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Roads Diverge: A Comparative Study of EU Accession and LGBT Human Rights in Former Yugoslav States

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**Roads Diverge: A Comparative Study of EU Accession and LGBT
Human Rights in Former Yugoslav States**

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Submitted May 1, 2019

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Abstract

Kosovo's first Pride parade on October 10, 2017 was an important landmark for Kosovo's LGBT community. The event was remarkable both as the first event of its kind and in that it occurred without violence. While the Western Balkans have seen significant progress on LGBT rights, differences in degree of homophobia are clear across the former Yugoslav states. Slovenia and Croatia have become the least homophobic in the region while Serbia and Kosovo are the most. Where other arguments fail to adequately justify this disparity, EU accession explains the emergent differences in LGBT human rights since the breakup of Yugoslavia.

Section 1: Introduction

To most countries, the installation of the state's first openly gay Prime Minister would be a moment of great celebration for local LGBT NGOs and activists. When Serbia's President Vucić appointed Ana Brnabić to the office, local LGBT NGOs didn't so much sing her praises as they rolled their eyes. Despite the fact that Brnabić made Serbia just the fifth state with an openly LGBT¹ head of state, LGBT NGOs responded with skepticism that Brnabić's appointment indicated a shift in the perception of the LGBT community in Serbia. Rather, they viewed the symbolism of her appointment as a gesture to the international community, most notably the European Union (EU). This came after a couple years of consistent annual Pride events following several years of consistently cancelled Pride events by the state under the guise of security concerns. So-called security concerns are frequently a pretext to bar Pride events in many conservative Central and Eastern European states. The violence at Serbia's 2010 Pride served as such an excuse until the next Pride in 2014. (Fecanji 2017; McLaughlin 2017).

The situation for LGBT persons in Serbia or their southern neighbor Kosovo is pairs interestingly with that of the other former Yugoslav states of Slovenia and Croatia. Where LGBT rights have been slow to improve with only a handful of recent changes

¹ Here I use LGBT to refer to the Lesbian, Gay, Bisexual, and Transgender community. LGBTI meaning Lesbian, Gay, Bisexual, Transgender, and Intersex is more common both in the Western Balkans and in the literature on the region. I have deliberately chosen not to use LGBTI because discussing the human rights of intersex individuals is outside the scope of this project due to both a lack of existing literature and lack of protections for LGBT individuals both at the state level and at the EU level in these cases. LGBTQ meaning Lesbian, Gay, Bisexual, Transgender, and Queer is more commonly used in the United States as the inclusion of Queer makes the term more inclusive, however, LGBTQ is not commonly used in the Western Balkans and there is contestation around the English language-centric nature of the term Queer. For these reasons I have elected not to use LGBTQ in this project.

over the last few years in Serbia and Kosovo, Slovenia and Croatia have seen huge developments in LGBT human rights in the last decade. These states, united in Yugoslavia for nearly seventy-five years, have moved apart dramatically in their treatment of LGBT rights since the 1990s. Why have LGBT rights emerged in some former Yugoslav states where they are slow to develop in others?

Another key area of variation in the former Yugoslav states is Europeanization, the process of becoming integrated into the European Union and centralizing a “European” identity. Where some former Yugoslav states have been included in the Eastern Expansion of the EU into Eastern Europe others remain slow to move towards EU membership at varying stages of the accession process. Slovenia and Croatia are currently the only two former Yugoslav states to have completed the accession process and become EU members, in 2004 and 2013 respectively. Serbia and Kosovo remain outside the EU but not outside the sphere of its influence. The economic and political benefits of EU membership are highly desirable and influence the actions of the governments of these states to do things they otherwise might not to receive these benefits. At present Serbia is a candidate for EU membership while Kosovo is a potential membership candidate and has had extensive, if not unique, ties to the EU since the beginning of the European Union Rule of Law Mission in Kosovo (EULEX) in 2008.

In these cases, there is a correlation between progress towards EU membership and making improvements on LGBT human rights. Since the early 2000s, LGBT human rights, falling under the category of fundamental rights, have become increasingly

important to the accession process. The ideas of being European and LGBT friendly are tied for the Eastern Enlargement states in ways they were not in previous enlargements because of this recent increase. In this paper I argue a causal relationship between EU accession processes and LGBT human rights. Potential EU membership provides states with incentives to change their approach to fundamental rights, including LGBT human rights, in ways they otherwise might not. This relationship tracks when examining the timelines of EU accession and LGBT rights in each of these cases.

There are other arguments as to the causes of these variations in LGBT rights across the former Yugoslav states. While the purpose of this paper is specifically to make the argument of the direct influence of the EU in LGBT rights as the cause of these variations, I do not believe that I can effectively make this case without addressing some of these alternative explanations. The literature on homophobia offers multiple causes of homophobia, including state-level homophobia, which could be applicable in these cases. In outlining the context for the four cases in this paper in Section 2 I also address some of these alternative explanations and why I believe, in the context of the former Yugoslav states, these explanations are not useful.

1.2 Argument

Based on the structure of the EU accession process, Eastern Europe's lagging record on LGBT rights, and the incentives for Eastern European states to join the EU, I argue that in the case of the former Yugoslav states EU accession plays a significant role in the shifting status of LGBT rights. States which have progressed through EU accession

in the 21st century have had the external motivation in the benefits of EU membership and exposure to norm diffusion processes to change significantly with regard to LGBT human rights. Whereas, in states who are not EU member candidates or only part way through the accession process that incentive to counter public and institutional resistance to LGBT human rights is not as present. In the 1990s and 2000s the EU has instituted expectations of new member states of the fifth and sixth enlargements, in 2004 and 2013 respectively around LGBT rights that were not in force for states which joined the EU in the Twentieth century. Sloomaeckers and Touquet (2016) describe this as the co-evolution of EU enlargement and fundamental human rights policies on LGBT rights (19-21). The influence of both official standards around LGBT rights in the EU and ideals of Europe as uniquely LGBT-friendly continent is a new phenomenon (2016).

Theories of norm diffusion² show that a connection between states (or between a collection of states and an individual state) can facilitate the diffusion of ideas, values, and norms from the group to the individual state. While an institution, like the EU, can have very direct, intentional impact on the actions and official opinion of the state and political actors it cannot, by its nature, have such a direct impact on public opinion. However, norm diffusion is much more subtle and shaped more by the connection between the institution and the state than the power of the institution. Because norm diffusion, in addition to official policy changes, is involved in Europeanization, we should see Europeanization exhibit changes in the broader society outside the

² For more on norm diffusion see section 3.2

government. While norm diffusion, for example, may not change the positions of organized nationalist groups on LGBT rights, it can normalize the LGBT community and LGBT rights in the public. It can also connect local LGBT organizations to LGBT organization in the EU allowing for broader organization and the influence of non-local LGBT organization in respective new member or candidate states. Due to norm diffusion, in the EU accession process we can also expect to see local NGOs emboldened and empowered to pursue change within their state. EU accession can create opportunity and support, through the incentives for the state and norm diffusion respectively, for NGOs to push for further legislative progress in LGBT rights.

1.3 Methods

To examine homophobia in each case study I will be using indicators of homophobia and of LGBT equality to both establish levels of homophobia in each state and key dates where changes in these indicators occurred. While, for the purposes of this paper, I broadly define homophobia as state, societal, or personal negative against persons for their actual or perceived homosexuality, here in my methodology I do distinguish where I examine state or societal homophobia. The indicators and the dates combined will establish where changes in LGBT rights have occurred in each of the case studies and when they occurred. The dating of these changes is key to my argument as it will establish when changes occurred in relation to changes in each states' relationship with the EU. Changes motivated by the accession process and the prospect of becoming an EU member state will occur in the years immediately prior to reaching candidate

status or in the years between attaining candidate status and becoming an EU member. Because of the key role of timing in this argument in establishing causality between EU accession and LGBT rights I use timelines to illustrate the way in which timing is key to the LGBT rights changes in each case, in comparison to changes in EU accession policies.

