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The Europeanization and Politicization of LGBT Rights in Serbia

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Abstract: As seen through the development of the anti-discrimination legislative framework and the history of Belgrade Pride parades, the European Union (EU) accession process has played an inconsistent role in shaping LGBT politics and rights in Serbia. While fostering some legislative changes and supporting some activism, the EU has periodically backed off on its pressure in service of other EU interests, such as regional stability. In part as a consequence of the politics of the EU enlargement process, many of the changes in Serbia—such as the region and the regime’s first lesbian prime minister—have been symbolic, a means to demonstrate Europeanness. This chapter’s discussion of the case of Serbia is situated within the wider debates on the role of EU enlargement on LGBT politics across candidate countries. While advances in LGBT rights have resulted from a combination of EU pressure, long standing activist pressures, and tactical use of EU leverage, the chapter demonstrates that, because the EU has been inconsistent in its commitments to LGBT rights throughout the accession process, Serbian governments have been able to instrumentalize the adoption and non-adoption of LGBT rights to further their own political agenda.

In 2017, when news broke that Ana Brnabić would become the new prime minister of Serbia, observers started congratulating Serbia on its double first: the first female and first openly LGBT prime minister. Following the election of Aleksandar Vučić as president earlier that spring, Ana Brnabić was appointed as his successor and the new prime minister of Serbia. As the story developed, Western news outlets, such as the BBC, were quick to highlight the apparent progress this represented by contrasting this with the riots that accompanied the

2010 Belgrade Pride parade. This apparent progress is often linked to Serbia's European Union (EU) candidacy and the wider European integration process.

This chapter looks into how LGBT rights have been subject to Serbia's Europeanization process, drawing attention to how LGBT rights have been politicized domestically and transnationally throughout the process. The literature on the LGBT rights within the EU enlargement process has produced different arguments about the Europeanization of LGBT rights in Central-Eastern Europe (CEE). First and foremost, scholars have highlighted the role played by external incentives, i.e., EU conditionality, in the adoption of LGBT rights in candidate countries (O'Dwyer 2010). They have pointed to the increased norm visibility (Ayoub 2016) and new political opportunities (O'Dwyer 2018) created by the process as a catalyst for change, as well as the role of transnational activism (Ayoub 2013). Although there is a general consensus that the EU has mattered for LGBT rights in candidate countries, there have also been criticisms of the EU's engagement with LGBT rights, arguing that the EU has not been consistent and its actions were subject to other priorities (Ames 2004; Slootmaeckers and Touquet 2016). Domestic legislation was introduced in a rather top-down manner, without public debate (Chetaille 2011), which in turn has led to laws remaining under implemented. The EU's apparent if partial promotion of LGBT rights has sparked resistance and state-sponsored and political homophobia within new member states (on political homophobia, see Weiss and Bosia 2013). Such politicization of LGBT topics has been linked to the interrelated phenomena of threat perception (Ayoub 2014), nationalism (Mole 2011), and Euroscepticism based on the rejection of so-called EU values (Slootmaeckers and Sircar 2018). More recently, scholars have been highlighting how these initial backlashes against LGBT rights are part of a longer process of change. Ayoub (2016), for example, demonstrates that resistance and state-sponsored homophobia paradoxically

make LGBT equality norms more visible and therefore can contribute to further change in the longer run. O'Dwyer (2018), similarly, argued that backlash can have both a unifying and professionalizing effect on LGBT movements, allowing them to forge new alliances and coalitions.

Within the EU enlargement process to the Western Balkans (Croatia became a member in 2013, whereas Albania, the Republic of North Macedonia, Montenegro, and Serbia are all official candidates countries at the time of writing), LGBT rights have become increasingly central and have become a symbolic litmus test for the Europeanness of the candidate countries (Slootmaeckers 2017). Scholarship on LGBT rights in the Western Balkans is still in its early stages—at least within the anglophone literature—and predominantly focuses on the development of LGBT politics in the region and how it is shaped by wider processes of nationalism and/or Europeanization (e.g., Bilić 2016a; Gould and Moe 2015; Swimelar 2019; Mikuš 2011).

