizenship include clauses as to "European Union Citizenship". In these articles, the rights provided for the Union's citizens are explained elaborately: For instance, (among the Union's citizens) there will be no discrimination (Art.18); the right to travel and settle (Art.20(2a) and 21); to vote or to be a candidate in the elections of municipalities and European Parliament (Art.20(2b) and 22); the right of asylum and the right of diplomatic protection (Art.20(2c); the right of petitioning to the European Parliament (Art.20(d), 24(2)) and the right to apply European Ombudsman (Art.20(d)), 24(3) and 228).

elections of the region or country they live in. As regards the component of the EU citizens' rights concerning the right to vote and stand as a candidate at elections, the adjustments will be necessary in the both candidate countries. Under the current constitutions only the citizens of Croatia and Turkey have the right to vote. For example, Article 45 of the Constitution of the Republic of Croatia determines that Croatian nationals have the general and equal voting rights at 18 years of age, according to law. Article 2 of the Law on the Election of Representatives to the Representative Bodies of Units of Local and Regional Self-Government stipulates that representative body members are elected by Croatian nationals having turned 18, with residence in the territory of the unit for the representative body of which elections are held. Like Croatian Constitution, Article 67(3) of the Turkish Constitution prescribes that "*All Turkish citizens over 18 years of age shall have the right to vote in elections and to take part in referenda*". Also, Article 6 of the Law on Basic Provisions of Elections provides the right to vote *just* for a Turkish citizen.⁴³

When the time comes, citizens of the Union residing in the country but who are not nationals will have to be allowed to vote and to stand as a candidate in elections to the European Parliament and in municipal elections. Legislation will also have to be enacted to transpose the relevant *acquis* on voting rights to European parliamentary and municipal elections. In case of Croatia, the amendments made to the Constitution, the Law on the Election of Representatives to the Representative Bodies of Units of Local and Regional Self-Government and the Law on Registration of Voters will be necessary in order to apply the right to vote, and to be a candidate in local elections for citizens of the Union. The Croatian government has recognized in its screening report that the alignment of legislation will be necessary and estimated that those rights will be provided upon accession of the Republic of Croatia to the European Union. At this point, we can look at Romanian case: Article 16(4) of the Romanian Constitution titled "Citizenship Rights" regulates this matter and presents this right to the EU citizens: "*After Romania's accession to the European Union, the Union's citizens who comply with the requirements of the organic law have the right to elect and be elected in the local public administration bodies.*" A similar regulation needs to be exercised in the Article 67 of the 1982 Constitution of Turkey which organizes and defines the conditions of the right the vote and the right to hold office. Should this amendment take place before the EU membership, an expression starting with "*If Turkey joins the European Union ...*" can be used as it was the case for Romania. On the other hand, in the process of making these decisions, giving the Turkish citizens the right to elect and be elected in the European Parliament with an additional article/clause should not be forgotten.

Regarding *residence rights*, EU citizens are for the time being treated in the same way as other third country nationals as regards residence and work permits, and must register with the police for stays longer than three months

⁴³ Website of Law on Basic Provisions of Elections at <http://www.ysk.gov.tr/ysk/SecmenKaydi/298.htm>.

under the Croatian Law on Foreigners.⁴⁴ In due time, the legislations of both Croatia and Turkey will have to be amended in order to ensure compatibility with the *acquis* on free movement of persons, notably on the formalities and conditions for entry and stay for the EU citizens in the territory. For example, in case of Turkey, according to the issues mentioned above, the term "foreign" or "foreigner" in the Article 16 in the constitution needs to be reviewed. Aforementioned article can be amended in the way that basic rights and freedoms are to be limited for foreigners except for the European Union citizens.⁴⁵ Similar amendment is foreseen in the draft of the Constitutional changes that will be part of the Constitutional heading "European Union".⁴⁶ In this heading, rights emerging from the European citizenship will be guaranteed to all European citizens, including the right to residence. As stated above, legal status of foreigners in Croatia is regulated by the Law on Foreigners. This Law needs to be amended in order to ensure that work and business permits will no longer be necessary for EU nationals and their family members in order to be employed in Croatia.