Establishing changes in policy indicators of homophobia or LGBT equality is a fairly simple process. Typically, policy can be traced back to a day of enactment or a voting day where there is a clear line between “before the policy” and “after the policy.” When the change happens is distinct in matters of policy. When it comes to measuring and tracking societal change, however, things become much more complicated. There are no such distinct lines in examining societal feelings on the LGBT community. The quality of the most straightforward measure of societal opinion, surveys on questions around LGBT rights, vary greatly in quality, precise topic, geographic area of study, sample size, and regularity. Additionally, because there is no single survey which covers all four of the case in this paper this variation in surveys is an additional challenge.

Public accommodation or societal acceptance can also be examined through other measures such as rates of hate crimes or rates of experienced discrimination, however, while higher rates of negative feelings towards LGBT persons leads to greater rates of hate crimes and other forms of discrimination it also leads to a decrease in reports of hate crimes and discrimination. Official statistics are therefore highly flawed and are not reflective of actual experiences of the LGBT community in that state. Statistics reported

through surveys conducted by independent organizations can be more reflective of actual conditions than official statistics, however they can still be influenced by underreporting and the methodology of the survey in question and the representativeness of the sample should be considered. Ultimately, any form of societal analysis available to me in this project will be deeply flawed.

Because policy analysis alone is too limited to adequately examine homophobia, I will use limited analysis of societal change to further address the influence of the EU on LGBT rights. By using ratings for each case from the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA) in areas of asylum, equality and non-discrimination, family, hate crime and hate speech, legal gender recognition and bodily integrity, and civil society space, I will evaluate present day conditions for the LGBT community in conjunction with the changes over time for each case. I chose the ILGA scores because, based on my research, it was the only source which included non-legislative measures of homophobia which was reliable and consistent for all four cases.

Section 2: The Cases

In order to understand the conditions and circumstances which shape human rights, politics, and EU relations it is important to understand and consider the political and geographic background of the cases and the EU's background in relation to fundamental rights, including LGBT rights. This section aims to lay out the necessary background needed to understand the central argument of this paper, regarding what

makes the relationship between EU accession and LGBT rights momentum particularly interesting in the former Yugoslav states.

2.1 LGBT Rights in Yugoslavia

While other Eastern Bloc countries, and their LGBT citizens, were separated from the growing LGBT movement in “the West,” Yugoslavia’s comparatively open borders allowed gay and lesbian Yugoslavs to be exposed to and influenced by LGBT movements in Europe and North America (Kuhar 2014, 136). Despite its openness, however, Yugoslavia was by no means a gay oasis. As Irene Dioli (2011) states, “within the country’s dominant culture—not an exception to the repression and domestication of sexuality shared by communist systems—a rhetorical emphasis of hegemonic masculinity stigmatized male homosexuality as an expression of weakness, while a general erasure of female sexuality and pleasure virtually canceled female homosexuality from the picture” (313). This was demonstrated in Yugoslavia’s penal code, which criminalized male homosexual anal sex acts,³ but did not include female homosexual sex acts (Dioli 2011, 314). The criminalization of homosexuality in Yugoslavia did not necessarily lead to widespread legal persecution of LGBT Yugoslavs; it did connect to the stigma and marginalization of Yugoslavia’s LGBT community. As a result of the disconnect between the criminalization of homosexuality and persecution, the decriminalization of homosexuality in some Yugoslav Republics and Vojvodina (an autonomous province

³ Homosexual anal sex acts were criminalized until 1977 in Slovenia, Croatia, Montenegro, and the Serbian province Vojvodina and until 1994 in all other former Yugoslav Republics.

within Serbia) in the late 1970s, did not decrease persecution and discrimination against the LGBT community in Yugoslavia (Kuhar 2014, 135-136).

The conflicts of the 1990s and the associated rise in nationalism and traditionalism meant that what limited space and tolerance had been granted to LGBT Yugoslavs disappeared. Where the LGBT community had gained visibility in the 1980s, they were then targeted for violence. The city of Ljubljana, the capital of Slovenia, had been particularly open to the LGBT community in Yugoslavia and developed visible LGBT spaces. However, in the early 90s these spaces were targeted by neo-Nazi and other nationalist groups (Kuhar 2014, 137). The aftermath of the violent disintegration of Yugoslavia and the economic and social crises of the 1990s triggered a re-traditionalization process in the mid to late 1990s and early 2000s. There was a “re-patriarchialization” of family values and in the ideals around gender roles. In nationalist and patriarchal ideals anyone outside the hyper-masculine male or maternal women ran counter to nationalist ideology around the biological continuation of the nation. While Yugoslavia had never necessarily been “gay-friendly,” with the growth in nationalism and traditionalism, homophobia grew in the former Yugoslav states (Dioli 2011, 313-315).⁴

⁴ For more on the connections between nationalism and homophobia see section 3.1

2.2 Case Studies

Yugoslavia, literally “the land of Southern Slavs,” in its first iteration, was formed following post-World War One breakup of the Austro-Hungarian and Ottoman Empires. In the Second World War, the Croatian Fascist Ustaše, Nazi Germany, and Fascist Italy occupied Yugoslavia. Josip Broz Tito led the Communist Partisans in occupied Yugoslavia who, in partnership with the royalist Chetniks, liberated Yugoslavia. Following the Second World War, Yugoslavia, under Tito and the Communist Party’s leadership, became the Federal People’s Republic of Yugoslavia.⁵ Tito remained Yugoslavia’s leader until his death in 1980. Following his death, Yugoslavia assumed a system of collective presidency where a new president assumed the role each year as a representative of their respective republic. Slobodan Milošević became the President of the League of Communists of Serbia in 1986 and became President the Socialist Republic of Serbia in 1989.⁶ In 1991 Milošević blocked the election of the Croatian President to the collective presidency and Slovenia and Croatia declared their independence just a few months later triggering the breakup of Yugoslavia. While Slovenia and Serbia’s conflict lasted for 10 days, aptly named “the Ten Days War,” Croatia, Serbia, and Bosnia’s bloody conflict would continue until the signing of the Dayton Agreement in 1995. As the republics declared their independence Yugoslavia shrank into “Rump Yugoslavia,” consisting of Montenegro and Serbia, including Serbia’s two autonomous provinces Vojvodina and Kosovo.

⁵ Changed to Socialist Federal Republic of Yugoslavia in 1963

⁶ The Socialist Republic of Serbia became the Republic of Serbia in 1991.

Tensions in Kosovo, already on the rise since Tito's death, grew under Milošević's repressive leadership. The situation escalated in the early to mid-1990s as Milošević first segregated the education of Serb and Albanian students in Kosovo and eventually barred all Albanian students and teachers from all levels of education. Milošević also fired nearly all ethnic Albanians in government employment causing widespread unemployment among Kosovar Albanians. Violence escalated and the Kosovo Liberation Army (KLA) was formed. Eventually the violence and ethnic-cleansing of Kosovar Albanians escalated to the point where the international community feared the war in Kosovo would resemble the violence and ethnic-cleansing of Bosnia. NATO intervened with a months-long bombing campaign in 1999 which eventually ended the conflict. Kosovo received assistance through the United Nations Mission in Kosovo (UNMIK) until 2008 and by NATO through the peacekeeping Kosovo Force (KFOR) mission. In 2008 Kosovo officially declared their independence from Serbia and later that year the European Union Rule of Law Mission in Kosovo (EULEX) began.

Of the four cases included in this paper, Slovenia sits as both the northernmost and the wealthiest; Kosovo is the southernmost and poorest. In September 2018 Slovenia had an unemployment rate of 7.8 percent, while Kosovo had an unemployment rate of 30.7 percent ("Slovenia Unemployment Rate" 2019; "Kosovo - Economic Indicators" 2019). There are also significant linguistic and religious differences across the four cases. Slovenia predominantly speaks Slovenian and Kosovar Albanians speak Albanian. Beyond the use of the Cyrillic alphabet in Serbian, there are no significant differences

between Serbian and Croatian languages (once referred to as Serbo-Croatian, the official language of Yugoslavia). Slovenia and Croatia are predominantly Catholic, Serbia is predominantly Serbian Orthodox, and Kosovar Albanians are predominantly Muslim with a Catholic minority.