The remainder of this chapter focuses on two key aspects of Serbian LGBT politics: the anti-discrimination legislative framework as the beginning of the politicization and Europeanization of LGBT rights in Serbia and, more briefly, the Belgrade Pride parades that have received more scholarly attention (e.g., Bilić 2016b; Ejodus and Božović 2016; Mikuš 2011). Doing so, it will highlight two key elements in how we can understand the Europeanization of LGBT rights politics. First, the chapter reconfirms the crucial role of domestic activists in bringing LGBT rights onto the agenda as the EU did not introduce initiatives that were not already present in domestic activism. Secondly, and more importantly, the inconsistent engagement of the EU with LGBT rights allowed for Serbian governments to instrumentalize these rights for their own political agenda and to

symbolically demonstrate Europeanness. It is against this background that the appointment of Brnabić should be read. It was an example of symbolic politics in which LGBT issues are used to speak to the EU's self-proclaimed LGBT-friendly identity without engaging with LGBT issues domestically.

Finally, a note on terminology is warranted in relation to the term LGBT. Whereas gay and lesbian, along with the acronym LGBT (and sometimes LGBTI to include intersex) are now commonplace terms (Paternotte and Tremblay, 2015), they are not free from criticism (e.g., Binnie and Klesse 2012). In this chapter, the term LGBT is used as the acronym is not only dominant in EU policies and documents, but, more importantly, it is also the predominant label used by activists in Serbia. However, in EU policies and documents, LGBT mostly refers to same-sex sexual orientations while trans and bisexual issues remain invisible. Similarly, in Serbia, LGBT refers predominantly to lesbian and gay people and issues. To date, bisexuals and trans issues, although certainly not absent, usually remain relatively invisible, under-recognized, and, at times, have been actively erased from the laws. Although the chapter will distinguish between sexual orientation and gender identity where needed, within the Europeanization of LGBT rights, they remain often folded onto, if unequally, each other, even as this is problematic.

Anti-discrimination policies and sexual orientation and gender identity in Serbia

The Europeanization of Serbian anti-discrimination policies started with the overthrow of Slobodan Milošević in 2000. While LGBT activists then redirected their attention from fighting the wars and nationalism to legal initiatives, the new government sought to end Serbia's international isolation. Since then, several laws have been adopted that contain anti-discrimination clauses that mention sexual orientation and/or gender identity, as well as a

general LGBT-inclusive anti-discrimination law in 2009. The process of adopting these laws took place in three distinct phases marked by differences in politicization of LGBT topics and EU commitments.

The first phase (2001–2005), the first five years after the so-called Bulldozer Revolution, is characterized by Serbia’s initial democratization and rapprochement with Europe—with both the EU and Council of Europe (CoE)—and limited political attention to anti-discrimination principles. The adoption of the first LGBT inclusive anti-discrimination clauses were the result of normative emulation (Börzel and Risse 2012), in which Serbia “downloaded” policies from those institutions it deemed legitimate. Indeed, following the 1990s war-induced isolation, there was a strong desire in Serbia to re-integrate into the international community. Although there was limited-to-no international pressure for such references at the time, LGBT-inclusive anti-discrimination clauses were perceived to be emerging European standards that Serbia should follow (Slootmaeckers 2017).

The second phase (2005–2009) sees the politicization of LGBT rights in Serbian politics as a result of the intertwining of EU conditionality, nationalist politics, and threat perception. Although civil society actors had drafted an LGBT-inclusive anti-discrimination bill as early as 2001, EU pressure on the government to adopt the law began only in 2005 after the establishment of the Coalition Against Discrimination and the start of the Stabilization and Association Agreement (SAA) negotiations, which had the adoption of a comprehensive anti-discrimination legislation as one of its conditions. This pressure, combined with EU funds, led to the first government-led draft of an anti-discrimination law, but without any mention of LGBT rights. The draft never made parliamentary proceedings because of the resurgence of nationalist politics in response to other EU demands related to Serbia’s need to deal with the