As a part of the right and freedom to settle in a country, one needs to mention the recognition of 'the right to have property' for the European Union citizens. While there is no clear expression that will hinder Union's citizens (both individuals and corporation) from acquiring any property in Turkey, Article 35 of the Land Register Law no.2644 which was legislated to adapt to EU legislation and amended with a law that would give the right to have real estate's property to the foreigners was cancelled by the Constitutional Court. It is seen when the experiences of other countries are observed and analyzed that Slovenia gave this right before joining the European Union. On the other hand, with the article 41(2) of the Romanian Constitution which was shaped according to the European Union's legislations, even though EU citizens are free to have property without the condition of reciprocity, other foreigners are to have the right to get property on the basis of reciprocity.⁴⁷ As can be seen, with an amendment in Turkish Constitution like the one in the Romanian Constitution, it is possible to set EU citizens apart from other countries' citizens; and with this change, the right to have property for EU citizens can be linked to the condition of full membership.

Acquisition of real estate's property in the Republic of Croatia is possible for foreign legal entities and natural persons, provided that the condition of reciprocity is met, as regulated by agreements between the Republic of Croatia

⁴⁴ Law on Foreigners, Official Gazette, 79/07 and 36/09.

⁴⁵ Turkish Constitution in Article 16 reads: "*The fundamental rights and freedoms of aliens may be restricted by law in a manner consistent with international law.*"

⁴⁶ Vlada Republike Hrvatske, 'Prijedlog odluke o pristupanju promjeni Ustava Republike Hrvatske s prijedlogom nacrtu promjene Ustava Republike Hrvatske', available at <http://www.cpi.hr/download/links/hr/12816.pdf>.

⁴⁷ Article 41(2) of Romanian Constitution reads: "*Private property shall be equally guaranteed and protected by the law, irrespective of its owner. Foreign and stateless persons shall only acquire the right to private property of land under the terms resulting from Romania's accession to the European Union and other international treaties Romania is a party to, on a mutual basis, under the terms stipulated by an organic law, as well as a result of lawful inheritance.*"

and the country of the respective foreigner's residence or business domicile. The procedure is even more favorable for the EU citizens, as established by the Stabilization and Association Agreement (Article 60/2).⁴⁸ The Agreement has foreseen the right of nationals and legal entities from the Member States of the EU to acquire real estate under the same conditions as Croatian nationals as from 1 February 2009.

Another point about the citizenship is about common action in the European Union in terms of justice and internal affairs. To achieve adjustment with European Arrest Warrant which started to be implemented in 2005, Article 38(11) of the Turkish Constitution needs to be changed and replaced by the clause that "Citizens shall not be repatriated due to a crime except for the conditions required by the Union's *acquis* and properly approved international treaties."⁴⁹ Similarly, the amendments to the Croatian Constitution will need to be changed, in order to comply with the European Arrest Warrant requirements and to allow for the extradition of Croatian citizens to EU countries. Namely, *de lege lata*, the Croatian Constitution foresees that Croatian citizens shall not be extradited to another state (Article 9(2)). In this subject, Article 53 of the Slovakian Constitution which was shaped and adapted according to European Arrest Warrant may set an example and may be taken into consideration.⁵⁰

As a last point, according to the Article 138 of the Turkish Constitution, judges come to decisions in compliance with the law and Constitution. However, there needs to be a relaxing clause for the judges in this article for the EU to be exercised in a proper way. For this reason, it would be beneficial to make an addition to the content of the article, which would facilitate the process for the judges to decide according to the Union's *acquis*. In this respect, the amendments that took place in Czech Constitution in 2001 are noteworthy because the former Article 95 of the Czech Constitution was similar to Article 138 of the 1982 Constitution of Turkey. After the changes in 2001, with the new Article 95(1), judges entered into responsibility of making their decisions based on not only the law but also "the treaties that have become an integral part of the judicial system"⁵¹

⁴⁸ See the text of the Proposal for a Council Decision concerning Stabilisation and Association Agreement, COM(2001) 371 final, <http://www.mvpei.hr/ei/download/2001/08/02/SAACouncilProposal1.pdf>.

