

**Partial Reforms
and Incomplete
Europeanisation -**

Croatia's

Experience in

Conducting Reforms

in the Context

of the Chapter 23

Negotiations

with the EU

Policy Insight

Partial Reforms and Incomplete Europeanisation – Croatia’s Experience in Conducting Reforms in the Context of the Chapter 23 Negotiations with the EU

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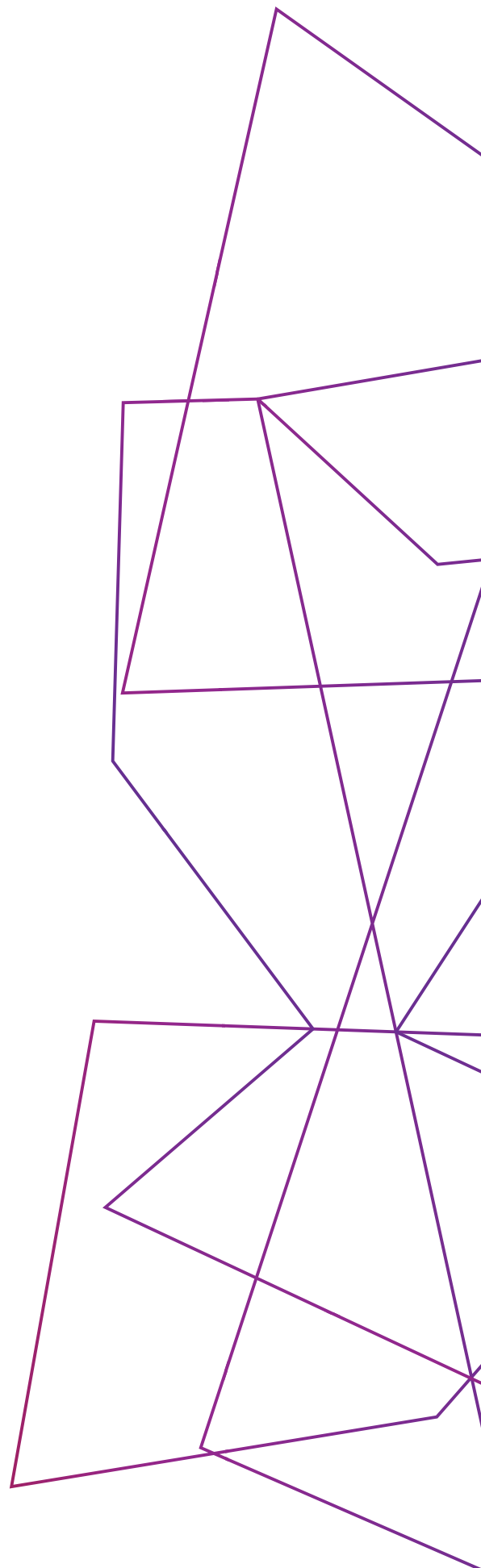
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Introduction

Croatia became a member of the European Union on July 1, 2013, after more than ten years since it applied for membership in February 2003. Negotiations started in November 2005 with the 'screening' stage, while the first chapter on science and research was opened in June 2006. The start of the accession negotiation was made conditional by the EU based on the full cooperation of Croatia with the International Criminal Tribunal for former Yugoslavia (ICTY). After six years of negotiating, the accession negotiations were closed in June 2011, and finally in December 2011, the EU and Croatia signed the accession treaty.¹

Chapter 23 on judiciary and fundamental rights was probably the most challenging and publicly discussed part of the negotiations from the beginning - ever since the cooperation with the ICTY was an obstacle for opening the process of negotiations - until much later when progress in the judiciary and the fight against corruption reform processes were measured by the EU with tangible results, which was proven demanding for Croatia to manifest.

Nevertheless, the reforms conducted under the auspices of the EU negotiations undoubtedly transformed the judiciary, accelerated the fight against corruption and improved the system for the protection of fundamental rights and freedoms. Although these reforms enabled Croatia to become a member of the EU, their results and outcomes were not entirely in line with expectations. Moreover, in the case of Croatia like in many other Central and East European EU member states, it is evident and clearly visible that after the EU conditionality had passed many of the started reforms were not finalised due to changes of political priorities or were reversed (either by changing or choosing not to implement the current policies).