legacies of the war (Subotic and Carey, 2014). The Serbian government grew ever more intolerant with these demands and increasingly relied on nationalist rhetoric in which the governing Democratic Party of Serbia (DSS) argued that the Serbian nation needed to be protected from undue European influence. This line of argument resembled the victimization discourse that underpinned the 1990s nationalism, calling for Serbia to defend itself from external and internal enemies and traitors as well as foreign efforts to subordinate and demasculinize the Serbian nation. Within this discourse—which is inherently gendered—the anti-discrimination law and LGBT issues more widely, were represented as yet another attack on the Serbian nation and its values.

After the 2007 snap elections demonstrated a clear nationalist turn in Serbian politics, the EU significantly softened, or as Stahl (2011) argues “perverted” its conditionality, dropping the anti-discrimination law from the political agenda. When the newly elected government fell over Kosovo’s unilateral declaration of independence in 2008, Serbia’s political arena became increasingly split over Serbia’s future within the EU. When a pro-European coalition won in the next election, the EU integration process being a key priority again, which in turn meant that the political climate was more favorable again for the adoption of the anti-discrimination law.

In this context—using what Keck and Sikkink (1998) have labelled the “boomerang pattern of influence”—Serbian civil society worked with their transnational allies to lobby the EU to include the anti-discrimination law in the visa-liberalization conditionality (Slootmaeckers 2017). As the pro-European government was committed to Serbia’s EU integration and was presented with tangible rewards for adopting the law, passing the anti-discrimination bill became its main priority. Although the government sought to adopt the 2006 government bill

quickly with no changes, the newly appointed State Secretary for Human and Minority Rights (Marko Karadžić, who had an NGO background and was an ally to the LGBT movement) insisted the law had to be rewritten to include articles on sexual orientation and gender identity. When the new version of the law was about to enter parliamentary proceedings, strong opposition against the law emerged that in turn politicized LGBT rights in Serbian politics.

After a phone call by the Serbian Orthodox Church to the president, the government withdrew the bill from parliamentary proceedings. Although the Orthodox Church objected to the law as a whole, the debates quickly narrowed in on the articles pertaining to sexual orientation and gender identity. Religious leaders, and nationalists alike, argued that the legislation was threatening the religious and cultural values upon which the Serbian nation was built. They also argued that LGBT rights would be introduced under the false pretense of EU conditionality. Highlighting the lack of a EU standards in anti-discrimination legislation and its inclusion of LGBT rights, the opponents argued that removing the LGBT provisions would not harm Serbia's European integration. Proponents of the law, in turn, increased pressure on the government to adopt the law through increased media pressure, street protests, one-on-one discussions with politicians, and involving the international community. This resulted in a three-week debate permeated with homophobia.

Under strong pressure to adopt the law within the EU's expectations, yet considering the Orthodox Church's objections to the law, the government redrafted the law with some compromise modifications to the articles pertaining to sexual orientation and gender identity (Slootmaeckers 2017, 143–45). Key changes in the law were the deletion of the article relating to gender identity and adding a paragraph that stipulates that the official conduct of

church officials cannot be considered to constitute discrimination. Whereas the parliamentary debate on the bill was permeated with anti-LGBT arguments, an important shift in debates can be observed. When opponents realized their further attempts to also remove sexual orientation as a protected category within the law would prove unsuccessful, they shifted their arguments against the law as a whole. Maintaining that homosexuality is a disorder and against the Serbian traditional values, opponents now sought to limit the societal impact of the law by suggesting amendments to limit the freedom of expression of sexual orientation by removing those paragraphs to provide the right to declare one's sexual orientation. The proponents of the law, in contrast, strongly relied on EU integration based arguments to defend the law. While EU conditionality enabled the government to overcome the strong nationalist opposition, it also externalized the need for the law and thus attenuated its potential impact on society. Indeed, to date, the implementation of the law remains rather limited.

