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**Transitional Justice Beyond EU Conditionality:
Post-Accession Backsliding in Croatia from a
Rational Institutionalist Perspective**

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Abstract

This study aims to explain the post-accession backsliding on transitional justice (TJ) in post-conflict societies by operationalizing the rational institutionalist (RI) approach to Europeanization, which assumes that domestic adoption of EU rules depends on the cost-benefit calculation of the relevant power coalitions in society. Bridging the gaps in the literatures on EU conditionality and TJ, the study proposes a model of post-accession redistribution of power between domestic coalitions in TJ arena (justice instrumentalists, justice resisters and justice true believers) explaining the causal mechanism behind the post-accession backsliding. The offered theoretical model is applied to the case of Croatia, which represents a pioneering attempt to explain the post-accession decline in the Croatian governing elites' willingness to solve multiple unresolved TJ issues and address the rising tendencies towards relativisation of war crimes and past criminal regimes. Combining single case study and process-tracing methods, the research is based on comprehensive analysis of primary data published by relevant international organizations, reputable international and Croatian human rights organizations, government institutions and media outlets. The findings confirm the hypothesised model, indicating that the expiry of EU “carrots and sticks” upon Croatia’s entry to the EU led to the reconsolidation of justice instrumentalists, strengthening of justice resisters and weakening of justice true believers in the Croatian TJ arena, which changed the domestic equilibrium from pre-accession compliance towards the post-accession non-compliance with the TJ norm. Demonstrating that EU TJ conditionality not only failed to outroot dangerous denial of accountability for war crimes among the Western Balkans countries, but produced adverse effects further undermining the prospects for their successful post-conflict transformation, this study advances our understanding of the EU’s peacebuilding capacity.

List of Abbreviations

COE – Council of Europe

DI – Discursive Institutionalism

EU – European Union

HLC – Humanitarian Law Centre

ICTY – International Criminal Tribunal for the former Yugoslavia

MP – Member of Parliament

OHCHR – Office of the United Nations High Commissioner for Human Rights

RI – Rational Institutionalism

SI – Sociological Institutionalism

SNC – Serbian National Council

TJ – Transitional Justice

YIHR – Youth Initiative for Human Rights

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1. Introduction

Initially reserved for the EU's influence on its member states, the term of "Europeanization" – broadly defined as "a process in which states adopt EU rules" (Schimmelfennig and Sedelmeier 2005a:7) – has become primarily associated with the impact of European integration on candidate states (Börzel and Risse 2003; Grabbe 2001; Schimmelfennig and Sedelmeier 2004, 2008; Sedelmeier 2011). While each of the previous enlargements revealed various ways by which the adoption of EU rules affected political, economic and societal dynamics in candidate states, the Western Balkans region is the first to have served as "a laboratory for EU approaches to peace and justice" (Rangelov, Theros, and Kandic 2016, 8) and tested the EU's capacity to help war affected countries "to positively prevent, contain, end and move beyond violent conflicts" (Hughes 2009:281). Aware that "moving beyond" a devastating war in former Yugoslavia could not be attained without affected countries dealing with their violent legacies, the EU utilized its main "transformative power" (Grabbe 2006) tool – its accession conditionality – as its main peacebuilding tool towards this region (Braniff 2011; Elbasani 2013; Gordon 2010; Tocci 2007) and included transitional justice (TJ)¹ among political conditions which the Western Balkan countries needed to fulfil in order to "Europeanize".

The first, and so far, the only Western Balkans country which joined the EU, and therefore acquired the "certificate" of successful post-conflict transformation, is the Republic of Croatia.

¹ This paper adopts a holistic definition of TJ according to which: "Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for the victims and to promote possibilities for peace, reconciliation, and democracy" (ICTJ 2009). Such approach includes both retributive TJ – advocating criminal justice as the best response to war crimes (Cassese 2003; Schiff 2008), and restorative TJ – which, being focused on rebuilding of affected communities, promotes the use of non-judicial mechanisms, such as truth and reconciliation commissions or informal customary mechanisms (Isser 2011; Tutu 1999).

Making the full cooperation with the International Criminal Tribunal for Former Yugoslavia (ICTY) a principle condition of Croatia's EU membership, the EU attacked the very essence of the Croatia's "official memory" (Jovic 2004) of the Homeland War, based on the exclusive reminiscence of two Croatia's roles in Yugoslav wars – roles of "heroic victim" and "victorious hero" (Banjevlav 2012) – and, on the categorical denial of its third role – the role of a victimizer (Banjevlav 2013; Peskin and Boduszyn'ski 2003). Massive anti-ICTY protests which flooded the country at the beginning of its integration process on one side, and the EU's decision to suspend Croatia's accession negotiations in 2005 due to its deteriorated cooperation with the ICTY on the other, best spoke to the agonizing level of costs which both compliance and non-compliance with the TJ norm carried for governing elites (Jovic 2009; Peskin and Boduszyn'ski 2003). Managing to "rebrand" the ICTY from the biggest insult to dignity of the Homeland War into "an appropriate venue through which the Homeland War could be defended" (Lamont 2010:1689), the Croatian political elites, nonetheless, found a way to gain domestic support for fulfilling all the ICTY requirements and thus moving towards the ultimate award of EU membership.

When even the anti-ICTY demonstrations against the arrest of general Ante Gotovina in 2005 "failed to carry the same weight as they did in 2001" (Pavlaković 2010:1723), when not only the ICTY but domestic trials to members of Croatian forces significantly intensified in the late 2000s, and especially when in 2010 the Croatian President Ivo Josipovic expressed his remorse for Croatia's involvement in the Bosnian war (Jovic and Lamont 2010), one could have optimistically assumed that the Croatian political leadership and people became ready to go even beyond the EU's explicit TJ condition. Nevertheless, Croatia's soon entry to the EU drastically shattered such optimistic assumptions, since it revealed that the willingness of the Croatian governing elites to solve multiple unresolved TJ issues significantly waned upon the expiry of EU conditionality, while – and even more worrying – the tendencies towards

relativisation of war crimes and past criminal regimes reappeared. In other words, the pre-accession progress in TJ in Croatia did not continue upon Croatia's entry to the EU, but stalled and even reversed.

In order to explain why EU-induced progress in TJ fails to endure the termination of EU conditionality, this paper proposes a model of post-accession redistribution of power between main coalitions in domestic TJ arena – justice instrumentalists, justice resisters and justice true believers – which operationalizes and temporally extends the rational institutionalist (RI) assumption that domestic adoption of EU rules depends on the way EU rewards affect the “constellation of bargaining power” (Schimmelfennig and Sedelmeier 2005:11) between relevant domestic actors. The hypothesized model argues that the EU's narrow, top-down, retributive TJ approach advantages those domestic actors willing to instrumentalize and (re-)adjust the TJ process in accordance with the currently dominant incentives – external demands for TJ during the pre-accession period and domestic opposition to TJ in the post-accession period. While their pre-accession instrumental compliance with EU demands cannot be vetoed by justice resisters whose bargaining position is temporarily weakened by EU membership leverage, their post-accession non-compliance cannot be vetoed by justice true believers whose bargaining power is decisively crippled by the expiry of EU membership leverage.

Bridging the gaps in the literatures on EU conditionality and TJ, the proposed model provides original theoretical contribution to both fields. Firstly, it contributes to the TJ literature by investigating sustainability and adverse effects of externally “imposed” TJ in post-conflict societies. Secondly, it contributes to the discussions on the “post-accession Europeanization” by extending the RI argument into the post-conflict environment and the field of TJ. In addition, the probation of the offered model provides an original empirical

contribution to both above mentioned fields since not a single study (to the best of my knowledge) has drawn attention to or attempted to explain the post-accession backsliding on TJ in Croatia. For all these reasons, this study contributes to better understanding of the EU's peacebuilding capacity.