⁴⁹ Baslar, *op.cit.*, p. 16-17.

⁵⁰ Article 53 of the Slovakian Constitution reads "The Slovak Republic shall grant asylum to aliens persecuted for the exercise of political rights and freedoms. Such asylum may be denied to those who have acted in contradiction with fundamental human rights and freedoms. A law shall lay down the details."

⁵¹ Article 95(1) of Czech Republic Constitution prescribes "In making their decisions, judges are bound by statutes and treaties which form a part of the legal order; they are authorized to judge whether enactments other than statutes are in conformity with statutes or with such treaties."

NECESSARY AMENDMENTS BEFORE THE ACCESSION

Amending Provisions That Banned "The Association of the Republic of Croatia into Alliances with Other States"

In 1997 the Constitution was amended, prescribing a procedure for the association of the Republic of Croatia into alliances with other states.⁵² In order to allow for an association to the international organization, such an alliance shall first be decided upon by the Croatian Parliament by a two-thirds majority vote of all representatives. Any decision concerning the association of the Republic of Croatia shall be made on a referendum by a majority vote of the total number of electors in the State. Such a referendum shall be held within 30 days from the date when the decision has been rendered by the Croatian Parliament. Constitutional amendment was a reaction to 'regional approach', policy the EU had pursued at the end of 1990s towards the Western Balkans.⁵³ The amendment confirmed that the purpose of the Article was to prevent formation of any state-union that would resemble former Yugoslavia.⁵⁴ Namely, the Article 141(2) of the Constitution reads: "*it is prohibited to initiate any procedure for the association of the Republic of Croatia into alliances with other states if such association leads, or might lead, to a renewal of a South Slav state community or to any Balkan state form of any kind.*" Since the accession to the EU would require referendum in which majority of the absolute number of voters should endorse EU accession, the government fears that turnout would not be sufficient. Therefore she is planning to abolish this constitutional provision in the forthcoming constitutional changes.

Economic Provisions in the Turkish Constitution that Might Constitute an Obstacle to the Accession

Turkey can be regarded as a functioning market economy and actually she had a functioning market economy relatively well advanced in fulfilling the economic *acquis* given its close integration with the EU since 1963 (and reinforced by the 1996 customs union). It should be able to cope with competitive pressure and market forces within the Union in the medium term, provided that it implements its comprehensive reform programme to address structural weaknesses.⁵⁵

There are some economic provisions in the Turkish Constitution that might cause problematic ends. Namely, the Constitution *inter alia* prescribes a set of duties that the state has with regard the economic provisions (Articles 166 and 167). Article 166 which is titled as 'Planning' prescribes that the state should be

⁵² Article 141 of the Constitution of the Republic of Croatia, Ustavni zakon o izmjenama i dopunama Ustava Republike Hrvatske, 'Narodne novine', broj 135. od 15. prosinca 1997. godine. *Official Gazette* 8/1998.

⁵³ Antonija Petričušić, 'Regional Cooperation in the Western Balkans - a Key to Integration into the European Union', *Croatian Yearbook on European Law and Affairs* Vol. 1, 2005, p. 213-233.

⁵⁴ Igor Čutuk, 'Šeks mijenja Ustav zbog ulaska u EU', *Nacional*, 13 February 2008.

⁵⁵ Willem H. Buiters, 'It's a long way to Copenhagen. Turkey's Membership of and Convergence with the European Union', *CEPS Policy Brief*, Vol: 96, March 2006.