Slovenia was the first of the former Yugoslav states to become an EU member in 2004. Croatia joined them as a member in 2013. Serbia is currently a candidate for EU membership and has been since 2012. Kosovo's situation is more unique. While not a candidate for EU membership, Kosovo became a potential candidate for EU membership after they signed onto the Stabilization and Association Agreement and the agreement went into force in 2016.

The four cases in this project demonstrate four different situations for LGBT rights which are perhaps best illustrated through examples of how each state's unique context plays out with regards to LGBT rights. In 2016, the blog *Two Bad Tourists* published an article titled "Why Gay Travelers Should Start Heading to Slovenia." The article posed two central arguments: one, that Slovenia was an underappreciated tourism destination with beautiful natural wonders, easy day trips, and excellent food and wine; the second, that Slovenia "is proving itself to be a country of the times" and becoming more and more "gay-friendly" by the day ("Why Gay Travelers..." 2016). Slovenia is the only of the former Yugoslav states to recognize same-sex marriage following a parliamentary vote in 2016 which introduced same-sex marriage without rights to adoption or in-vitro fertilization for same-sex couples. This was after the Slovenian

public rejected same-sex marriage (without restrictions) in a 2015 referendum on the issue.

In a December 2013 referendum supported by the Catholic Church, Croatia voted 65% in favor of defining marriage as between one man and one woman. Less than one year later, in 2014 Croatia's parliament passed the "Croatia's Life Partnership Act" which granted same-sex couples many of the rights granted in, except the rights to joint adoption and in-vitro fertilization. Croatia's LGBT community still faces marginalization in other areas. In 2017, teargas was thrown into an LGBT nightclub in Zagreb and, in 2018, a copy of the, then newly released, Croatian picture book "My Rainbow Family" was burned at a pre-Lent event (Vladisavljevic 2018). Still, for the region Croatia has made a lot of progress around LGBT rights since their independence. Over the course of Croatia's EU accession process, they didn't just meet the requirements around LGBT rights, they actually exceeded them (Slootmaeckers et al. 2016, 29).

In contrast to Slovenia and Croatia Serbia has no form of same-sex partnership recognition. Until recently, Serbia's government regularly canceled Pride events on the grounds of safety and security, a strategy used throughout Eastern Europe to provide an illusion of supporting Pride events by allowing them to be planned without allowing them to take place. However, safety is indeed a concern for the LGBT community in Serbia around public events. Belgrade's 2010 Pride Parade, which was allowed to take place, was met with violence against participants and police.

Serbia is the only of the former Yugoslav states to have an openly gay leader. Ana Brnabić was appointed to the position of Prime Minister by President Vučić in 2017 making her both the first female and first openly gay person individual to hold that office. An openly gay leader is a rarity not only in the Balkans but globally as well. In February 2019, Brnabić's partner gave birth to their first child despite restrictions on same-sex adoption. Second parent adoption is not an option for same-sex couples in Serbia and same-sex couples must seek artificial insemination abroad as Serbia has no options for the donation of reproductive material. Prime Minister Brnabić, despite her symbolic firsts, is not considered a spokesperson by the LGBT community. She has rarely spoken out about LGBT rights in Serbia and once stated that she did not believe Serbia is a homophobic country (Zivanovic 2019).

As Kosovo began to build its independence with assistance from the international community in the early 2000s, Kosovo introduced rights and legislation that theoretically protected LGBT Kosovars. The Law on Discrimination, passed in 2004, barred discrimination on the basis of sexual orientation. However, leaders of LGBT organization have stated that the MPs voting on these decisions understood neither the legislation they were voting for nor LGBT rights (Morina 2016). It is because of situations like this that Kosovo uniquely lacks clarity on the issue of same-sex marriage. LGBT activists argue that Kosovo's Constitution permits same-sex marriage; Article 37 of Kosovo's Constitution grants the right of marriage to all. However, Article 14 of the Constitution, the Law on Family, specifies that marriage is between those of different sexes.

Additionally, no same-sex marriage has ever been legally recognized in Kosovo and there have been no legal challenges (Morina 2017). Not all is bleak for LGBT rights in Kosovo. Kosovo had its first Pride events in October 2017, successfully followed by their second Pride in October 2018.

2.3 LGBT Rights and the European Union

In recent years fundamental values have become increasingly important to the EU's narrative. The idea of the European Union as a defender of certain fundamental rights, or basic rights inherently owed to all persons, has grown in importance internally as well as in its foreign and enlargement policies. As the EU looked to expand to the former communist states of Eastern Europe following the fall of the Iron Curtain Europe had to consider its approach to enlargement concerning human rights in those states. The foundational documents of the EU gave it a platform, beginning in the 2000s, to herald the rising importance of fundamental rights. Article 2 of the Treaty on European Union, as amended by later treaties, states,

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail (European Council 2007).

Article 49 goes on to require that all new Member States adhere to these tenants (European Council 2007). These articles are the central places where ideas of equality and tolerance as necessary for EU membership are expanded upon in other areas of EU

law. As the notion of fundamental rights has grown in importance the accession process has changed to bring these rights and the development of these rights into the fold. In 1993 the Copenhagen European Council summit issued the Copenhagen criteria which firmly established a set of criteria for EU accession which included criteria that the states must guarantee human rights and must accept established EU law and practices (Slootmaeckers and Touquet 2016, 24; “Conditions for Membership” 2016).

What is significant to this thesis is that this increase in prominence of fundamental rights has coincided with the increasing attention to LGBT human rights in Europe. As Slootmaeckers and Touquet (2016) point out, “being ‘gay-friendly’ has now become a symbol for what it means to be European and vice versa. And with this evolution an important mechanism for transforming candidate member states into countries ready (and worthy) to become a member of the EU and take up the responsibilities of such membership, including respect for LGBT rights” (20).

While the criteria make no mention of the LGBT community, the Copenhagen criteria, by introducing mandate on EU law, indirectly mandated the decriminalization of homosexual sex acts and the equalization of ages of consent, so that ages of consent for homosexual and heterosexual sex acts are the same, in new member states. The Copenhagen criteria also moved the accession process and the compliance with accession requirements from a categorical approach, with states that were either complying or not, to a negotiation-based process where requirements for accession and a state’s compliance was monitored and evaluated regularly (Slootmaeckers and Touquet 2016, 24). While

LGBT rights were not a central tenet of the Copenhagen criteria, the Copenhagen criteria were the first among many steps in introducing LGBT rights as a requirement for EU accession.

In November 2000, the European Council published Council Directive 2000/78/EC, which prohibited “any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation” in employment. It was the first document or declaration in the EU explicitly banning discrimination on the grounds of sexual orientation and, as a result of the directive and the Copenhagen criteria, candidate states were now mandated to adopt legislation protecting Lesbian, Gay, and Bisexual (LGB) persons from discrimination in employment (European Council 2000; Sloopmaeckers and Touquet 2016, 24).

Fundamental rights, as they were growing in importance in the early 2000s, became an official and key piece of pre-accession negotiations in 2005, when the European Commission amended enlargement policies by introducing Chapter 23, a chapter on the judiciary and fundamental rights, to the acquis. Chapter 23 moved fundamental rights from a precondition to begin accession negotiations to a central piece of those negotiations to be monitored throughout the accession process (Sloopmaeckers and Touquet 2016, 25).

2.4 Alternative Explanation: Religion

As I make the case that EU accession explains the variations in LGBT human rights in the former Yugoslav states, I see it as vital to address other factors which can influence the prevalence or scarcity of homophobia in a given state or society. There are several alternative explanations surrounding the causes and explanations of homophobia that I believe are relevant but fail to explain the variations in homophobia across the four cases in this project. In the remainder of this section I lay out three primary alternative explanations for these variations: religion, nationalism, and global changes and explain why I believe they do not adequately explain the changes in homophobia across the former Yugoslav states. Examples from across the four cases provide further evidence as to the inadequacy of these explanations.