The first chapter links the RI approach with the existing findings on the EU's TJ strategy towards the Western Balkans countries, and based on their bond proposes the model of post-accession redistribution of power between domestic coalitions in TJ arena. The second chapter outlines the research design of the study, justifying the methods and data selection. After an overview of the post-accession backsliding on TJ in Croatia, the third chapter provides the empirical support to the offered model and engages with alternative explanations coming from sociological institutionalist and discursive institutionalist approaches to Europeanization. Finally, the conclusion reflects on the theoretical findings of the study and draws avenues for future research.

2. Theoretical Framework: TJ Beyond EU Conditionality

2.1. The RI Approach

Assuming that states are rational utility-maximizers whose alignment with EU rules is generated by EU membership incentives rather than by identification with European norms and values, the RI approach understands Europeanization as a bargaining process between domestic actors who are satisfied with the existing "misfit" between domestic and EU rules and those domestic actors who attempt to upset such status quo in order to acquire EU rewards (Börzel and Risse 2012; Grabbe 2006; Kelley 2004; Vachudova 2005). In order to change the "current distribution of preferences and bargaining power in domestic society"

(Schimmelfennig and Sedelmeier 2005a:11) in favour of actors advocating compliance with EU rules, the EU adopts either a “top-down” approach and enters the direct intergovernmental bargaining with governments of candidate states, or engages in “bottom-up” differential empowerment of domestic actors who share EU values and norms (Börzel 2013; Schimmelfennig and Sedelmeier 2005). The ultimate outcome of the governments’ cost-benefit calculation therefore depends on the credibility, size and speed of EU rewards on the one side, and on the domestic adoption costs on the other side, primarily determined by the strength of veto players opposing the status quo change (Dimitrova 2010; Schimmelfennig and Sedelmeier 2005; Sedelmeier 2011). Nevertheless, while the likelihood and pace of a state’s pre-accession alignment with EU rules have been widely investigated (Börzel and Risse 2012; Kelley 2004; Schimmelfennig and Sedelmeier 2004; Vachudova 2005), the sustainability of such compliance upon the country’s entry to the EU represents the youngest and still under-researched sub-field of the Europeanization studies.

The temporal extension of the RI main argument into the post-accession phase is best formulated in the following words:

*“As the incentive structure for the new members changes, **post accession compliance with costly pre-accession demands of international institutions should deteriorate** [emphasis added]. After all, if it had only been the external incentive of membership that drove compliance, then – having won the ultimate reward – why would the newest EU members not be tempted to roll back reform that had been the most costly to implement? (Epstein and Sedelmeier 2008:797)*

Nevertheless, although such “reversed” conditionality hypothesis seems convincing, the existing studies on post-accession compliance with EU rules in different policy areas – from fight against corruption (Vachudova 2009) to gender equality (Sedelmeier 2012) – provide

rather mixed results (Blauberger 2009; Epstein and Sedelmeier 2008; Knill and Tosun 2009; Leiber 2007; Levitz and Pop-Eleches 2010; Sasse 2008; Schimmelfennig 2005; Sedelmeier 2011). While certain analyses do indicate that imported rules tend to remain “empty shells” or even reverse in the aftermath of enlargement (Dimitrova 2010), the other ones show that “lock-in of institutional change” (Sedelmeier 2012) and persistence of compliance with EU rules after the termination of EU conditionality is indeed attainable, thus not providing systematic support to the rationalist post-accession non-compliance hypothesis. Although the above-mentioned studies tackle this puzzle of variation in post-accession behaviour of new member states, they suffer from several weaknesses. First, the government’s post-accession non-compliance with EU rules is simply taken as an indicator of high domestic costs or occurrence of strong veto players – which both “often remain rather broad and are therefore subject to ad hoc operationalisation” (Sedelmeier 2011:30) – without sufficiently analysing why in some cases compliance sustains despite their presence. Second, all the existing analyses tend to reduce the domestic political dynamics to the relations between government and veto players, without devoting adequate attention to other important power coalitions in society. Finally, while the post-accession compliance to EU rules has been investigated in several economic and political areas, none of the existing studies analyses the post-accession compliance with those EU rules whose pre-accession adoption was considered “the most expensive” since they “touched directly on questions of national identity and statehood” (Epstein and Sedelmeier 2008:799), as those EU political conditions related to post-conflict issues did.

Investigating whether the RI approach is well-suited to explain the post-accession backsliding on TJ in post-conflict societies by exploring the domestic effects of one the EU’s most extraordinary enlargement conditions – the TJ condition towards the Western Balkans countries – this paper addresses all the mentioned gaps, contributing to the discussion on the explanatory power of the RI theory. Upon advice that process-tracing in EU conditionality

studies should start “with unpacking the construction and a malleability of a specific condition” (Sasse 2008:846), the following sub-heading “unpacks” the EU’s TJ condition and based on those findings proposes a model to explain the way in which EU membership incentives influence the pre-accession and post-accession bargaining equilibrium between domestic coalitions in TJ arena.

2.2. The Model of Post-Accession Redistribution of Power in TJ Arena

Thanks to the “thickening international environment of transitional justice” (Subotic 2014:129), reflected in continuing global developments towards the universal proliferation and regulation of the TJ norm (Teitel 2011), the states emerging from violent conflicts have come under increasing international pressure to deal, or at the very least, to be seen to be dealing with their legacies of violence. While TJ theories and practice recognize various judicial and non-judicial ways of addressing gross human rights violations, the international community, nevertheless, increasingly equates TJ with criminal prosecution in front of domestic, international and hybrid courts (Huyse 2003; Lambourne 2014; Spoerri 2011). Faced with a demanding task of post-conflict transformation of the countries emerging from the violent Yugoslav wars, the EU did not act as an exception, but operationalized its TJ condition towards the Western Balkans states in terms of “the full cooperation with the ICTY” (Kasapas 2008; Rangelov 2014). While such retributive approach to TJ condition can be viewed as a normative preference of the EU member states, several context-specific and pragmatic reasons must also be taken into account.

Extremely strong reluctance of the Western Balkans states to engage in the TJ process (Rangelov 2006, 2014) trapped the EU policy makers in the well-known “peace *versus* justice”

dilemma (Roht-Arriaza and Mariezcurrena 2006) and made them concerned that a “holistic” conditionality policy, which would include restorative TJ mechanisms and aims, could awake even stronger anti-TJ sentiments and undermine still volatile peace and democratization process in the region (Anastasakis 2008; Hartmann 2009). The EU considered that the lack of TJ *acquis* on one side, and ambiguous nature of non-judicial mechanisms of TJ on the other, would have probably affected the “determinacy of condition” (Schimmelfennig and Sedelmeier 2005a:12) and made it even easier for the target states to justify their unwillingness to accept the responsibility for human rights abuses with the EU’s allegedly inconsistent and biased conditionality. Therefore, trying to avoid a fast deadlock, the EU decided to act as a “surrogate enforcer” (Peskin and Boduszyński 2011) for the “toothless” ICTY, hoping that its demands for prosecution of those most responsible for war crimes would also foster the process of truth and reconciliation among the former Yugoslav states, in such a way contributing to their Europeanization.

Nevertheless, while the significant progress in the prosecution of war crimes committed on the territory of the former Yugoslavia has indeed been attributed to EU conditionality, the “narrowness” and “shallowness” of the EU’s TJ strategy attracted very vocal criticism from both academic and policy circles (Kostovicova 2009). Criticizing the EU for “conflating the arrest and extradition of accused war criminals with transitional justice more generally” (Spoerri 2011:1827), a vast number of TJ scholars warned that such exclusively retributive approach could lead only to “imposed” (Spoerri 2011) “compromise” (Grotsky 2017) or “hybrid” (Bojicic-Dzelilovic, Kostovicova and Randazzo, 2016) TJ, which fails to contribute to the over-arching goal of reconciliation. Since its TJ condition required the cooperation of the governing elites only, the EU missed the opportunity to induce active participation and real transformation of societies in target countries and thus outroot the “widespread denial of atrocities committed on “our” side of the conflict” (Rangelov 2006:368; Kasapas 2008;).