The final and third phase (2010 onwards) is characterized by uncontested and strategic changes and the continued expansion of the anti-discrimination framework that seem to be part of a strategic moves in which the government aims to communicate its Europeanness to the EU. Partly due to the path-dependency of adopting the anti-discrimination law and a shift of nationalist movements and the Orthodox Church towards opposing Pride parades, legal initiatives pertaining to anti-discrimination clauses became less contested. Despite such depoliticization of LGBT-inclusive anti-discrimination clauses, the government generally remains uninterested in adopting new pieces of legislation or strategic documents that would expand the legal framework. Due to the depoliticization of anti-discrimination legislative initiatives, one can also observe the re-introduction of gender identity in the list of protected characteristics. Such changes, like the hate crime law or the national strategy and action plan

against discrimination, only seemed to happen with international financial aid and at times when the government needed to demonstrate its Europeanness (Slootmaeckers 2017).

Pride parades as a battlefield on Europe

Once the anti-discrimination law was adopted, the nationalist opposition shifted their attention to the Belgrade Pride to fight the physical visibility of LGBT people in Serbia, which activists had first tried to organize in 2001. The history of the Belgrade pride shows that whether or not the Pride would happen is the result of a complex interplay of domestic and EU politics. Although an important player in this story, the EU, with its inconsistent focus on fundamental rights, has equally contributed to the reasons why the Pride parades were banned.

Emboldened by the EU pressure and the pro-EU government, LGBT activists started preparations for the 2009 Belgrade Pride, which, both domestically and internationally, was perceived to be an important test of Serbia's Europeanness. Having just adopted the anti-discrimination law and being pro-EU, the government was rhetorically trapped to support the event publicly. Behind the scenes, however, state institutions tried to get the event cancelled by exploiting internal movement disagreements, as well as by trying to intimidate the mostly female organizers (Ejdus and Božović 2016). Police leadership drew on omnipresent opposition by both extreme right groups and the Orthodox Church in the media, with the capital plastered with graffiti containing physical threats (Johnson 2012), while also misquoting the law by shifting responsibility of potential attacks on the Pride and ensuing injuries to the organizers. When organizers did not back down, the state sought to move Pride to the periphery of the city as some sort of compromise between proponents and opponents of

the Pride. This policy backfired as both organizers and international community considered this suggestion to be a de facto ban, putting the Belgrade Pride in the international spotlight.

With its EU-credentials being questioned, the Serbian government took a more cooperative stance in facilitating the 2010 Pride parade (Mikuš, 2011). As both the government and the organizers discursively linked Pride to Serbia's EU integration process, the Pride became connected to the EU, paradoxically enabling the opponents of LGBT rights to frame the event as a Western (anti-Serbian) perversion.

On the day of the Pride, extreme right-wing groups mobilized a mob of several thousand.

When protesters realized they could not reach Pride participants through the police cordons, they clashed with the police in what appeared to be a coordinated riot (Slootmaeckers 2017, 214–15). The lack of measures taken by the police to prevent these riots demonstrates the government's Janus-faced attitude towards the Pride parade. Though it knew Pride had to happen to maintain a positive relationship with the EU, it also did not want to challenge the nationalist forces within the country and thus allow for both the pride and the riots to happen.

The government then used the riots to shift the blame of the violence onto the EU and LGBT activists who, it argued, had forced it to organize an event that provoked violence. With this discourse relatively unchallenged (particularly by international actors), the riots became useful for the government by providing an excuse to ban the Pride the following three years on security grounds. Indeed, faced with domestically more sensitive issues, including elections and the normalization of relations with Kosovo, the government chose to ban the Pride. Doing so has had the added benefit of allowing the government to communicate to domestic nationalist forces it was able to fend off undue EU influences, while also softening

its stance on Kosovo. The linkage with Kosovo is important as the normalization of Serbia-Kosovo relations governed most of Serbia-EU relations at the time. With rising tensions in Kosovo and the formation of a new government in 2012—formed of parties with a nationalist and authoritarian legacy—the EU prioritized regional stability over fundamental rights, rewarding Serbia for its efforts in normalizing its relations with Kosovo, though turning a blind eye on fundamental rights issues, including the Pride. In other words, the bans of Pride were effectively made possible by the changing prioritization within the EU accession process.