In the world at large, but in Central and Eastern Europe specifically, religion and religious adherence are often used to explain higher levels of homophobia and resistance to LGBT rights. Scholars emphasize the link between religion and homophobia through conservatism. There is a high correlation between religiosity and conservatism and between conservatism and homophobia. The values promoted through religiosity are shared in conservatism and a piece of these values can often be restrictive views on gender and sex. In this way religion and homophobia are often tied to each other. (Mole 2016, 109). In some states this proves to be an adequate primary explanation for homophobia but in the former Yugoslav state religion and religiosity does not explain variation in homophobia.

Variations in religiosity do not align with variations in homophobia across the region. The case of Kosovo is a particularly strong illustration of how the religiosity-homophobia correlation does not align. While Kosovo is considered the most homophobic of the former Yugoslav states, it is relatively secular. Even after the end of Yugoslavia, it has remained difficult to obtain reliable data on religion in Kosovo; based on approximations of the Albanian population in Albania scholars have made estimates for the Albanian population in Kosovo. Somewhere between 67 and 75 percent of Kosovo Albanians are Muslim or from a Muslim background. The remaining 25 to 33 percent are Catholic or Orthodox or from a Catholic or Orthodox background (Judah 2008, 7-8). Views on religion in Kosovo are, as a trend, more relaxed than in other Balkan states. Religion in Kosovo has largely resisted conservatism; following the collapse of communism there were attempts at proselytizing more conservative forms of Islam in Kosovo which largely failed. Islam is not as central to the Kosovar Albanian identity in the same way, for example, the Serbian Orthodox Church is to the Serb identity.

Croatia, where Catholicism is tied to the nation, provides a useful comparison to Kosovo. The importance of the Catholic Church to the idea of the nation and to society is used to further justify, along with the nationalist arguments around reproduction and threats to the nation described in Section 3. The Catholic Church in Croatia, as an important identifier of the Croat nation, is closely linked to the Croatian Far-Right (as the Serbian Orthodox Church is linked to the nationalist Far-Right in Serbia) (Jovanović

2018, 82-83). As Jovanović argues, using evidence from the nationalist and homophobic Croatian website *Narod*, homophobia perpetuated by Croatians on *Narod* is tied to ideology of the Catholic Church and the idea of the Croat nation's ties to the Catholic Church. Homophobia is also often perpetuated at important national religious events. For example, the burning of "my rainbow family" picture book at a popular pre-Lent event (Vladisavljevic 2018). While Croatia does possess homophobic legislation and has an anti-LGBT far-right, Croatia is among the least homophobic, with Slovenia, of the former Yugoslav states. With homophobia's ties to Catholicism in Croatia and the importance of religion in Croatia, as compared to more secular states in the region such as Kosovo, a lack of or lower degree of religiosity in Croatia cannot be used to explain its lesser degree of homophobia.

These ties between homophobia, religion, and nationalism connected to religion are also evident in Slovenia and Serbia. In Serbia local LGBT activists maintain that the connection between the Serbian Orthodox church and homophobic rhetoric and beliefs is very strong. The roots of anti-LGBT sentiment in the church reinforces the legitimacy of homophobic speech and violence (Milosevic 2011). The same is true in Slovenia where the Catholic Church, as an institution, has taken strong stands against homosexuality and legislation to improve LGBT human rights including same-sex marriage. Church leaders in Slovenia have made public statements that the Catholic Church cannot accept homosexuality and that LGBT persons must "purify" themselves ("The Social Situation Concerning Homophobia..." 2009, 8)

This difference in connection to religion in Kosovo and the unusual amount of religious diversity among Kosovo Albanians, as compared to their Balkan peers, can be traced back to the lack of ties between the Albanian identity and religion. Whereas Serb identity is clearly associated with the Serbian Orthodox Church and Croat identity and Slovene identity are clearly associated with the Catholic Church, the same is not true for Albanians. National identity and nationalism have ties to religion throughout the Balkans, with Kosovar Albanians as an exception. As 19th century poet Pashko Vasa wrote, “the religion of Albanians is Albanianism” (Judah 2008, 8-9). Because of Kosovo Albanianism’s relatively loose ties to religion, Kosovo’s high degree of homophobia cannot be traced to high levels of religiosity. Religion does not serve here as an adequate explanation of Kosovo’s high levels of homophobia.

In some cases, religion can be a useful explanation for homophobia to social scientists. However, in my opinion, the cases of the former Yugoslav states cannot be adequately explained with religion or religiosity. Even if homophobia in some states may be linked to religion, religion fails to explain the variation between the states. As related to the diffusion of LGBT norms globally Ayoub states, “the LGBT norm has permeated different domestic contexts at different rates. For example, some traditionally Catholic countries blaze new trails on LGBT rights, while some modern, wealthy democracies remain laggards” (2016, 10). Therefore, while many states do see the prominent role of religion in their own homophobia, the fact that religion is not a central explanation of homophobia in the former Yugoslav state does not necessarily make them unusual.

2.5 Alternative Explanation: Nationalism and EU Accession

An additional alternative explanation for the variations in homophobia observed in the former Yugoslav states is Nationalism. It could be that EU member states are less homophobic, not because of the influence of the European Union, but because states with lesser rates of nationalism, which as a trend will be less homophobic, will be more likely to reach EU accession than states which are more nationalist. However, I argue that prevalence of nationalism among states within the European Union, including Slovenia and Croatia, demonstrates that this is not an adequate explanation of variations in homophobia in the former Yugoslav states.

Slovenia provides a useful case to demonstrate the ability of states with large nationalist constituencies, which result in the enactment of nationalist policies or policies supported by nationalist, to become EU member states. Slovenia joined the EU in May of 2004; in April of 2004 Slovenia passed legislation, via referendum, which denied rights of residency to those from the other former Yugoslav states. The campaign for the referendum was led by the far-right opposition, and, while the debate around the referendum did include some discussion around financial implications, the debate centered on the questionable loyalty to Slovenia of persons from other former Yugoslav states (Lungescu 2004). At the time of the referendum Slovenia was set to join the EU the following month, demonstrating that states with powerful and vocal nationalist constituencies can still become EU member states.

EU member states are not immune from nationalism and EU integration does not inherently counter nationalist projects or sentiments within candidate states. States with strong nationalist constituencies have and continue to successfully become EU member states. While Europeanization and nationalism cannot be isolated from each other, nationalism does not prevent states from becoming EU members (Csergo and Goldgeier 2004). This is evident in the example of Slovenia above. While there are factors that connect nationalism and homophobia, the fact remains that there is little connection between nationalism and EU membership. Nationalism cannot explain the correlation between EU membership and homophobia in the former Yugoslav states.

While nationalism is a contributing factor and indicator of homophobia, as argued in section 3, the norm diffusion of the accession process directly targets LGBT norms and incentives provided by the prospect of EU accession allows states to justify official (if symbolic) moves toward LGBT rights while justifying their actions to nationalist constituencies. EU accession, while possessing standards on LGBT rights, does not possess limitations on the existence of nationalist political groups (although the legislation they promote may violate accession conditions). Therefore, I observe that nationalism, while it can be linked to homophobia, does not serve as an adequate explanation for the variations in homophobia in the Balkans.

2.6 Alternative Explanation: Global Trends

Since the late 1990s and early 2000s there have been significant global shifts with regards to LGBT rights. Even states with some of the most severe laws have moved

towards decriminalization in this period. Therefore, we might expect that changes with regards to LGBT rights would be as a consequence of broader global trends with regards to LGBT rights, particularly as they moved away from the Yugoslav period and communism towards democratization. Despite what one might expect, evidence shows that these trends do not necessarily universally apply, particularly in Central and Eastern Europe.