Moreover, the EU's top-down approach allowed the domestic governing elites to misuse their formal compliance with EU TJ demands to actually strengthen their normative alliance with domestic opposition to TJ, in such a way perverting the very essence of the TJ norm (Subotic 2009a, 2009b). Nevertheless, despite the vocal criticism of its approach to TJ in the Western Balkans, the EU did little to move from retributive to restorative justice, thus allowing the Western Balkans states to acquire EU membership reward without truly engaging in the TJ process or owning its effects.

In such a way decoupling the states' formal commitments for the cooperation with the ICTY from the societies' real needs for TJ, the EU induced TJ process which more resembled "strategic bargaining" (Risse and Sikknik 1999) between different segments in the society than its real post-conflict transformation, exactly as RI assumes. The introduction, and later expiry of EU membership incentives altered the bargaining power of each of three main coalitions in the domestic TJ arena: justice instrumentalists, justice resisters and justice true believers (Subotic 2014), in such a way decisively influencing the outcome of both pre-accession and post-accession bargaining between them. While the EU most likely wished for the whole society to side with justice true believers by the end of the EU integration process, and continue believing in the TJ norm upon the expiry of "carrots and sticks", the way it constructed its TJ condition worked directly against those hopes.

a) The EU and Justice Instrumentalists

"Instrumental norm adopters" in the Western Balkans's TJ arena were those political actors willing to comply with an imposed TJ norm, but driven by external incentives instead of norm acceptance and internationalization (Subotic 2009a:39). Since the EU required only legal compliance of governments with the ICTY requests, it "privileged a relatively small group of central government officials" (Grabbe 2001:1013) who were in the best position to win the

“two-level” game (Putnam 1988) between the external demands for TJ and the domestic opposition to it. Rewarding the governments with the progress into the next stage of the integration process each time they met or even seemed to be trying to meet the ICTY’s requests, the EU made it easier for the governing elites in the Western Balkans to reassure their domestic audiences that their cooperation with the ICTY was nothing but a “necessary evil” on the path towards the ultimate goal of the EU membership. Through such “strategic compliance” (Lamont 2010), the governing elites managed “to acquire an international shield of legitimacy for continuing justice impunity at home” (Subotic 2009b:382), which allowed them to defeat other two coalitions in TJ arena.

However, aware that their position upon the expiry of EU conditionality again became exclusively dependent on domestic audience’ preferences, justice instrumentalists entered the EU not only unconvinced of the value of the TJ norm, but ready to once again distance themselves from it in order to continue winning in both political and TJ arena. In other words, once the EU pressure for dealing with unpopular TJ issues terminated, the political parties began reassuring domestic audience in their loyalty to the “national values” and even making up for some unpopular steps they made while trying to prove their adherence to the “European values” during the pre-accession period. Moreover, since the expiry of EU “carrots and sticks” changed the position of other two coalitions in a diametrically opposite way (discussed below), justice instrumentalists started reviving their never interrupted – though temporarily covered during the pre-accession period – formal and informal alliances with justice resisters, at the same time losing interest in their forced pre-accession cooperation with justice believers.

b) The EU and Justice Resisters

The coalition most weakened by EU pressure during the pre-accession round of bargaining was the collation of justice resisters – the conservative segments of society who were

ideologically, politically, or pragmatically opposed to the TJ norm (Subotic 2009a:38). Opposing everything that threatened to undermine their “truth” on the war, justice resisters strived to make the domestic costs of compliance with the EU’s TJ demands prohibitively high for the governing elites (Tsebelis 2002). Despite considerable public support to their stands, the perspective of EU membership made the compromise stances of justice instrumentalists more appealing to domestic public, which undermined the bargaining power of justice resisters in the pre-accession period and prevented them from vetoing the government’s cooperation with the ICTY.

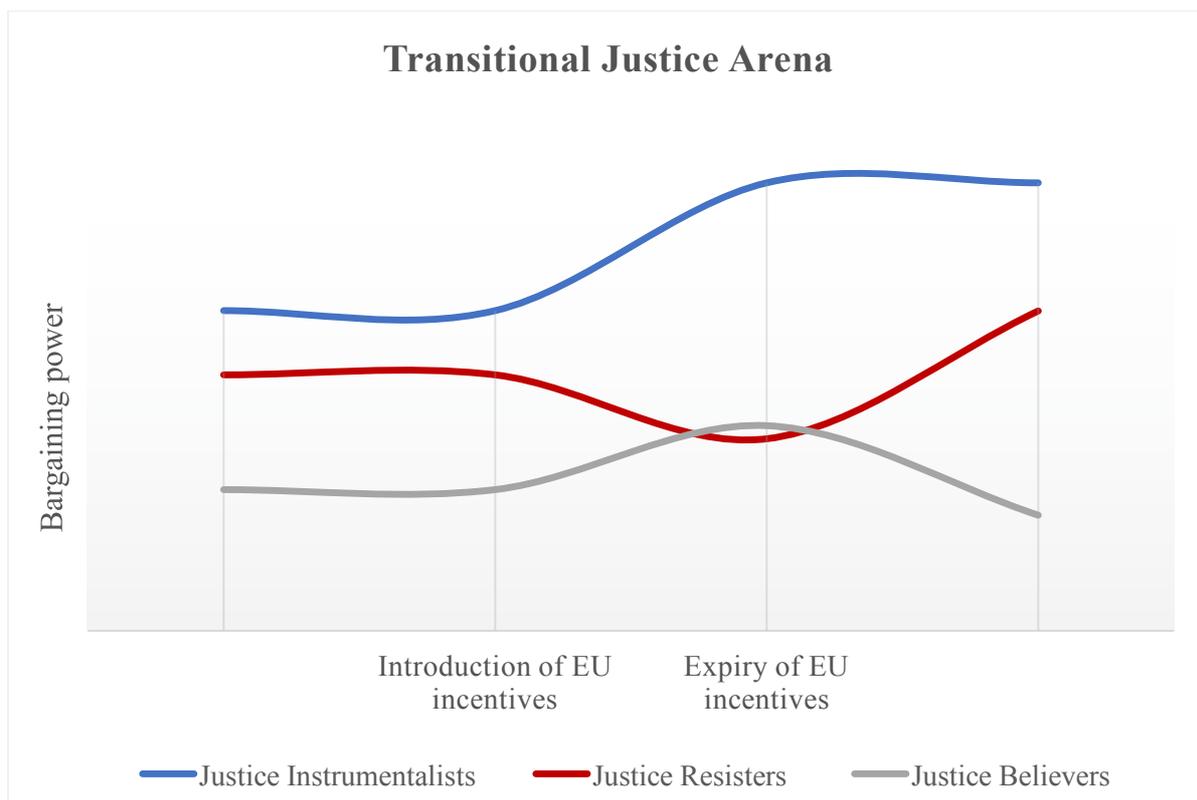
Nevertheless, while the cooperation with the ICTY made justice resisters “the first-round losers” in TJ arena, the termination of EU conditionality announced their “comeback”. The fact that the EU did not require or count with their transformation allowed justice resisters to survive the government’s instrumental cooperation with the ICTY and even “further consolidate their rule” (Subotic 2009a:35). Aware that the expiry of EU pressure left justice instrumentalists without their main excuse for complying with the unpopular TJ norm, as well as that justice believers’ position was never weaker, justice resisters rose immediately upon the accession determined not only to block any further progress in TJ, but even to undo all its unwanted effects generated by the EU’s pre-accession coercive, symbolic and bureaucratic pressure (Subotic 2009a:30–33). Therefore, although EU conditionality did calm, or rather voiced down justice resisters during the pre-accession period, its narrow and shallow TJ strategy allowed justice resisters to survive and revive upon Croatia’s entry to the EU, perhaps even stronger than before.