¹ European Neighbourhood Policy and Enlargement Negotiations - Croatia, available at: https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/croatia_en

Chapter 23 Judiciary and Fundamental Rights

The Croatian negotiations were divided into 35 chapters. Judiciary and fundamental rights were part of chapter 23. Negotiations of this chapter were open in June 2010 and were among the last few chapters that were closed in mid 2011.²

Croatian national structure for preparation of the negotiation on *acquis communautaire* on the judiciary and fundamental rights was organised into a *Working group for Chapter 23* which had five sub-groups on judiciary reform, national war-crime trials, anti-corruption policy, fundamental and minority rights, and return and housing of refugees. This division corresponded to the content-scope of the negotiations. Members of these working groups were predominantly representatives of state institutions with a few representatives from academic institutions.³ Representatives of civil society organisations were not part of this groups and were not included in the negotiation process in a method of conducting regular and structured consultations with civil society.

For the closure of negotiations of Chapter 23, the EU required Croatia to fulfil ten closing benchmarks in four areas: judiciary, combating corruption and organised crime, fundamental and minority rights, and cooperation with the ICTY.⁴ Benchmarks were designed as a tool to closely monitor Croatia's achievements and fulfilment of the requirements set in the negotiations' framework. They were designed and tailored to indicate whether the measures to implement the *acquis communautaire* are in place, and required the Croatian authorities to present a track record demonstrating its success, which was a novel approach in the negotiation process.

² Ministry of Foreign and European Affairs, Pregled stanja pristupnih pregovora Hrvatske s Europskom unijom stanje 30. lipnja 2011., available at: <http://www.mvep.hr/custompages/static/hrv/files/pregovori/stanje-dinamika.pdf>.

³ Ministry of Foreign and European Affairs, Radna skupina za poglavlje Pravosuđe i temeljna ljudska prava, available at: <http://www.mvep.hr/hr/hrvatska-i-europska-unija/pregovori/kako-smo-pregovarali/radne-skupine-za-pripremu-pregovora-u-pojedinim-poglavljima/23/>.

⁴ European Commission, Interim Report from the Commission to the Council and the European Parliament on Reforms in Croatia in the Field of Judiciary and Fundamental Rights (Negotiation Chapter 23), COM(2011) 110, page 2, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/hp/interim_report_hr_ch23_en.pdf.

Closing benchmarks in the area of judicial reform were to update the *Judicial Reform Strategy and Action Plan* and ensure effective implementation (CMB1); strengthen the independence, accountability, impartiality and professionalism of the judiciary (CMB2); improve the efficiency of the judiciary (CMB3); and improve the handling of domestic war crimes cases (CMB4). In the area of *fight against corruption and organised crime*: establish a track record of substantial results based on efficient, effective and unbiased investigation, prosecution and court rulings in organised crime and corruption cases at all levels including high level corruption, and in vulnerable sectors such as public procurement (CMB5); establish a track record of strengthened prevention measures in the fight against corruption and conflict of interest (CMB6). In the area of *fundamental and minority rights*: strengthen the protection of minorities, including through effective implementation of the Constitutional Act on the Rights of National Minorities (CARNM) (CMB7); settle the outstanding refugee return issues (CMB8); improve the protection of human rights (CMB9), and finally to continue the full cooperation with the ICTY (CMB 10).⁵

⁵ Ibid.

National civil society coalition for monitoring the Chapter 23 negotiations

Croatian civil society organisations primarily had a monitoring and watch-dog role in the negotiations, especially during the Chapter 23 negotiations. In February 2011, a few weeks before the European Commission's progress report on Croatia was published, a group of more than ten civil society organisations active in the field of protection and promotion of human rights produced a *Joint Opinion of Croatian Civil Society Organizations on the Readiness of the Republic of Croatia to Closing Negotiations in Chapter 23 - Judiciary and Fundamental Rights*, a report addressed both to the European Commission and to the Croatian public. The organisations stated that at that point, Croatia was not ready to close the Chapter 23 negotiations because the rule of law standards were not yet met, e.g., functional judiciary and system for the protection of human rights. In the area of judicial reform and fundamental rights, organisations requested the establishment of the independent supervisory mechanism over the reform processes and independence of the judiciary with the status of an independent rapporteur which would report to the Croatian Parliament and the EU institutions for at least the first three years of EU membership. Moreover, the organisations also demanded amendments to the Free Legal Aid Act in order to eliminate unnecessary administrative barriers hindering access to legal aid, and therefore to the justice system, etc.⁶

Those, and other actions and efforts of civil society organisations led to the foundation of *Platforma 112* - a coalition of human rights organisations from Croatia that was assembled in the context of the finalisation of the EU negotiations. Platforma 112 gathered around 70 civil society organisations active in fields of human rights protection, democratisation, peacebuilding, the fight against corruption, protection of public goods, and protection of the environment.