A Pew Research survey found there is a great deal of divide between Western Europe and Central and Eastern Europe with regards to LGBT rights. Where most individuals in Western Europe support same-sex marriage, most individuals in Central and Eastern Europe oppose same-sex marriage. There is very little state level variation when it comes to this trend. The only Central and Eastern European country they surveyed where a majority supported same-sex marriage was the Czech Republic. There were no Western European countries in their survey where a majority opposed same-sex marriage (“Eastern and Western Europeans Differ...” 2018).

A variation in support for same-sex marriage does not necessarily prove that global shifts have not spread to Central and Eastern Europe. With just the information I included above, there remains the possibility that rather than being outside these trends Central and Eastern Europe following these trends but simply lag behind Western Europe. This leaves open the possibility of future change in LGBT rights across Central and Eastern Europe. If the trends of change are influential in Central and Eastern Europe with the region simply lagging behind Western Europe there should be generational

changes evident in the population. If these changes are occurring young people should show significantly more LGBT friendly views than older generations. What Pew found, however, was there is little different between young adults and older adults in Central and Eastern Europe with regards to same-sex marriage. Because of the lack of generational different Pew specifies that they anticipate little change in the immediate future as younger generations grow older. This doesn't necessarily mean that Central and Eastern Europe is totally separated from global shifts with regards to LGBT rights, but it does mean that changes in Central and Eastern Europe are not as a result of global shifts as polling indicates a resistance to global shifts ("Western and Eastern Europeans Differ..." 2018). Central and Eastern Europe is not immune from global changes, particularly those propagated by social media and increased global connectivity. While these findings do not indicate future changes, at least in the immediate future, there remains the possibility that as the substance and means of these global shifts on LGBT rights changes the receptivity of Central and Eastern Europe to global shifts may also change.

Section 3: The Literature

The central argument of this paper is that the process of Europeanization encourages states to make progress on LGBT rights where they otherwise would not. The literature comes at this idea from a number of angles including the relationship between nationalism in the Balkans and homophobia, and how that connects to perceptions of the EU both with and without aspirations of EU membership, how Europeanization impacts

norm diffusion, and how Europeanization decreases political risks of supporting LGBT rights to states.

3.1 Nationalism and Homophobia

Scholars resoundingly find a connection between nationalism and homophobia. This is notable because of the remarkably high levels of both nationalism and homophobia in many Central and Eastern European states including the Balkans. In an article on homophobia in Latvia, Richard Mole (2011) argues Latvia has uniquely high levels of homophobia because in Latvia homosexuality “is seen as a threat to the continued existence of the nation” (541). In nations which define themselves in terms of ethnicity, reproduction becomes increasingly important to the national narrative. These states are more likely to ascribe to patriarchal family values with strict gender roles (2011, 548). As Mole describes in his chapter of *The EU Enlargement and Gay Politics: The Impact of Eastern Enlargement on Rights, Activism and Prejudice*,

The ethnic continuity of the nation is maintained by means of the patriarchal family, underpinned by heteronormative and patriarchal conceptions of masculinity and femininity. The most important role that women can play in the nation is that of the mother, producing sons (and daughters) for the nation and inculcating in them the ethnic language and culture, while men act as defenders and decision makers (2016, 105).

This is a structure in which homosexuality defies nationalist standards for gendered behavior and, therefore, represents a threat to the nation. Because of the framing of the nation and homosexuality as mutually exclusive, nationalism is tied directly to homophobia (Mole 2011; Mole 2016, 105). Building off of Mole’s arguments that to

nationalists homosexuality presents a threat to the continuity of the nation. Gould and Moe (2015) outline the connection between homophobia, nationalism, and the international community from the 1990s to 2008 in Serbia.

In the early 1990s as the Yugoslav wars began Milošević's regime promoted patriarchal gender norms of individuals relationship to the nation as part of the regime's nationalist rhetoric. As Gould and Moe describe, "the regime championed a patriarchal, ethno-sexual frontier in which Serbian men were expected to protect a nation under siege from hostile ethnic enemies that were—at least initially—largely of the regime's own invention" (2015, 276). Because, under threat from perceived fertile national enemies, nationalism in Balkan states placed an emphasis on procreation (Moe 2016). This placed homosexuality outside what Gould and Moe describe as the "ethno-sexual frontier," it was useful to the regime to link the international community with homosexuality. Homophobia in this case was a rhetorical resource for the regime. Because they were able to connect NGOs, foreign embassies, aid organizations, and political opponents to homosexuality, the regime was able to also portray these groups as similarly counter the nation (Gould and Moe 2015, 278).

The established link between internationals and sexual minorities, placing the international community including the ICTY and the EU beyond the "ethno-sexual frontier," tied their fates. Following 2005, Serbia began to develop further interest in completing the accession process, which it had already began a few years earlier without much action towards meeting EU standards for accession. The new government,

following the fall of Milošević, was at least symbolically invested to reforming human rights for the LGBT community. However, this shift in government and investment in becoming an EU member state marked a change in allegiances somewhat away from nationalist interests and institutions (Gould and Moe 2015). In 2009, when a bishop in the Serbian Orthodox Church, an institution which routinely promotes Serb nationalist values, successfully removed protections for LGBT persons from anti-discrimination legislation just hours before it was scheduled to be voted upon in Serbia's parliament. However, activists were able to secure a delay for the vote. International and domestic activists and organizations embarked on a lobbying campaign which successful returned LGBT protections to the legislation before it passed its parliamentary vote (2015, 279-281). Though nationalist rhetoric undermined international institutions, as EU accession became increasingly appealing and human rights for sexual minorities became a standard for EU accession, this connection began to serve Serbia's LGBT community.

3.2 Norm Diffusion and the EU Accession Process

Norm diffusion is the adoption, by a state, of standards of a community. Norms spread from states where they are accepted to states where they are not. States are influenced by outside actors or states to adopt new norms which they would not without such influence (Ayoub 2017, 6-7). Norm diffusion can manifest through action, such as government policies; lack of negative action, such as a lack of retaliation to events which would have elicited retaliation in the past; or negative attention due to increased awareness overall, such as counter protests on an issue that received little to no attention

in the past (Swimelar 2017, 915). Ayoub (2016) describes Latvia's first pride in 2005 in Riga as an example of this last phenomenon. Scholars studying norm diffusion and Europeanization have argued that through the accession process norms diffuse into "formal and informal rules during the creation of shared beliefs through a combination of rational external incentives, social learning, and identity shifts" (Ayoub 2016, 7; Swimelar 2017, 915).

Ayoub (2016) argues that Europeanization serves norm diffusion of LGBT rights through its contributions to visibility norms. In a country without norms around LGBT acceptance it can be a difficult and dangerous proposal for a LGBT individual to be "out" in that community, so these individuals are invisible. However, research shows that having exposure to LGBT individuals makes a person much more likely to accept the LGBT community generally. Invisibility can keep an individual safe as an individual, however it suppresses domestic movements. This is the reason LGBT groups and activists have advocated for coming-out as a mechanism for furthering visibility and LGBT norms. Transnational actors, without the risks which might hold an individual back from acting, can be an external source of visibility which can normalize LGBT identities and individuals. Transnational visibility can also create connections between LGBT movements across borders creating a solidarity which can strengthen LGBT movements within states without well-established norms for LGBT rights (23-31).

Ayoub also argues that Europeanization facilitates the diffusion of LGBT norms through a few processes. First, the EU imposes requirements and expectations around

LGBT rights on member states, which increases the opportunity for local organizations to influence domestic government institutions. Second, Europeanization creates an environment which grows networks of transnational activism which exposes actors in new member states to actors in other member states. Finally, there is so much mobilization around LGBT rights among existing member states that “EU-level frames and elites” and their mechanisms of socialization go along with this mobilization (2016, 54-86). In essence, Europeanization creates opportunity for domestic actors on LGBT rights to both influence local institutions and to connect with actors outside the state. It creates mechanisms for both the connection of higher-level institutions for norm diffusion and the development opportunities for local level organizations and activists to facilitate this norm diffusion.