c) The EU and Justice Believers

Finally, justice true believers were domestic actors fully convinced in moral legitimacy of the TJ norm, and therefore settled among liberal segments of civil society. Although “indirect and

incidental” (Kostovicova, Bojicic-Dzelilovic, and Kandic 2010), the EU’s support to liberal civil society did temporarily improve its bargaining position during the pre-accession period by opening at least some advocacy channel for its TJ demands – completely ignored by the governments before the EU’s involvement. Nevertheless, focused primarily on the government’s cooperation with the ICTY, the EU’s TJ approach left civil society’s demands for restorative TJ bereft of conditionality “magic”, thus failing to recognize how “absolutely central to the spread of transitional justice practices” (Boesenecker and Vinjamuriy 2011:363) civil society was.

Nevertheless, the end of EU conditionality confirmed the most pessimistic assumptions that the EU’s neglect of restorative justice would not only fail to structurally strengthen liberal civil society engaged in TJ, but further undermine its already weak position in TJ arena (Börzel and Buzogány 2010). Not doing anything to make restorative justice aspects a necessary condition for a country’s accession, the EU made those issues seem more like a civil society’s caprice instead of a political necessity and legal obligation of governments. A country’s accession to the EU, perceived as a final proof of the successful post-conflict transformation, hence decisively weakened the legitimacy of justice believers’ demands and bolstered already negative domestic attitudes towards them (Börzel 2010; Sedelmeier 2011:19). Similar to the period before the EU’s involvement when they were not able to induce the beginning of the TJ process, the capacity of justice true believers to “lock-in” conditionality-induced progress and veto its reversal (Sedelmeier 2012) remained almost insignificant upon the EU’s withdrawal from TJ arena.



Graph 1. Visual representation of the (re-)distribution of bargaining power among three main coalitions in TJ arena

Hence, operationalizing and temporally extending the RI assumption that the EU membership incentives affect the “distribution of preferences and bargaining power in domestic society” (Schimmelfennig and Sedelmeier 2005a:11), the above proposed model illustrates both pre-accession and post-accession constellation of power in domestic TJ arena. During the pre-accession period, the EU’s retributive TJ approach empowered justice instrumentalists and, to a significantly lesser extent justice believers, *vis-à-vis* justice resisters, which explains the outcome of the first round of bargaining between them – the instrumental compliance with the TJ norm. Nevertheless, since such instrumental compliance was not accompanied by the norm diffusion or internalization in the society, the domestic opposition to TJ endured the EU pressures and carried over into the post-accession period. Moreover, due to the strong negative perceptions of the ICTY’s work and legacy among the domestic population (Stover and

Weinstein 2004), domestic opposition welcomed the end of EU conditionality not only reassured, but somewhat vengeful. Such altered incentive structure initiated the post-accession redistribution of power between domestic actors, which resulted in the reconsolidation of justice instrumentalists, strengthening of justice resisters and weakening of justice believers, why the eventual outcome of the post-accession bargaining between them was the stagnation and backsliding on the TJ process.

3. Research Design

The single-case study method is considered optimal for this research since it allows to capture temporal variations in the pre-accession and post-accession power of domestic coalitions in TJ arena, hypothesised by the proposed model. While the case of Croatia can be considered a “typical case” since it absolutely corresponds to the scope conditions (countries facing strong EU demands for TJ and strong domestic opposition to it), it can also be viewed as an “extreme case” (Seawright and Gerring 2008) as Croatia was often assumed to be a country in which the identity convergence with the European identity was higher than in other Western Balkans countries (Braniff 2011; Subotic 2011; Trauner 2011), and therefore, a country in which the observed post-accession non-compliance with EU rules was least expected. Hence, while any generalization from a single-case study would be problematic, the case of Croatia indeed offers an opportunity for making valid conclusions in relation to the main research question.

Since the research objective of the analysis is to make inferences about a “causal chain” between Croatia’s accession to the EU and post-accession backsliding on its TJ process, the central research method is process-tracing (Beach and Pedersen 2013). Although the hypothesized model of the post-accession redistribution of power between domestic actors in

TJ arena was principally deducted from the RI and TJ theory, the fact that Croatia is the only Western Balkans country which joined the EU – and therefore a case which inspired the proposed theoretical model – requires process-tracing relied on “the combination of deduction and induction” (Bennett and Checkel 2014:17). Finally, due to “the weakness of a clear-cut causal relationship between conditionality and outcome” (Hughes, Sasse, and Gordon 2004:523) of Europeanization, the evidence is examined not only in the light of proposed rational model, but it is additionally assessed from the perspective of alternative, sociological institutionalist and discursive institutionalist approaches.

Due to the “hard-to-measure” nature of TJ issues and the specific aim of the study to capture nuanced variations in domestic actors’ positions, the advantage is given to the qualitative data. The first group of primary data represent reports and information published by relevant intergovernmental organizations and internationally reputable non-governmental human rights organizations (e.g. EU, COE, OHCHR, Amnesty International). The second source was data made available by the relevant Croatian state and local government institutions (e.g. The State Attorney’s Office), including the minority self-government bodies (e.g. Serb National Council). Domestic and regional non-governmental human rights organizations involved in TJ issues (e.g. Documenta, HLC, YIHR) represented the third, and undoubtedly the most comprehensive source of information, since their periodical (even biweekly) monitoring reports and specialized publications offer direct and detailed insights in the developments in the TJ process in Croatia. Additionally, careful triangulation of data from these three sources is supplemented with the use of media archives and secondary desktop research.

Lastly, the attention should be given to two potential limitations of the study. The first one stems from the contemporaneity of the observed phenomenon since only four years have passed since Croatia joined the EU in 2013 (the analysis includes data published until 1 July

2017). Nevertheless, while any ultimate conclusion at this point would be nothing but wrong, the offered analysis of the initial post-accession tendencies in the Croatia's TJ process provides a good jumping-off point for future research and therefore represents a valuable asset for both TJ and EU conditionality literature. However, in order to reduce the risk of being speculative to a minimal level, the analysis is focused exclusively on events which finished before the start of research and whose authenticity is cross-checked in multiple sources. The second potential weakness of the research is the absence of interviews, especially since the offered model is agent-oriented. Nevertheless, even though the interviews would provide additional insights on the researched problem, it is questionable how sincere answers would be received from government officials or right-wing political actors having in mind the sensitive nature of the topic.

4. Case Study: Post-Accession Backsliding on TJ in Croatia

4.1. Regressing at All Fronts

A sobering moment, which warned that the government's pre-accession instrumental compliance with the TJ norm had indeed failed to induce its internalization in the Croatian society, arrived already in November 2012, when the ICTY's controversial acquittals of the Croatian generals Ante Gotovina and Mladen Markac² were welcomed with public euphoria – fuelled by nationalist speeches of high-ranking officials and biased media reporting (Banjeglav 2013:44). The fact that Croatia had already signed its accession treaty in December 2011, meant that the main “fuel” of the ongoing progress in TJ was about to expire, leaving

² Both indicted for war crimes against civilians during the military operation “Storm” in 1995. See: Pavlaković 2010.

unresolved all the TJ issues which were not made an explicit condition for EU membership. Low-quality and biased trials in front of domestic courts, unimplemented lustration process, inadequate protection of witnesses, insufficient efforts to address the problems of people forced to flee Croatia, and – underpinning all those problems – the limited public awareness of the war crimes committed by the Croatian forces, were some of the issues that remained open in the moment of Croatia’s entry to the EU in July 2013 (Banjeglav 2013:39–43). The hopes that the end of EU conditionality would not mark the end of progress in TJ have, unfortunately, been significantly shattered since every year following Croatia’s accession to the EU brought new evidence on not only stagnation, but backsliding on both retributive and restorative TJ in Croatia.