involved with "the planning of economic, social and cultural development, in particular the speedy, balanced and harmonious development of industry and agriculture throughout the country, and the efficient use of national resources on the basis of detailed analysis and assessment and the establishment of the necessary organization for this purpose." The Article also prescribes that "measures to increase national efficiency and production, to ensure stability in prices and balance in foreign trade transactions, to promote investment and employment, shall be included in the plan; investments, public benefit and requirements shall be taken into account; the efficient use of resources shall be aimed at. Development activities shall be realised according to this plan." Article 167 prescribes supervision of markets and regulation of foreign trade. It reads that "the state shall take measures to ensure and promote the sound, orderly functioning of the money, credit, capital, goods and services markets; and shall prevent the formation, in practice or by agreement, of monopolies and cartels in the markets." The article continues that "in order to regulate foreign trade for the benefit of the economy of the country, the Council of Ministers may be empowered by law to introduce or lift additional financial impositions on imports, exports and other foreign transactions in addition to tax and similar impositions." Both articles that prescribe a kind of economic protectionism obviously seem contradictory to the free trade the EU internal market has been pursuing since its creation back in 1950s. Therefore, those provisions will have to be adjusted to the EU standards in advance to the accession.

CONCLUSIONS

The EU started to play an important role in furthering the changes in state-society relations by helping to create a 'strong language of rights' in the accession countries. This study has shown, particularly with reference to the implementations and reforms of the Constitutional bill of rights' that required acceptance of international human rights standards, that Croatia has been steadily improving its ability to take on the obligations of EU membership. However, progress in Turkey regarding political rights and related reforms are still limited. Nevertheless, Turkey's negotiations process with the EU for a fully-flagged membership appears to be an open-ended process. The hesitation of EU bureaucrats may be because the following claims; divided public opinion in Europe about Turkey's membership; the blockage of opposition parties in the Turkish Parliament on EU reforms; the efforts to destabilize AK Party; AK Party's pragmatism and inconsistency towards required amendments of constitutional changes, and etc. These arguable factors are unfortunately reducing the necessary political motivation to make amendments to the 1982 Constitution of Turkey. Thus it creates a bar for the harmonization between the national and the EU law. However, being a product of a military coup, authoritarian, the 1982 Constitution of Turkey has lost its integrity, has been to a great part deformed and as a result of this nowadays looks like a patchwork. Therefore, we argue that it would be indeed much more convenient to change it en bloc as soon as possible.⁵⁶

⁵⁶ During the final reading of this article, 17.04.2010, there appears to be 13 amendments to be made to the 1982 Constitution of Turkey which are mostly referring to the reforms required by the EU.

When it comes to the harmonization of the legislation to the *acquis*, we noted in the previous paragraphs of this paper that the alignment of the national legislation with EU legislation is high in some sectors, while in a number of areas, particularly still in Turkey, there is still space for improvement. Progress reports of 2009 for both countries observed that the progress has primarily been achieved exactly in terms of legislative alignment. However, this progress was lesser with regard to the administrative capacity of buildings and legislation implementations. Therefore, still much remains to be done regarding the overall level of legislation, alignment, harmonisation and administrative capacity of buildings. Whereas the accession process has already influenced changes of the Constitution of Turkey, the Croatian one is yet to be amended. In short, considerable efforts must be carried out for both candidate countries in order to reach full alignment of the Constitutions with the *acquis*.