Swimelar (2017) compares the norm diffusion processes in Bosnia and Serbia to examine the relationship between the Europeanization process and the diffusion of norms around LGBT rights. She argues that Serbia, which has EU candidate status and is becoming increasingly focused on EU membership, has seen more norm diffusion since the 1990s because of its faster paced Europeanization process than Bosnia, which does not have candidate status and is not experiencing Europeanization in the same way. In Serbia this norm diffusion is visible through the granting of permits to Pride Parades, the passage of anti-discrimination and other pro-LGBT legislation, and the creation of government programs for the LGBT community (2017). The process of Europeanization creates external incentives for this norm diffusion in the form of the economic, social,

and political benefits Serbia would receive as an EU member state to bring about that norm diffusion. Being in the process of becoming an EU member allows norms of LGBT rights to better spread from the EU to the candidate state than if the state in question was at an earlier in the process (2017). Swimlear establishes a link between the process of Europeanization, including the degree of Europeanization, and diffusion of norms on LGBT rights.

Beyond norm diffusion, Europeanization expands LGBT through the balancing of accession requirements and the incentives of EU membership. Europeanization can be an opportunity for states to expand the human rights of sexual minorities while appeasing nationalist constituencies with the benefits of EU membership (Slootmaecker et al. 2016, 3; Mikuš 2011, 841-842). Mikuš (2011) argues that Serbia's government was able to permit the 2010 Belgrade Pride and form a sort of political alliance with the organizers, framed by the context of Europeanization which then both served to create public space for Serbia's LGBT community and further reinforced nationalist perceptions of LGBT human rights as foreign. This is strategic both for the state and for the parade organizers. By intentionally using Serbia's status as a candidate for EU membership to promote the parade to the state, organizers were able to secure permissions for the parade which had previously not been permitted due to government concerns around security (2011, 841-842). At the same time, the state was able to endorse the parade and therefore support LGBT norms, at least rhetorically, without facing political repercussions from nationalist constituencies. Serbia's government successfully used the connection between LGBT

norms and the international community, including the EU, to justify the parade as a part of the EU accession process.

While the EU may still be outside the nation and sexual minorities a threat to the nation, the economic, social, and political benefits of EU membership are enough to justify state action to a nationalist base without facing significant political repercussions, as would have been the case in the early 2000s just after the fall of the Milošević regime (2011). Thus, without necessarily altering nationalist ideas of sexual minorities and the international community, the state is still able to move toward EU accession and its benefits and expand LGBT rights, at least symbolically.

Section 4: Evidence and Argument

The center of my argument is that when comparing the progress of these four former Yugoslav states to both the changes in enlargement policies as related to LGBT human rights and to each other in their individual timelines of EU accession there is a clear connection between EU accession and new, otherwise unexplained, progress on LGBT rights. The case of Croatia particularly demonstrates progress through the accession process; the case of Slovenia demonstrates progress as an EU member, having become an EU member state just as these new policies were being introduced. Serbia and Kosovo, at different places in the accession process, demonstrate the ongoing influence of these policies mid-accession process.

Slovenia's case is slightly unique as compared to the other three cases. Slovenia became an EU member as the EU introduced new standards around LGBT human rights meaning that these new standards had little direct impact on Slovenia's accession process. What is interesting about Slovenia's case is examining the changes in LGBT human rights, comparable to Croatia's changes before accession, which occurred after Slovenia became an EU member. Because of Slovenia's unique timeline it is included following the other three cases in this section.

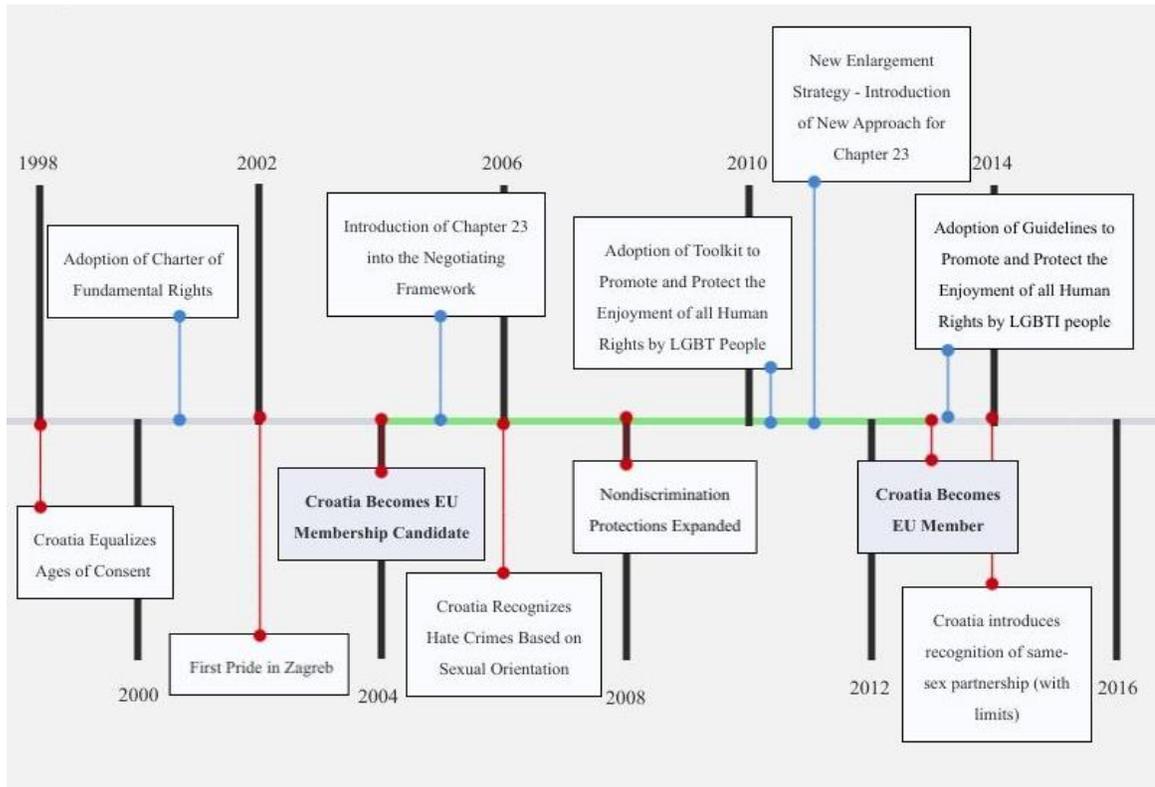
4.1 Croatia

Croatia serves as an ultimate example of the shifts in approach to LGBT rights by governments following the introduction of the incentive of EU membership. Because of the timing of Croatia's EU accession such that Croatia's accession process came just following the growth of fundamental rights in the accession negotiations, Croatia illustrates the possible progression for LGBT rights over the full course of the accession process from beginning to end. Croatia joined discussions of the EU's eastern expansion just as LGBT rights were emerging into the forefront of enlargement discussions and their accession process and requirements were the first to include Chapter 23. Despite setbacks in the accession negotiations due to issues around Croatia's compliance with the ICTY tribunal, which included a temporary closure of negotiations around Chapter 23, by Croatia became an EU member in 2013 it had exceeded the requirements on LGBT human rights (Slootmaeckers and Touquet 2016, 29). As Slootmaeckers and Touquet (2016) state, "After the opening of Chapter 23 in the EU negotiations (2009), LGBT

rights became a prominent political topic, and it was no longer possible for those in power to ignore the rights of the LGBT community, as these issues became part of the public debate” (29). Croatia’s entry into the EU accession process coincided with the growth of LGBT human rights in the accession process.

Croatia was the first state of the four cases to see LGBT rights become a prominent issue as a direct result of the promotion of LGBT rights by the EU in the accession process. This makes it the key case for examining new policies in the EU’s eastern enlargement. Figure 1 below offers a comparison of the development of LGBT rights as an important EU membership requirement and some of Croatia’s most significant legislative changes around LGBT rights. By observing the changes in EU accession expectations and policies in the lead up and early years of accession negotiations with Croatia we can see their impact in the changes introduced in Croatia in the lead up to 2013.