Different to the years of intensified EU pressure when the indictments for some of the most serious crimes committed by members of the Croatian forces were issued (Documenta 2014a, 14), a significant slowdown in the pace of investigations of unresolved crimes was recorded in the years following the Croatia’s entry to the EU (COE 2016:5–7; OHCHR 2015:5–6). The negative trend which started in 2013 when not a single investigation was initiated or indictment issued against any member of the Croatian military and police formations (Documenta 2014a:4) continued in following years, including 2016 when “the most modest investigative results of the work of state prosecutors” (Documenta 2017, 4) in prosecuting war crimes were recorded. Moreover, observing the criteria in which accordance the domestic war crimes prosecutions were carried out, the COE Commissioner for Human Rights expressed concerns during his visit to Croatia in 2016 that the selection of cases remained disproportionately directed against ethnic Serbs (COE 2016:8), while courts continued considering the participation in the Homeland War a mitigating circumstance when sentencing members of Croatian troops (Documenta 2016c:12). Another equally worrying trend in the domestic wartime criminal proceedings was the post-accession continuation and even increase in the

number of trials *in absentia* (COE 2016:9; Documenta 2015c:8, 2016c:13), contrary to the established international standards and the EU's recommendations to Croatia (European Commission 2011:48). Finally, while the post-accession increase in the number of cases returned for re-decision must not be viewed as *per se* bad, since it was to a large extent caused by the repeals of the verdicts made on trials *in absentia*, it further contributed to the declining public interest in war trials, not to mention to the re-traumatization of victims (Documenta 2015b, 2016c).

In addition to the observed stagnation in retributive justice, the “rise in manifestations of ethnic intolerance and hate crime and its negative impact on social cohesion in Croatia” (COE 2016:3) demonstrated how wrong the EU's neglect of restorative TJ had been. The post-accession wave of public outburst of ethnic intolerance towards the Serb minority started already in the first months of Croatia's membership in the EU with anti-Cyrillic protests in several cities and continued in the following years in various forms – from increased public appearance of graffiti and insignia containing hate speech, through damaging of property of private persons and Serb institutions, to increased use of language of ethnic intolerance in media and public sphere (Documenta 2014a, 2016c, 2017, SNC 2015, 2016, 2017; YIHR 2016). Moreover, while those tendencies indicate how far away reconciliation in Croatia is, the increasing relativisation and even glorification of past criminal regimes and war criminals represent even more direct proof that EU conditionality failed to outroot dangerous public attitudes towards crimes committed by members of Croatian troops. The notable rise in public use of the slogan “Ready for Homeland!”³, certain perilous changes in the commemoration and memorialization practices,

³ The slogan used by the Ustasha movement during the Nazi-aligned Independent State of Croatia and revived by the extreme nationalist groups in the 1990s. Its explicit connection with racist ideologies and criminal actions is unequivocally confirmed by court rules and practice. See: Ombudsman 2017.

and, above all, increasing tolerance by governing elites to such negative tendencies (extensively discussed below), indicate that certain segments of Croatian society and political elites awaited the removal of EU conditionality as an opportunity to clean every stain which the ICTY and domestic trials might have left on Croatia's "national biography".

4.2. Post-Accession Redistribution of Power in the Croatian TJ Arena

In accordance with the theoretical model proposed in the second chapter, this sub-heading presents evidence on the post-accession changes in bargaining power of three main coalitions in the Croatian TJ arena, illustrating the hypothesised mechanism behind the notable backsliding tendencies.

a) Justice Instrumentalists Reconsolidated

Two most significant political parties in Croatia – the centre-left Social Democratic Party of Croatia (SDP) and the centre-right Croatian Democratic Union (HDZ) – have proven to be textbook examples of "justice instrumentalists". Incentivized by EU rewards on one side, and constrained by voters' preferences on the other, they found the way to introduce Croatia to the EU while keeping the "myth" of Homeland War almost untouched (Batt et al. 2009; Lamont 2010). However, once EU membership was gained and thus removed from the top of the list of voters' preferences, the cost-benefit calculation of both SDP and HDZ changed and they started re-adjusting to the dominant domestic attitudes on TJ. What required their very prompt repositioning and perhaps accelerated the backsliding on TJ was a series of rather frequent elections in the aftermath of Croatia's entry to the EU.

SDP

The first signals on the repositioning of SDP – the ruling party at the moment of Croatia’s entry into the EU – arrived already three days before the accession, when the government introduced a temporal limitation on the application of the European Arrest Warrant only to crimes committed after August 2002, emphasizing that the main motivation of such decision was the protection of Croatian “defenders” from criminal prosecution, due to the universal jurisdiction of certain EU member state (Documenta 2013b). While justice resisters, led by war veteran associations, awaited this move with particular cynicism, their long-lasting opposition to the “anti-Croat”, “pro-Yugoslav” and “pro-Serb” SDP-led government grew from a year to year, continuously challenging its bargaining position in TJ arena. Nevertheless, while the then President Josipovic (SDP candidate) did vocally condemn justice resisters’ anti-democratic and anti-minority actions and initiatives and continued advocating the furtherance of the TJ process (Documenta 2014b:21–22; Ivanovic 2013), the government’s “tacit disapproval” of numerous events which provoked the eruption of inter-ethnic intolerance in the Croatian society best spoke about its awareness of the post-accession jump in political price of any confrontation with the “defenders of the dignity of Homeland War”.

Moreover, in the eve of parliamentary elections in 2015, leading SDP politicians, including the PM Zoran Milanovic himself, were repeatedly praising Tudjman’s political merits, despite the fact that this very party was one of the strongest advocates of the so called “detudjmaisation” during the pre-accession period (Koren 2015:25). In a similar manner, hoping to ingratiate himself to right-oriented voters ahead of parliamentary elections in 2016, the SDP leader Zoran Milanovic met with the representatives of war veterans and, on that occasion, spoke about the Serbian leaders and people in a language which could only hamper already poor reconciliation (SNV 2017:143). Nevertheless, despite the steps which SDP took to reassure the electorate in

its commitment to the “fundamental values of the Homeland War” primarily by ignoring and, hence, allowing the dangerous TJ regressing, its repositioning was not sufficient to the rising justice resisters, especially since HDZ, perceived as “the pillar of Croatian independence” (Koska and Matan 2017:136), openly announced the return to the values of the 1990s (Koren 2015:26).

HDZ

Despite the fact that Croatia’s cooperation with the ICTY peaked exactly during the HDZ’s “strategic compliance” to the EU’s TJ requirements (Lamont 2004, 2008, 2010), its “nationalist credibility” (Pavlaković 2010:1723) and loyalty to the Homeland War was rarely questioned even by hard-line justice resisters (Koska and Matan 2017:136), why its post-accession distancing from the TJ came as little surprise.