6 Zajedničko mišljenje hrvatskih organizacija civilnoga društva o spremnosti Republike Hrvatske na zatvaranje pregovora u 23. poglavlju - Pravosuđe i temeljna ljudska prava, Zagreb, February 2011, available at: https://s3-eu-west-1.amazonaws.com/zelena-akcija.production/zelena_akcija/document_translations/729/doc_files/original/Zajednicko-misljenje.pdf?1298297288.

Ahead of the 2011 parliamentary elections, Platforma 112 presented its 112 demands to the political parties and candidates on necessary reforms and measures to advance and secure the rule of law standards in Croatia. These 112 demands were later presented to the newly formed government which was asked to implement them in the two-year long period during the ratification process of the EU accession agreement. Organisations requested the government to act proactively and deliver reforms in five interconnected areas and to secure: i) stable, responsible and democratic institutions, and equal access to justice for all; ii) increase the quality of democracy; iii) strengthen the fight against corruption and protection of public interest; iv) enable equality and dignity of all people; and v) to deal with the past and engage in peacebuilding. In the area of judicial reforms, the Platforma 112 specifically urged the government to adhere to the criteria established for the selection of judges and to extend the same criteria to the selection of state attorneys. The organisations also repeated their previous calls to amend the Free Legal Aid Act and to secure support and protection to the victims of criminal acts.⁷

Civil society organisations in Croatia were genuinely supportive of the process of EU accession and encouraged the Government to use this process and utilise the reforms to the fullest extent to achieve long-lasting results and improvements in the fields of human rights, the rule of law, and democracy. As stated above, unfortunately, the negotiation framework did not count on the inclusion of the civil society as an important stakeholder that could facilitate the implementation of the necessary reforms and contribute to the better quality of laws and public policies that were being drafted. Besides the occasional inclusion of the civil society framework in the process of drafting new legislation, the primary role of Croatian organisations was as a 'watch-dog'. Some other challenges vis-à-vis transparency and inclusiveness were undefined and rules for the engagement of civil society were unclear: The closed process of the negotiations encompassed with confidentiality; urgent legislative process and weak public consultation frameworks and practices and the poor capacity of the Parliament to prompt public debate on EU accession, combined with an inadequate communication strategy.⁸

7 Zahtjevi Platforme 112, Zagreb, November 2011, available at: https://www.gong.hr/media/uploads/dokumenti/Platforma_112_za_Hrvatsku_vladavine_prava_-_21122011.pdf.

8 Marina Skrabalo, Transparency in retrospect: preliminary lessons from Croatia's EU accession process, Discussion paper commissioned by the Greens / EFA in the European Parliament, available at: <http://www.franziska-brantner.eu/wp-content/uploads/2012/11/Transparency-in-retrospect.pdf>.



Civil society engagement in the post-negotiation period

After the finalisation of the negotiation process and the signing of the EU Accession Agreement, the new government changed political priorities that were now shifted to deal with economic performance, unemployment, austerity measures and consequences of financial crisis⁹. In that time, Platforma 112 continued its monitoring and advocacy activities during the ratification period and before Croatia became a member state, vis-à-vis implementation of the obligations emerged from the negotiation process. In April 2012, organisations within in Platforma 112 published a report on Croatia's performance in the reform processes.