Figure 1: Croatia Timeline



What is clear is that while some discussions around LGBT rights and some progress around those rights had occurred prior to accession negotiations, once Croatia became a candidate state in 2004 and Chapter 23 was introduced in 2005 LGBT rights became a new priority. This gave LGBT and human rights NGOs power in policy making decisions and gave the government an incentive to improve LGBT human rights in a scenario where neglecting LGBT rights was no longer politically feasible (Slootmaeckers and Touquet 2016, 28-31). Shifts toward greater protections of LGBT human rights become increasingly frequent and more regular in the years following Croatia's move to candidate status and leading up to Croatia's membership in 2013.

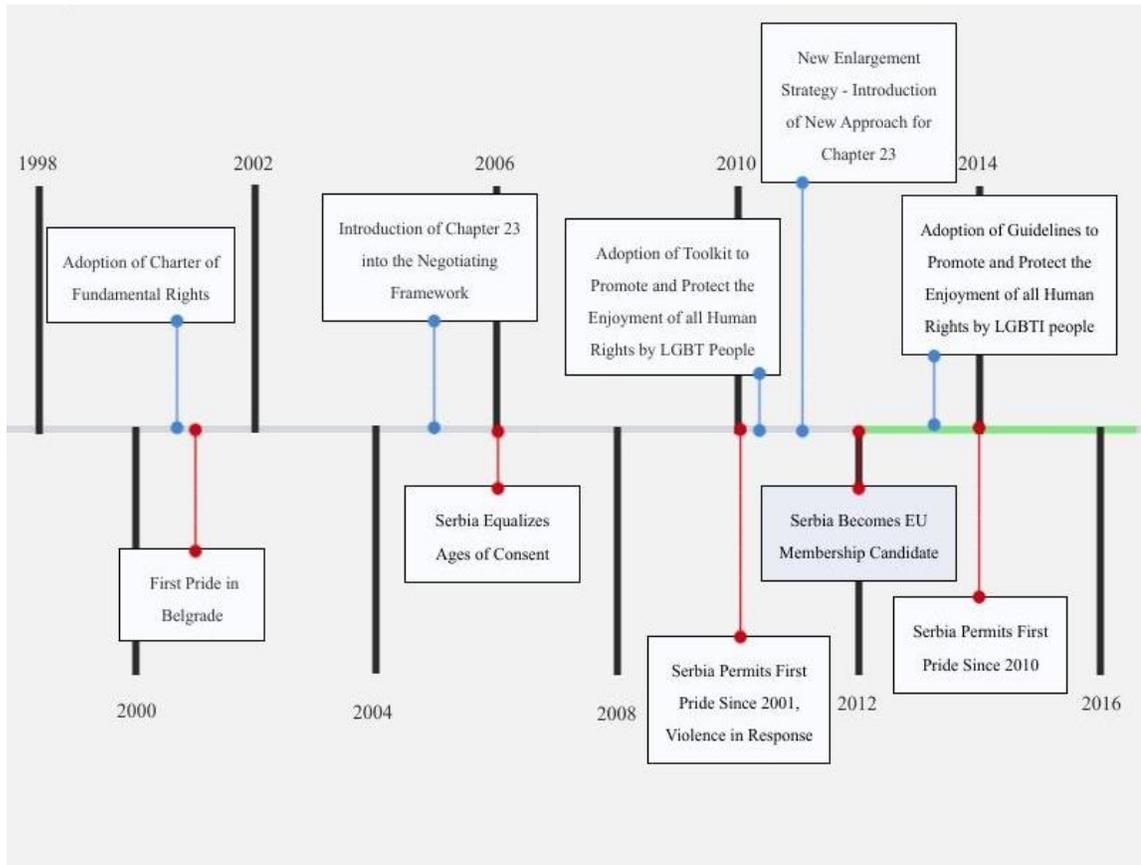
One important piece to understand when examining the timeline of changes for Croatia not only increases in changes once Croatia was pursuing EU membership but also the types of changes they were making. Equalizing ages of consent or permitting Pride events are changes which are focused more on decriminalization of the LGBT community, whereas non-discrimination protections and the recognition of hate crimes based on sexual orientation are centered more on protection and inclusion of the LGBT community in wider society. The difference between these two types of changes is subtle, but it indicates a shift not just in the pace of change in accession process but also in the type of changes.

There are several instances where a shift in the pace of pro-LGBT legislation is particularly evident, as noted in figure 1 above. After Croatia became an EU candidate and began to face requirements around fundamental rights, which newly prioritized LGBT rights, Croatia made notable shifts in its policies. Two years after becoming a candidate, in 2006 Croatia began to recognize hate crimes based on sexual orientation and in 2008 Croatia introduced legal protections against discrimination on the basis of sexual orientation. Croatia also recognizes same-sex couples but does not recognize same-sex marriage. This is a notable difference between Croatia and Slovenia, who has recognized same-sex marriage since 2017. However, neither state permits same-sex couples' joint adoption or in vitro fertilization rights (see 4.4 for more on Slovenia).

4.2 Serbia

Serbia, situated partway through the accession process, serves as a clear comparison point to Croatia. In 2019 Serbia is at a place where the incentives and desired endpoint are clear, and the first changes are being made with the explicit purpose of achieving the goal of EU membership. Serbia became an EU candidate in 2012 as the Eastern Enlargement was in full swing. By that time Chapter 23 LGBT rights were already established as a priority in accession negotiations. Where Croatia may be considered a test case for how fundamental rights might shape the relationship between EU accession and LGBT this is not case for Serbia. Still among the first states dealing with the inclusion of LGBT rights in accession, Croatia and other EU member states which were part of the earlier Eastern Enlargement have demonstrated how this change can shape the accession process from beginning to end. Today, Serbia is in the midst of its accession process and has far to go in the area of fundamental rights as well as in corruption, normalization of relations with Kosovo, and the economy (“Serbia 2018 Report” 2018, 2-5).

Figure 2: Serbia Timeline



From the course of events before and after the EU granted Serbia candidate status, we can observe important changes to LGBT rights in the state. One trend which is particularly notable is the changes in policy related to Pride events in Serbia's capital. While Serbia had its first Pride march in 2001 Serbia did not have another Pride until 2010. Unfortunately, the 2010 event was marred by violence. Anti-LGBT protesters violently clashed with police, causing both extensive injury to both police and members of the public. Serbia had forced the cancellation of Pride events in 2009 and continued to cancel all Pride events after 2010, under the excuse of public safety, until 2014. The cancellations mark Serbia as a state reluctant to tackle LGBT rights. Rather take

measures to prevent violence, governments avoid public debate and succumb to political push-back from the far-right by not permitting the events under false pretenses. However, once Serbia was an EU candidate and facing requirements to progress on LGBT rights, there was a new incentive to allow Pride events to take place in Belgrade. Rather than avoid approaching LGBT rights politically and in public Serbia's government had a greater incentive to, at least, make a show of new tolerance for LGBT rights and to open up public and political space for LGBT civil society at, perhaps, the expense of appeasing the far right. If Serbia wanted to continue to pursue EU membership, they had to make changes in their approach to Pride. Despite the government's denials that the cancellations were a "capitulation to the hooligans," the EU repeatedly condemned the cancellations (Vasovic 2013). There was no realistic scenario where Serbia could continue to cancel Pride and become an EU member, therefore, the prospect of EU accession motivated Serbia in 2014 to alter their approach to Pride.

These changes can also be tracked in the changing statements of the government in the EU accession process. President Vucić, in the early 2000s Serbian anger at the role of the international community in the Kosovo War, co-edited a book titled *English Gay Fart Tony Blair* ("The Changeling" 2016). Using homophobic rhetoric was common in Serbia during that period to discredit the international community. Now, Vucić attends Belgrade's annual Pride March and promotes LGBT as necessary for Europeanization. Observers have noted just how much of the current government's actions around LGBT rights are motivated by a desire to appear LGBT-friendly to the EU (Byrne 2017).