The return of HDZ on power started with the victory of Kolinda Grabar-Kitarovic (HDZ candidate) in January 2015. Already the list of her inauguration ceremony guests – from a former HDZ politician Tomislav Mercep and a retired general Zeljko Sacic (both on trial for war crimes against the Serbian civilians at that time) to the leaders of war veteran associations – signaled that moves similar to her predecessor’s apology could hardly be expected from a newly-elected President Grabar-Kitarovic (Documenta 2016c:16). Her first important TJ-related move was not to partake in the official commemoration to the Jasenovac WWII camp victims in April 2015, in such a way interrupting over a decade-long practice respected by previous presidents and awaking strong resentment among the Serbian and Jewish communities (SNV 2016:74). The tensions provoked by such decision culminated in a boycott of the state-backed commemoration by the representatives of the Jewish and Serbian communities, as well as by the anti-fascist activists, both in 2016 and 2017 (Milekic 2016a, 2017c). A number of other President’s moves – such as her frequently ambiguous, not to say

approving, statements on the public use of the Ustasha slogan “Ready for Home(land)!” and her occasional presence at the events on which the slogan was chanted (Milekic 2017b; SNV 2017:126) – attracted similar accusations for disrespecting victims of war crimes by the representatives of minorities and liberal civil society. Hence, while not having the same executive responsibility as the government, the President Grabar-Kitarovic was indeed politically responsible for rising tendencies towards relativisation of war crimes and criminal regimes, since her reactions did not dispirit, but often additionally encouraged such perilous inclinations.

Lastly, after a campaign centred on the recall of triumphal aspects of the Homeland War, the Patriotic Coalition gathered around HDZ won the parliamentary elections in autumn 2015. Exactly as such campaign signaled, the first years of their rule were marked with almost complete absence of the public recognition of other sides’ victims, and even more alarming, with a notable increase in government officials’ statements in which war crimes and criminal regimes were either negated or relativized, as well as in their increase appearance at the events from which open messages of ethnic intolerance and hatred were sent (Documenta 2016b, 2016c:16, SNV 2015:40–50, 2016:67–78). One of the most striking examples was the attendance of the HDZ’s high-ranking government official at the 25th anniversary of the IX HOS Unit “Knight Rafael Boban” – named after a famous Ustasha commander – on which occasion a master of ceremony called the audience to chant the slogan “Ready for Home(land)!” (Milekic 2016g; SNV 2017:48). Despite the controversies which this event provoked in Croatia and abroad, Minister of Culture Zlatko Hasanbegovic himself soon afterwards visited the monument dedicated to this exact unit and on that occasion further encouraged the awoken nationalist sentiments among some segments of society by stating that he was “particularly pleased to pay tribute to the monument that causes many controversies to those who do not respect the victim of the Croatian defenders” (Milekic 2016c). Moreover, the

very fact that Minister Hasanbegovic became a member of the government despite his open pro-Ustasha stands and his participation in pro-fascist protests during the 1990s, indicates that not only justice instrumentalists, but even vocal justice resisters managed to find their place in the political leadership of this EU member state (Milekic 2016d, 2016e, 2016f; SNV 2017:5–6). Despite the call for his resignation which came from “justice believers” from all around the world – including former Croatian ministers, several world leaders and a Nobel Peace Prize Winner – in the form of an open letter to the Croatian government in May 2016, Minister Hasanbegovic remained in position until the end of the government’s mandate (Documenta 2016a; Milekic 2016b; SNV 2017:5).

Therefore, the behaviour of two major political parties in Croatia upon the termination of EU conditionality indeed confirms the RI main assumption that EU TJ demands failed to induce normative change even of those who were directly affected by it – the political elites themselves. Both SDP and HDZ, though to a different extent, have continued the “win-win” strategy from pre-accession period, only switching from “strategic compliance” (Lamont 2010) with the EU demands for TJ towards the strategic compliance with domestic opposition to it. Re-adjusting the balance between the “European” and “national” values, they managed to remain on their leading position in Croatia’s political and TJ arena.

b) Justice Resisters Strengthened

The most vocal spoilers of TJ in Croatia have been grouped among war veteran associations, right-wing political parties, Catholic Church and right-wing media (Peskin and Boduszyn’ski 2003; Subotic 2009a). Despite the significant public support which they enjoyed before the EU’s increased pressure – evident during the massive anti-ICTY protests throughout Croatia at beginning of the 2000s – it seemed that a growing social consensus on the EU membership substantially weakened their position in TJ arena by 2013. Since each consequent ICTY

indictment against members of Croatian forces attracted fewer demonstrators, since the Catholic Church stopped openly advocating against the ICTY and since even the most extreme parties moved towards more conventional politics (Subotic 2009a:113), it looked like EU conditionality not only helped the governing elites to side-line justice resisters, but also initiated their normative change. Nevertheless, the justice resisters' "rise and shine" upon Croatia's entry into the EU, unfortunately, contested these optimistic assumptions.

The very first year of Croatia's EU membership brought two clear signals that justice resisters would strive to use the opportunity that the expiry of EU conditionality opened for them. The first signal came already in the months prior to the accession, when the Headquarters for the Defence of Croatian Vukovar⁴ firstly issued a 14-day ultimatum to the SDP-led government to remove the remaining Latin-Cyrillic plates in Vukovar and afterwards organized anti-minority demonstrations which culminated in violent destruction of bilingual plates (COE 2016:51; Documenta 2013c). Such outburst of ethnic intolerance, which spread to several Croatian cities, was openly supported by certain Catholic Church bishops, as well as by the opposition leader Tomislav Karamarko (HDZ) who supported the Headquarters attempts to stop the Vukovar's "second massacre, now by the Government" (Documenta 2013a). The second signal came already in November 2013, on the occasion of the Day of Remembrance for the Victims of Vukovar in 1991, when the Headquarters formed a separate Memorial Column and prevented the entire state leadership from entering the Memorial Cemetery and paying tribute to the victims (Documenta 2014a:22). Once again supported by the right-wing parties and several Catholic Church officials, the "defenders of the dignity of the Homeland War" loudly announced the renewal of their fight for symbolic monopoly over the "truth" on the war.

The next important phase in the post-accession bargaining between justice resisters and

⁴ The right-wing association which gathers numerous war veteran associations.

government started in October 2014 when war veterans launched a sit-in protest in front of the Ministry of Croatian Veterans, calling for the dismissal of the Minister Predrag Matic (SDP) and his team, but also for a new constitutional law which would improve the veteran's rights. After the worst of several incidents, in which protesters clashed with the police in May 2015, the PM Milanovic personally met with protestors to hear their demands, although unsuccessfully. The fact that the protest ended very soon after the opposition HDZ – which openly supported the protestors (even the newly-elected President Grabar-Kitarovic went to celebrate her victory with protestors in January 2015 (Milekic 2015b)) – formed the government in spring 2016, raised reasonable doubts about the political background behind the veterans' protest. While it would be indeed misleading to claim that this protest was exclusively motivated by political instead of material reasons, it did confirm the revived readiness of war veterans to further improve their position of “deserving citizens” in the Croatian society and history. Moreover, as one of the protestors' slogans “In 1991 against Yugoslavia, in 2014 against Yugoslavs” suggested, some justice resisters did see this protest as an opportunity to warn that “the Homeland War was not over, but was simply led by other means” (Koska and Matan 2017:144).

While certain developments from the pre-accession period – such as the decisions of the former Croatian Presidents Stjepan Mesic and Ivo Josipovic to seizure medals and even revoke ranks of the members of Croatian forces convicted of war crimes (Dubljevic 2014:164–65) – signaled that persons accused or convicted of war crimes were not welcome on the Croatian political scene, their increased presence in the years following Croatia's entry to the EU suggested otherwise. In spite of being on trial for crimes against Serb civilians at that time (later convicted), a former HDZ politician Tomislav Mercep was an honoured guest at numerous ceremonies organized by the state authorities in 2015 and 2016, which sent a very discouraging and dangerous message to victims of his crimes and witnesses on his trial (Documenta 2013d:1;

SNV 2016:74). Another striking example is the political engagement of Branimir Glavas who, despite being on a re-trial for war crimes against the Serbs in Osijek, has been an MP since 2015. His right-winged party even established a black-clad unit called the Slavonian Hawk Guard, which in the eve of parliamentary elections in October 2015 lined-up in front of the Croatian Parliament in a manner which very much “reminded of not so remote war events, recalling the images of fear, exile and refuge” (Documenta 2015a:1; Milekic 2015a).