REFERENCES

- Anneli Albi, 'Impact of EU Accession on the National Legal Orders of Candidate Countries- National Report of Croatia' Conference paper presented at the Conference *Impact of European Integration on National Constitutions and Parliaments*, The Hague, 13 October 2004.
- Anneli Albi, (Ed), *The Impact of EU Accession on the Legal Orders of New EU Member States and (Pre) Candidate Countries: Hopes and Fears* (Hague : T.M.C. Asser Press, 2006).
- Antonija Petričušić, 'Regional Cooperation in the Western Balkans - a Key to Integration into the European Union', *Croatian Yearbook on European Law and Affairs* Vol. 1, 2005, p. 213-233.
- Armin von Bogdandy and Jürgen Bast, *Principles of European Constitutional Law*, (Oxford: Hart Publishing, 2006).
- Christoph Grabenwarter, 'National Constitutional Law Relating to the European Union', in Armin von Bogdandy and Jürgen Bast, (eds), *Principles of European Constitutional Law* (Oxford:Hart Publishing, 2006), p. 83-129.
- Daniel Gros, Kemal Dervis, Michael Emerson, and Sinan Ulgen, 'The European Transformation of Modern Turkey', Centre For European Policy Studies, Brussels/Economics And Foreign Policy Forum, Istanbul, 2004, <http://www.ceps.be>, p. 9-21.
- Gergana Noutcheva, 'EU Conditionality, State Sovereignty and the Compliance Patterns of Balkan States', Paper prepared for the 3rd Pan-European Conference on EU Politics, European Consortium for Political Research, Bilgi University, Istanbul, September 2006.
- Harun Arikan, *Turkey and the EU: An Awkward Candidate for EU Membership?* (Ashgate Publishing, 2003).
- Heather Grabbe, 'How does Europeanisation Affect CEE Governance? Conditionality, Diffusion and Diversity', *Journal of European Public Policy* Vol. 8 No. 6, 2001, p1013-1031.
- Igor Ćutuk, 'Šeks mijenja Ustav zbog ulaska u EU', *Nacional*, 13 February 2008.
- Joseph Weiler, 'The Transformation of Europe', *Yale Law Journal* Vol. 100, 1991, p 2403-83.
- Kemal Baslar, 'Avrupa Birliği'ne Katılım Sürecinde Türk Anayasası'nın Uyumlaştırılması Sorunu', <http://www.turkishweekly.net/turkce/makale.php?id=51>

- Monica Vlad, 'National Sovereignty and the European Union. The Case of Romania', paper presented at the seminar Advanced Issues of European Law: EU Enlargement of 2004 and its Impact on Candidate Countries, Dubrovnik, Croatia, March 2005.
- Nigar Karimova and Edward Deverell, 'Minorities in Turkey', Occasional Papers No. 1, Sticholm: Utrikespolitiska institutet, The Swedish Institute of International Affairs, 2001.
- Robert D. Putnam, 'Diplomacy and Domestic Politics: The Logic of Two-Level Games,' *International Organization* Vol. 42 No.3, 1988, p. 427-460.
- Robert Podolnjak, 'Hrvatsko članstvo u EU i ustavne opcije', *Informator: instruktivno-informativni list za ekonomska i pravna pitanja* Vol. 54, 2006), p. 1-2.
- Siniša Rodin, 'Evropska zajednica i nacionalni interesi' (European Community and National Interests), *Politička misao: Croatian Political Science Review* Vol. 1, 1993,p. 22-32.
- Siniša Rodin, *Europska integracija i ustavno pravo* (Zagreb: IMO-Institut za međunarodne odnose, 1997), p. 263-269.
- Siniša Rodin, 'Requirements of EU membership and legal reform in Croatia' in *Politička misao: Croatian Political Science Review* Vol. 38, 2001, p. 87-105.
- Siniša Rodin, 'Pridruživanje Hrvatske Europskoj uniji: preobrazba pravnog sustava', in Katarina Ott (Ed.). *Pridruživanje Hrvatske Europskoj uniji: Izazovi ekonomske i pravne prilagodbe* (Zagreb: Institute of Public Finance: Friedrich Ebert Stiftung, 2003), p. 223-248.
- Siniša Rodin, Tamara Čapeta and Dario Mihelin, 'Croatia - National Report', in Alfred Kellermann et al. (eds.), *The Impact of EU Accession on the Legal Orders of New EU Member States and (Pre) Candidate Countries: Hopes and Fears* (Hague : T.M.C. Asser Press, 2006), p. 465-489.
- Siniša Rodin, 'Constitutional Challenges Ahead of Croatia's Future EU Accession', report presented at the UNIDEM Campus Trieste Seminar "European Integration – Constitutional and Legal Reforms", Trieste, Italy, September 2007.
- Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999).
- Tomislav Maršić, 'Assessing the negotiation experience: quick accession or good representation?', in Katarina Ott, (ed.), *Croatian accession to the European Union: the challenges of participation* (Zagreb: Institute of Public Finance: Friedrich Ebert Stiftung), p. 29-56.
- Willem H. Buiter, 'It's a long way to Copenhagen. Turkey's Membership of and Convergence with the European Union', *CEPS Policy Brief* Vol. 96, 2006.