In their *Report of civil society organizations on the first 112 days of the new government with recommendations for effective action by the end of 2012*, the civil society organisations pointed out the difficult aspects of meeting the Chapter 23 rule of law standards, which in the context of the judicial reform, remained the same: selection of judges and state attorneys, free legal aid and support to victims.¹⁰ Organisations in Platforma 112 announced they would continue its cooperation, and efforts to monitor the implementation of the ongoing reforms required to meet the Chapter 23 standards, and that they would develop advocacy activities to inform the public and European Commission ahead of the Commission's annual progress reports.¹¹

Joint monitoring and advocacy actions of civil society organisations in Platforma 112 continued even after Croatia became a EU member state in July 2013, mainly because the reform process on achieving standards from Chapter 23 were not concluded and the majority of the Platforma 112 demands from 2011 were not yet met. Therefore, in November 2014, ahead of parliamentary elections, Platforma 112 published its report *Assessment of Reform Capacities of the Government of the Republic of Croatia in the past three years of mandate in relation to Platforma 112 demands*. In this report, the organisations stated that not one demand from 112 requests ahead of 2011 elections had been fully achieved and implemented, and concluded that despite being a member state of the EU, over the past few years, the rule of law standards and human rights situation had deteriorated in Croatia with an increase in social polarisation in regard to the economic deprivation of its citizens.¹²

Prior to this report, in 2013, Croatia held a citizen-initiated referendum for amending the Constitution by adding a heterosexual definition of marriage as the sole union between a man and a woman. Both the pre-referendum and referendum campaigns had a negative impact on the human rights of LGBT persons in Croatia, and the Government has not taken any legal action to challenge the constitutionality of the referendum initiative and did not take an active role in the campaigning against the proposed amendments to the Constitution. The main campaigners against this anti-LGBT referendum were civil society organisations gathered around Platforma 112 that formed the campaign *Građani glasaju PROTIV [Citizens vote AGAINST]* that utilised its earlier advocacy experience and experience of joint collaboration and work in collations to create a formidable campaign with very limited resources and in a very short space of time.¹³

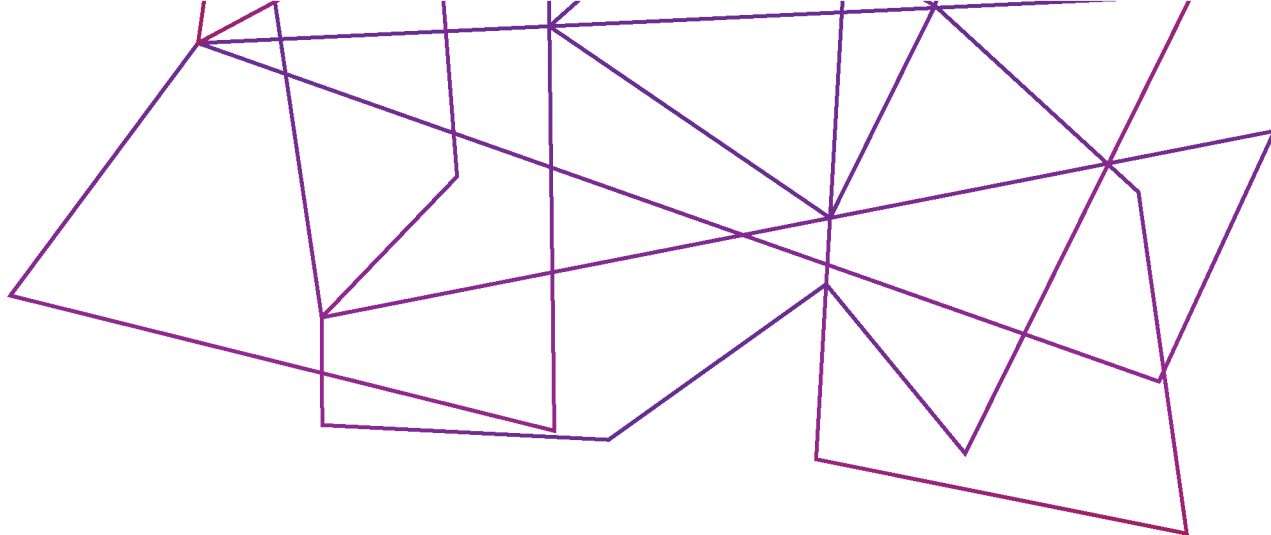
9 Danijela Dolenc, *Democratic Institutions and Authoritarian Rule in Southeast Europe* (ECPR Press, 2013), page 158.

10 Platforma 112, *Izveštaj organizacija civilnog društva o prvih 112 dana nove vlasti s preporukama za učinkovito djelovanje do kraja 2012. godine*, Zagreb, April 2012, available at: <http://www.sjaj.hr/wp-content/uploads/2012/04/Izveštaj-Platforme-112-finan-lektoriran.pdf>.

11 *Ibid.*, page 2.