Finally, perhaps the most open attempts of justice resisters to revert the work of courts and deny the other sides’ victims are the monuments and plaques showing the Ustasha slogan “Ready for Home(land)!” installed by war veteran associations in several Croatian cities during 2016. While the plaque in Jasenovac was installed in the immediate vicinity of the WWII Ustasha-run concentration camp, the monument in Split, built in the memory of the “72nd Battalion” of the Croatian military police, was placed in front of the very camp “Lora” where several battalion members were involved in the torture of inmates resulting in the deaths of two men in 1992. Both opening ceremonies were, nonetheless, attended by the representatives of local and national government (Milekic 2016h; SNV 2017:59–64). However, since the increase in such use of the controversial slogan sparked accusations from parts of domestic, but also regional and international community, the Croatian government announced the establishment of a council which would draft recommendations for the regulation of insignia and symbols of non-democratic regimes, but also give “comprehensive recommendations aimed at dealing with the past” (Milekic 2017a). Whether such a body will represent a new opportunity or a new threat to TJ in Croatia, it is still early to say.

Although none of these tendencies is a wholly new phenomenon, an increase in their manifestation upon the expiry of EU conditionality is what confirms that justice believers have started regaining their position in the TJ arena. While the EU membership left justice

instrumentalists without “the excuse” for unpopular dealing with the crimes committed by the Croatian forces, it, on the other hand, removed the main obstacle for justice resisters to continue denying those crimes. Aware of their new bargaining positions in the post-accession period, these two coalitions started moving the “golden mean” between them in the direction opposite to the TJ norm, however in line with the dominant narrative on the war.

c) Justice Believers Weakened

The liberal civil society in Croatia represented, or should have represented the EU’s most natural partner within the Croatian TJ arena. Nevertheless, while the EU’s insistence on the prosecution of members of Croatian forces indeed boosted a part of civil society’s demands towards the government, their position was not drastically strengthened by EU incentives even during the pre-accession period. First, they were officially included in Croatia’s accession negotiations at their very end (Teršelič 2014:8). Second, and most importantly, the EU’s exclusive focus on the cooperation with the ICTY made civil society’s requests for restorative TJ seem unnecessary to resolve, especially after the acquittal of generals Gotovina and Markac, which conservative segments of society utilized to further portray liberal civil society as “professional enemies of the Croatian state” (Koska and Matan 2017:139). Unfortunately, the expiry of EU conditionality asserted the flaws of such “unequal partnership” between the EU and liberal civil society in Croatia.

Regardless of how limited it was, justice believers lost their key advocacy channel when Croatia joined the EU. The first signals of the EU’s deteriorating support came as soon as Croatia closed all negotiation chapters in June 2011, already when the representatives of the EU started signaling to the Croatian human rights organizations that they should begin looking for a new address for their concerns in relation to TJ in Croatia instead of “running to Brussels with each complaint” (Mažić 2015:11). The three-month meetings between the

representatives of the European Commission, ICTY, OSCE and the representatives of the human rights organizations ended a couple of months prior to Croatia's entry to the EU, thus officially closing the most important forum where liberal civil society could address its concerns and seek much-needed external support (Teršelič 2014:8). The final confirmation that the EU would not do much to reframe its narrow approach and find alternative ways to support civil society in furthering the TJ process in Croatia, came when the European Commission responded to the YIHR's 2012 Report on the remaining TJ problems in Croatia by officially stating that "the EU does not have mechanisms to pressure Croatia on these issues upon its accession to the EU" (Mažić 2015:12). In other words, the EU simply withdrew from Croatia's unfinished TJ process.

Since then, the COE has remained the most important source of external support to justice believers in Croatia. Nevertheless, despite being the continent's leading human rights organisation, the COE's capacity to exercise its influence on Croatia is rather weak. While more than a half of the COE's report on the human rights situation in Croatia published in 2016 was dedicated to a thorough elaboration on "the escalation of intolerance, hate speech and glorifications of criminal regimes", "the lack of accountability in Croatia for certain serious violations of international human rights and humanitarian law", as well as on "regression of the co-operation in the region" (COE 2016), the COE's pressure mechanisms go hardly beyond "naming and shaming". Therefore, even though the COE's recent warnings to Croatia confirm legitimacy and relevance of civil society's demands for the continuation of the TJ process in Croatia, they cannot significantly improve the justice believers' weakened position in TJ arena.

Each year following Croatia's entry into the EU brought new evidence on such diminishing influence of justice believers *vis-à-vis* both justice instrumentalists and resisters. One of such symptomatic post-accession "political battles" between them was waged in August 2016, when

the Minister of Interior Vlaho Orepic (HDZ-led government) decided for the first time to ban the “Anti-War Protest Against the Celebration of the War Victory”, held for several years in the organization of a group of civil society organizations opposed to the celebration of the military operation “Storm”. Justifying his decision with security reasons, Minister Orepic, nonetheless, added that such a protest would “disparage the operation ‘Storm’” and “upset citizens, especially the defenders”, in such a way arousing reasonable doubts with the liberal segments of the Croatian civil society in truly political motivation of such decision (N1 2016b; SNV 2017:96–97). Dissatisfied with the ban, the activists decided to hold a protest anyway, which resulted in a strong counter-protest by war veterans who verbally and physically assaulted the protestors (N1 2016a) .

Growing ignorance by the authorities, but also inertness of media and public, awaited every similar initiative taken by the Croatian human rights organizations in the post-accession period. The petition of apology to “those innocents who were killed and those who lost their loved ones” during the military operation “Storm” – launched by YIHR in 2016 and continued in 2017 – which called the Croatian government and whole society to demonstrate their commitment to justice and show solidarity with victims, attracted insignificant media and public attention (YIHR 2017). Moreover, even the most important bottom-up regional initiative, aimed at establishing regional commission (RECOM) which would determine the facts about war crimes and other serious violations of human rights committed in the former Yugoslavia, came to the least support exactly in Croatia (Banjeglav 2013:43). While launching a new campaign for the collection of signatures at the beginning of 2017, the leaders of the Initiative for RECOM warned that the termination of the ICTY and EU pressure had resulted in “the backsliding in post-war justice” even in Croatia, now an EU member state (Djuric 2017), and urged all post-Yugoslav states to establish RECOM as part of the Berlin Process – hoping that this diplomatic forum could give new institutional “impetus” to the highly-needed

process of bottom-up reconciliation in the region (HLC 2017) .

In sum, once the effect of “positive externalities” of the EU conditionality incentives expired, liberal civil society organisations in Croatia lost their greatest source of bargaining power. Not being able to find an alternative “surrogate enforcer” either among domestic or external power structures, justice believers in Croatia started losing the battle with governing elites and conservative parts of the society, whose reluctance to continue with the TJ process did not only break free from EU accession conditionality, but, paradoxically, was legitimized by it. Croatia’s membership in the EU became the strongest argument against the justice believers’ demands for the continuation of TJ process in Croatia.