It was only after a deal to normalize relations between Serbia and Kosovo was brokered in the spring of 2013 that the EU reprioritized fundamental rights and explicitly started pressuring Serbia to maintain Belgrade Pride. With a new government elected in 2014, the government re-engaged with the event in a way that was qualitatively different from the 2010 organizational process. Contrary to 2010, the 2014 and 2015 Prides were not explicitly linked to the EU accession process. In fact, Prime Minister Vučić managed to use the event to bolster his personal image as “the reformer” at both the domestic and international scene, without creating visibility for LGBT people per se (Slootmaeckers 2017). The inconsistency of EU pressure and the resulting discontinuity of Prides has undermined their potential to force the state to recognize LGBT lives. Though this political context anchored the Belgrade Pride in the realm of human rights, it also contributed to the widening of the gap between Pride organizers and LGBT people, as the Belgrade Pride transformed into a ritualized event, voided of (LGBT) politics (Slootmaeckers 2017). This, in turn, allowed the Serbian government to appropriate Pride.

The increasing symbolism of Pride as an indication of Serbia's Europeanness and the increasing disconnect between Pride and LGBT people allowed the Serbian state to transform the controversial Pride into a political tool of its own. The government resorted to "tactical Europeanization," a performative act to communicate the readiness to Europeanize by aligning oneself with certain perceived European norms, while disengaging and undermining with the underlying principles of the norm at the domestic level (Slootmaeckers 2017). Internationally, the government used Pride to demonstrate Serbia's commitment to the European integration process by showing its alignment with the EU's values, while domestically it was used to emphasize the state's power and sovereignty. The current government--in protecting the pride using extreme police deployment--has successfully transformed the "State Pride" into a "Ghost Pride," i.e. a state-tolerated manifestation of Pride which takes place in a militarized "transparent closet" (Kuhar 2011) that keeps LGBT people's visibility strategies invisible and outside the public sphere. Despite the fact that this process has significantly impacted LGBT politics in Serbia, one should not be too quick to dismiss the future potential of Pride altogether. Since 2016, activists have engaged in a process to reclaim Pride by building stronger connections with LGBT communities and re-inject the event with LGBT politics.

Conclusions

This Serbian case study demonstrates the inconsistent role played by the EU in the advancement of LGBT rights, with both positive and negative effects, and the essential role of domestic activists. On the one hand, while the EU accession process helped push legislative reform, those initiatives were already being pursued by domestic activists. As such, the EU's conditionality has not been the driver of reform, but rather a facilitator of the adoption of the anti-discrimination law, where the promised rewards allowed the government

to overcome domestic opposition. While this corroborates the findings of previous scholarship on CEE where conditionality has been proven vital for the adoption of new legislation, this does not mean that such processes should be interpreted as the EU imposing or introducing new legal initiatives to candidate countries. Indeed, local activists are also capable of using their transnational networks to include their agenda within EU conditionality through “boomerang mechanisms.”

On the other hand, in contrast to Ayoub’s (2016) and O’Dwyer’s (2018) more positive assessment of the EU-fostered anti-LGBT politics, EU conditionality in Serbia sparked and increased the general opposition to LGBT equality. This may be because of differences in the timing. In Serbia, the opposition and the politicization of LGBT rights were part and parcel of the accession process, not after effects, as Serbia is still in the process and LGBT rights have become more central (Slootmaeckers, Touquet, and Vermeersch 2016). Further, there are suggestions that Serbia has learned from previous enlargement rounds and has been able to tactically use symbolic moves LGBT rights to advance its European aspirations without having to improve its domestic track record on the issue. This in turn complicates how LGBT activists go about their struggle.

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