12 Platforma 112, *Ocjena reformskih kapaciteta Vlade RH u protekle tri godine mandata u odnosu na zahtjeve Platforme 112*, November 2014, available at: https://www.gong.hr/media/uploads/p112_izveštaj_studen_2014.pdf.

13 *Građani glasaju PROTIV* web page, available at: <http://glasajprotiv.cesi.hr/o-nama-podrzavateljji/index.html>.



Simultaneously, organisations in Platforma 112 were engaged in countering another citizen-initiated referendum initiative that was collecting signatures to hold a referendum on limiting the rights of national minorities to equal and official use of their scripts and languages, with the real target being Serbian language and the Cyrillic script. The organisations formed a campaign *SVI MI – za Hrvatsku svih nas!* [*ALL OF US – for a Croatia for everyone*] the goal of which was to raise public awareness about the importance of protecting minorities rights which are protected with international human rights treaties, with Croatia having pledged to uphold these standards in the Accession Agreement with the EU¹⁴. The referendum initiative ultimately failed after the decision of the Constitutional Court upon the request for a Constitutional check made by the Parliament.¹⁵

Following the 2014 parliamentary elections and the formation of the new government, Platforma 112 had an important role in countering illiberal policies of that government in the field of civic space, media, culture and historical revisionism vis-à-vis Second World War. In a number of public actions, protests and peaceful gatherings, together with domestic and international advocacy efforts, Platforma 112 and its member organisations were warning the public and stakeholders about reverting the rule of law, democracy and fundamental rights standards achieved during the accession to the EU, and that the Croatian government is modelling its policies based on Hungary and Poland which at that time already had huge problems with the rule of law, especially in the field of the judiciary.¹⁶

¹⁴ SVI MI – za Hrvatsku svih nas , Podnesak zastupnicima Hrvatskog Sabora i sucima Ustavnog Suda u vezi sa zahtjevom "Stožera za obranu hrvatskog Vukovara" o raspisivanju referenduma o pravu nacionalnih manjina na ravnopravnu uporabu manjinskih jezika i pisama, available at: https://www.gong.hr/media/uploads/podnesak_za_sabor_i_usud_svi_mi-za_hr_svih_nas.pdf.

¹⁵ SVI MI – za Hrvatsku svih nas, Press release, April 2014, available at: <https://www.cms.hr/hr/izjave-za-javnost/izjava-inicijative-svi-mi-za-hrvatsku-svih-nas>.

¹⁶ Human Rights House Zagreb and Human Rights House Foundation, Resisting Ill Democracies in Europe: Understanding the playbook of illiberal governments to better resist them, available at: https://www.kucaljudskihprava.hr/wp-content/uploads/2017/12/22017_11-Resisting_Ill_Democracies_in_Europe-web-11.pdf.



Recommendations

1. Negotiation processes should be transparent, with clearly defined and known rules for participation and inclusion of all the relevant civil society stakeholders. Reforms in this area should be as a result of deliberations in which the Parliament holds a central role, and civil society is directly and honestly consulted.
2. Foster working in coalitions and establishment of cross-sectional networks of civil society organisations working on a variety of issues relevant to the EU negotiations. Formulate joint monitoring and advocacy activities, formulate joint advocacy positions, and adopt a holistic approach to the reform process within Chapter 23.
3. Reach out to the relevant civil society organisations in an EU member state that were active during their country's accession and have expertise in drafting laws or in policy creation.
4. Engage in advocacy activities with representatives of the European Commission and European Parliament in your capital as well as in Brussels and engage in advocacy activities with EU member states.
5. Formulate and implement public campaigns aimed at raising awareness about the importance of adhering and preserving the values of democracy, fundamental rights, and the rule of law.
6. Prepare for operating monitoring and advocacy activities in the post-negotiation period in a changed environment without the EU conditionality and in the changed political circumstances where reforms might not be at the political agenda.
7. Use the process of programming of the post-accession cohesion funds available to the new member states to envision funds and programs that will support the implementation of started Chapter 23 reforms in fields of judiciary, fundamental rights and democracy. Post-accession funding for further strengthening of the judiciary and national mechanisms for the protection of fundamental rights is of the highest importance in order to mitigate potential backslidings in the rule of law field as seen in other EU member states. Special focus, inter alia, should be placed on financing programs promoting EU values of democracy, the rule of law and fundamental rights and providing support to organisations providing free legal aid to citizens.