4.3. Competing Explanations

Illustrating the reconsolidation of justice instrumentalists, strengthening of justice resisters and weakening of justice true believers in the Croatian TJ arena, the presented evidence confirms the hypothesised model of post-accession redistribution of power between domestic coalitions. The expiry of EU conditionality revealed not only that the EU’s narrow approach failed to induce the internalization of the TJ norm in the entire Croatian society, but paradoxically strengthened those segments of society which were either willing to instrumentalize the TJ process or were completely opposed to it – which could have hardly led to anything else except to the observed post-accession backsliding. Nevertheless, before a final judgment on the explanatory power of such RI model is made, two main alternative explanations are briefly discussed.

a) Sociological Institutionalism

The most prominent alternative to the rationalist “external incentive model” is the “social learning model” which, grounded in the sociological institutionalism (SI), assumes that a candidate state adopts the EU rules if it is persuaded of their appropriateness from the perspective of its own collective identity, norms and values (Schimmelfennig and Sedelmeier 2005:18). Since the rules adopted through social learning “have a broader societal base and can be defended against political actors who challenge them” (Dimitrova 2010:141) the state’s compliance with those rules is expected to last beyond conditionality (Epstein 2008; Pridham 2008; Schimmelfennig 2005). Nevertheless, the above presented evidence on the post-accession backsliding on TJ in Croatia seem to contradict such SI hypothesis, hence not providing systematic support to the belief that Europe became “a state of mind” (Subotic 2011) among all the segments of the Croatian society. The assumptions that the “identity convergence” strategy of the Croatian political elites succeeded in marginalizing political opponents of TJ and that “even Croatian exclusionary nationalism worked in favour of Europeanization” (Subotic 2011:320) failed to withstand up the end of EU conditionality since justice resisters re-emerged soon upon Croatia’s entry to the EU, followed by the same exclusionary nationalism. The only explanation which SI could offer to such backsliding would have to prove the contestation of the TJ norm by conflicting norms in the EU or international environment, which would be hardly possible due to the continuing global institutionalization and promotion of the TJ norm (Roht-Arriaza 2005).

What, however, might indicate that EU conditionality induced something more than mere instrumental compliance with external TJ demands is the absence of even bolder post-accession non-compliance and, more importantly, even larger public support to it. If EU requirements for the adoption of the TJ norm and other related human rights norms had failed to induce any

“social learning” in Croatian society, the relevant institutional and legal framework would have probably returned to the state before EU conditionality – which has not happened so far, while the newest justice resisters’ controversial initiatives would have attracted equal public support as those that preceded the EU’s involvement – which has not been the case either. However, although these facts indicate that the “logic of appropriateness” (March and Olsen 1998) is not to be completely excluded from a comprehensive explanation of the post-accession TJ in Croatia, they do not refute the main hypothesis of this paper, nevertheless. The observed “restricted” backsliding fully fits into the proposed model since such “strategic non-compliance” represents the most rational choice for the Croatian governing elites. Their complete disregard of the TJ norm would most likely provoke stronger reactions of the EU and the rest of international community and, therefore be too costly.

b) Discursive Institutionalism

Aimed “to counter the static and overly deterministic nature of institutions” (Schmidt 2008:304) in both RI and SI explanations, the discursive institutionalist (DI) approach could offer another alternative explanation of the observed phenomenon. Providing valuable tools for capturing “a lack of discursive reinforcement of adopted rules” (Kostovicova 2014:67) during the pre-accession phase, the DI approach offers equally good explanation to “the unexpected” (Schmidt 2008:319) in the post-accession behaviour of domestic actors. Inversely proportional to the one in the pre-accession phase, the post-accession “disconnect” overlooked by the RI explanation lies between the abandoning of the TJ norm and the constant discursive denial of such policy change. Even though they have (or must have) been aware of the ongoing stagnation and reversal in the TJ process – and have often contributed to it in many above illustrated ways – the governing elites in Croatia continuously deny and thus “cover up” such policy change in discourse (the change prohibited by the international audience) (e.g. Milekic,

2017), relying on the very same “logic of communication” which helped them cover up their adoption of the TJ norm during the pre-accession period (the change prohibited by domestic audience).

Nevertheless, although DI does a better job in explaining some of the noticeable inconsistencies in the post-accession behaviour of domestic actors, its explanation can hardly be isolated from the “background information” (Schmidt 2008:314) defined by RI. In other words, as the “incentive structure” in the pre-accession period created a context in which the Croatian political elites were enforcing the TJ rule while denying such policy adaption in discourse, the post-accession change in the incentive structure created a different institutional context within which new “repertoires of more or less acceptable (and expectable) ideas and discursive interactions developed” (Schmidt and Radaelli 2004). Therefore, while it does not offer a superior explanation of a main causal mechanism behind the post-accession backsliding on TJ in Croatia, DI approach undoubtedly provides valuable contribution to the proposed model of post-accession bargaining between justice instrumentalists, resisters and true believers, particularly since – being focused on relations between domestic actors – this model attempts to reflect on the neglected element of agency in the structure-oriented RI explanation.

For all the above reasons, this paper concludes that the discussed alternative explanations neither undermine the explanatory power of the proposed model of post-accession redistribution of power between domestic coalitions in TJ arena – build on the RI theory – nor offer superior explanations to the post-accession backsliding on TJ in Croatia. However, while arguing that “logic of consequences” represents the best-suited tool for explaining the observed phenomenon, this paper also warns against any clear-cut exclusion of “logic of appropriateness” and “logic of communication” from a comprehensive analysis on the Europeanization outcomes, particularly in a complex area such as TJ.

5. Conclusion

Demonstrating that the most convincing explanation to the post-accession backsliding on TJ in post-conflict societies stems from the RI theory, this study reveals much about the EU's peacebuilding toolkit. Not only that the EU's depoliticized approach to solving hyper-politicized TJ issues fails to outroot dangerous domestic denial of the crimes committed by "our side" among the Western Balkan countries, but it produces adverse effects which can backfire immediately upon the expiry of EU conditionality. Equating post-conflict transformation with the governments' cooperation with the ICTY, the EU created an opportunity for the Western Balkans countries to turn the EU's main tool for inducing the TJ progress – the prospect of EU membership – against its post-accession furthering. Therefore, while the EU's membership leverage has been the main generator of TJ in the Western Balkans, the presented evidence from Croatia indicates that it cannot be concluded with certainty whether such justice "transits" these societies back to Europe or back to the past.

What, however, gives hope that the EU has started improving its approach to TJ, perhaps additionally stirred by noticeable "boomerang effects" in Croatia, is the EU's Policy Framework on Support to Transitional Justice, adopted in late 2015. Going way beyond the EU's initial narrow approach by including "both judicial and non-judicial mechanisms (...), individual prosecution, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof" (EU 2015), this framework indeed sets the ground for the EU's more active and consistent role in this integral part of peacebuilding process. Whether and how the EU will operationalize this framework in its relation to the remaining Western Balkan countries and whether the EU will truly find ways to provide better support to bottom-up TJ initiatives – which could perhaps induce a different redistribution of power in their TJ arenas – it remains to be seen and further explored. This is particularly important since EU membership leverage

does not expire only when a country joins the EU, but it can also vanish if a country stops believing that it will ever become an EU member, which the rise of Euroscepticism among the “Restern Balkans” countries keeps warning about. Moreover, continued attention is also needed in the case of Croatia, since the future developments in its TJ process might reveal whether the “unconditioned” belonging to the “European family” could further Europeanize Croatian society and thus stop, or even reverse the ongoing backsliding TJ tendencies, in such a way re-challenging the offered RI explanation.

While the Western Balkan countries certainly bear the greatest responsibility for the fact that conflict cycle between them has not been entirely closed even after more than two decades upon the war ending, the EU’s involvement in their post-conflict reconstruction and reconciliation has not gone without adverse effects either. If the EU wants to preserve its *raison d’etre* – being originally established to prevent the recurrence of war on the European territory – it must continually improve its policies towards post-war areas and recognize that new members do not leave their post-conflict issues at the EU doors. It goes without saying that the same recognition is required from the post-conflict states themselves.

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