

Steve Schwarzer

Transfer of law in focus. The transfer of European law on equal treatment between women and men in the process of enlargement to Bulgaria and Romania

Source

Niedersächsische Staats- und Universitätsbibliothek, Göttingen, 2011
<http://resolver.sub.uni-goettingen.de/purl/?webdoc-2843>

Index of contents

- 1 Introduction
 - 1.1 Problem and motivation
 - 1.2 Theoretical approach - short
 - 1.3 Research design
 - 1.4 Process tracing
 - 1.5 Case selection
 - 1.6 Methodological approach
 - 1.7 Structure of the thesis

- 2 Equal treatment and equal opportunities in Eastern and Western Europe
 - 2.1 Equality in socialist countries
 - 2.2 Post -1989 period
 - 2.3 Legal approach in Western Europe

- 3 Conception and analytical approach
 - 3.1 Determinants of europeanization and European enlargement
 - 3.2 Europeanization
 - 3.3 National implementation of international regulations and Eastern enlargement
 - 3.4 Europeanization and policy transfer
 - 3.5 Europeanization and national implementation
 - 3.6 Implementation and the conditions of European enlargement
 - 3.7 Transformation and enlargement

- 4 The legal system in socialist countries
 - 4.1 Transfer of law
 - 4.2 Implementation and the transfer of law
 - 4.3 Eastern Europe and law transfer – theoretical approaches
 - 4.3.1 Problems of law transfer

- 5 Principles of European enlargement
 - 5.1 European enlargement process – conditions and drivers
 - 5.2 European enlargement process – Eastern Europe
 - 5.3 European enlargement process and europeanization

- 5.4 Europeanization and European eastern enlargement
- 5.5 Europeanization and starting conditions
- 5.6 Summary – conditions and structure of the European Eastern enlargement

- 6 Applicant countries Romania and Bulgaria
 - 6.1 Romania
 - 6.2 Bulgaria
 - 6.3 Summary and comparison of endogen factors

- 7 Reform caused by the enlargement process
 - 7.1 Historical institutionalism – path dependency
 - 7.2 Sociological institutionalism – isomorphism
 - 7.3 Incentives and reform
 - 7.4 Explaining reform process - party differences
 - 7.5 Explaining reform process - administrative capabilities
 - 7.6 Summary and theoretical model

- 8 Adaptation towards European legal procedures and measures
 - 8.1. The legal situation in Romania and Bulgaria during the socialist rule
 - 8.2 The legal situation when starting negotiations
 - 8.3 The enlargement agreements
 - 8.4 Progress or stagnancy - processes until 2006
 - 8.5 Developments until the accession date 2007, 1st of January 1
 - 8.6 Developments between 2007 till 2009

- 9 Conclusions – change thru accession?

- 10 Concluding remarks

- 11 References

Summary

The European enlargement towards East European countries started right after the fundamental changes, which took place in the beginning 1990s. Since then, all former social states started to reform their political, economic and societal structures with focus once to become a member state of the European Union.

In order to follow these adjustments, the thesis expounds the problems in the policy field of opportunities and equal treatment of women and men. The policy field is most interesting as a reference point, as one can speak of two different approaches towards the problem of inequality between women and men in West and East. Whereas especially the EU is mainly oriented towards legalistic approaches to deal with the problem, former socialist countries showed a more societal approach, almost without legal fundamentals.

Within the so called enlargement process the focus lies on the transfer of the European approach of legalization of equal treatment Eastern European applicant countries had to download the European regulation and to develop legal construction and regulation in order to adapt to the laws coming from the EU's legal basis, the *Acquis Communautaire*. The whole enlargement process has been based in conditions by the EC and rewards to the applicant countries.

The thesis uses the process tracing approach, to do two things in the same time: first of all to follow the development in both countries in order to see, what happened during almost 17 years of harmonization with western European regulations and policy approaches in the field of equal treatment, and, secondly, to take into account the different theoretical approaches. Beside the obvious focus on theoretical approaches of European integration and policy implementation, the circumstances of the radical political, economic and societal changes in the early nineties and the process of transition (transformation) of all eastern European countries necessitates to also use theories of transition in order to understand the adaption in those countries. Further on, it seems to be crucial to focus on literature of law transfer, as the process itself is based in transfer of western European legal approaches and regulation toward other countries.

Adaptation and transfer have been closely monitored the European Commission In annual progress reports the EC mainly focused on adaption, whereas the implementation almost didn't appear in the reports. In-depth expert interviews were used to highlight the other side, the experienced "reality of regulation and adaption" on the ground in both countries. The differences between both perspectives are obvious and raise question, whether the European Commission didn't track the implementation phase in order to evaluate progress and adaption.

The findings highlight the misconception of the EC's monitoring, as the gap between adaptation and implementation remains large. The thesis also emphasizes the different and complex explanations for the developments in both countries.

The results also provide some hints, why it is more difficult for current and future applicant countries, as the EC is more careful in evaluating the progress of adaption then she did in the case of Bulgaria and Romania.