While, like Croatia, Serbia has been motivated to make changes to LGBT, Serbia lags behind member states Croatia and Slovenia with regards to the present state of LGBT rights. Where Croatia began their accession process in 2004 Serbia's process began in 2012. This is reflected in the present context of LGBT rights in Serbia. Serbia has far fewer legal protections for the LGBT community than Croatia and Slovenia. For example, both Slovenia and Croatia legally recognize hate crimes based on sexual orientation, having passed the appropriate legislation in 2008 and 2006 respectively. Serbia does not have such recognitions of crimes motivated by homophobia. While other issues are of a greater priority for progress towards Serbia's potential EU membership, normalizing Serbia-Kosovo relations for example, Serbia will have to expand LGBT human rights in order to qualify for membership.

In the European Commission's 2018 report on Serbia protecting the LGBT community from discrimination was listed among the shortcomings in fundamental rights which still need to be addressed by Serbia (23). The report also stated that 2017 saw a small increase in violence targeted at LGBT persons while legal resources including prosecution continue to be inadequate, with Transgender individuals being particularly vulnerable and lacking support (28). As evident from the current state of LGBT rights, Serbia certainly has a lot of progress to make before they can meet EU standards of fundamental rights. From the progression Serbia has made since 2012, however, I believe that as long as the desire to join the EU remains strong LGBT rights will continue to improve in Serbia.

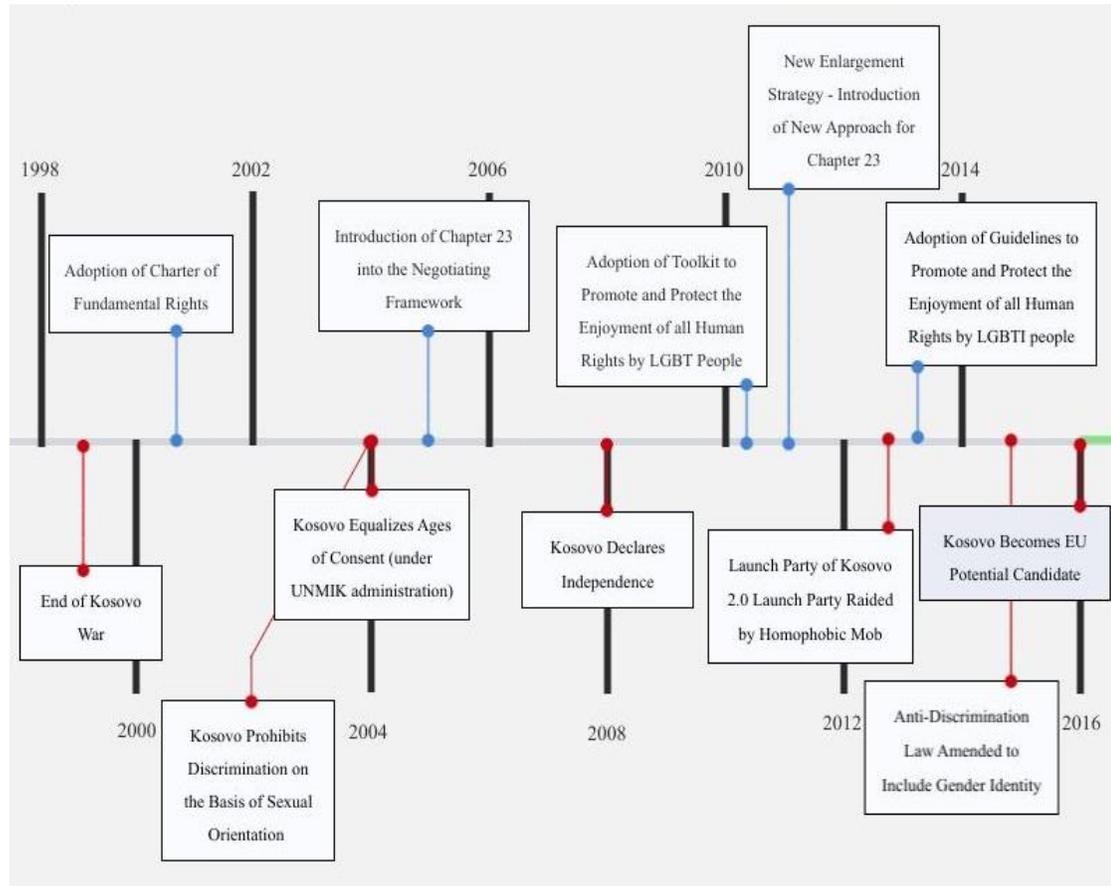
4.3 Kosovo

Kosovo's unique context for EU accession exemplifies the influence of potential EU membership specifically as well as just how dramatic and swift the changes in approach to LGBT rights can be. While Kosovo has a close relationship with the EU, Kosovo is still only a potential candidate for EU membership, further from potential future membership than Serbia, which has candidate status. Kosovo gained its potential candidate status after signing onto the Stabilization and Association Agreement, a part of the EU Stabilization and Association Process (SAP) with the countries of the Western Balkans. Kosovo has a unique relationship with the European Union particularly through the European Union Rule of Law Mission in Kosovo (EULEX) which launched in 2008 following Kosovo's declaration of independence. The mission of EULEX is to assist in creating sustainable and independent rule of law in Kosovo and its current mandate goes through 2020. While Kosovo is farther from EU accession than Serbia, its unique relationship provides interesting insight.

However close Kosovo is with the EU, there is still a long way to go before it can reach EU membership. Kosovo has a weak economy, a government barely ten years old, and lacks universal recognition of its independence even within the EU. There are many areas which are of a much greater interest in potential negotiations with the EU at the present, including ongoing disputes with Serbia, than LGBT rights. This, in combination with the fact that a National Democratic Institute (NDI) 2015 survey rated Kosovo the most homophobic country in the Balkans, provides context to help us understand

Kosovo’s trajectory with regards to LGBT human rights (“LGBTI Public Opinion Poll: Western Balkans” 2015).

Figure 3: Kosovo Timeline



There are two key points to note on the timeline with regards to Kosovo’s relationship with the EU: the launch of EULEX in December 2008 and the Stabilization and Association Agreement went into force in Kosovo which went into effect in April 2016 and Kosovo became a potential candidate for EU membership. EULEX is significant in marking the relationship between Kosovo and the EU. The Stabilization and Association Agreement, however, marks the movement of Kosovo towards future

EU membership and the introduction of future expectations in human rights. The agreement is most significant in examining the connection between Kosovo's changing relationship with the EU and LGBT human rights. From the timeline, we can see that Kosovo made initial legal changes with regards to the equalization of the ages of consent for homosexual and heterosexual sex acts and the introduction of anti-discrimination legislation in the years between the Kosovo War and Kosovo's unilateral declaration of independence from Kosovo, while Kosovo was under the administration of UNMIK.

In relation to the other three cases included in this paper, it is remarkable how recently and how swiftly Kosovo has changed its approach to LGBT human rights. While there were earlier changes under UNMIK administration, recent changes have been dramatic and far more internally directed (albeit with the motivation of relations with the EU). In just five years Kosovo went from having the 2012 launch party of a magazine which discussed LGBT sexuality and issues violently attacked to being able to hold Pride in 2017 without violence. This is a truly unprecedented shift particularly when compared to Serbia. While Kosovo and Serbia are in a similar place in early 2019 in terms of their legal accommodation of the LGBT community, Kosovo's progression has been much more recent and in a much shorter time frame.

With regards to Kosovo, it is impossible to separate the progress on LGBT rights at a legislative level from the influence of the international community, particularly the EU. While, because of the continuous presence of the international community in Kosovo since 1999, it is impossible to isolate pre-influence and post-influence timeframes with

regards to LGBT rights the consequences of potential EU membership for Kosovo's human rights record are clear. Similar to Serbia, the benefits of EU membership would be extremely beneficial. Not only would membership give Kosovo the typical economic and political benefits it would also give them international legitimacy that they currently lack. While not yet an official EU membership candidate, the incentives are certainly there for Kosovo to continue to make progress in LGBT human rights.

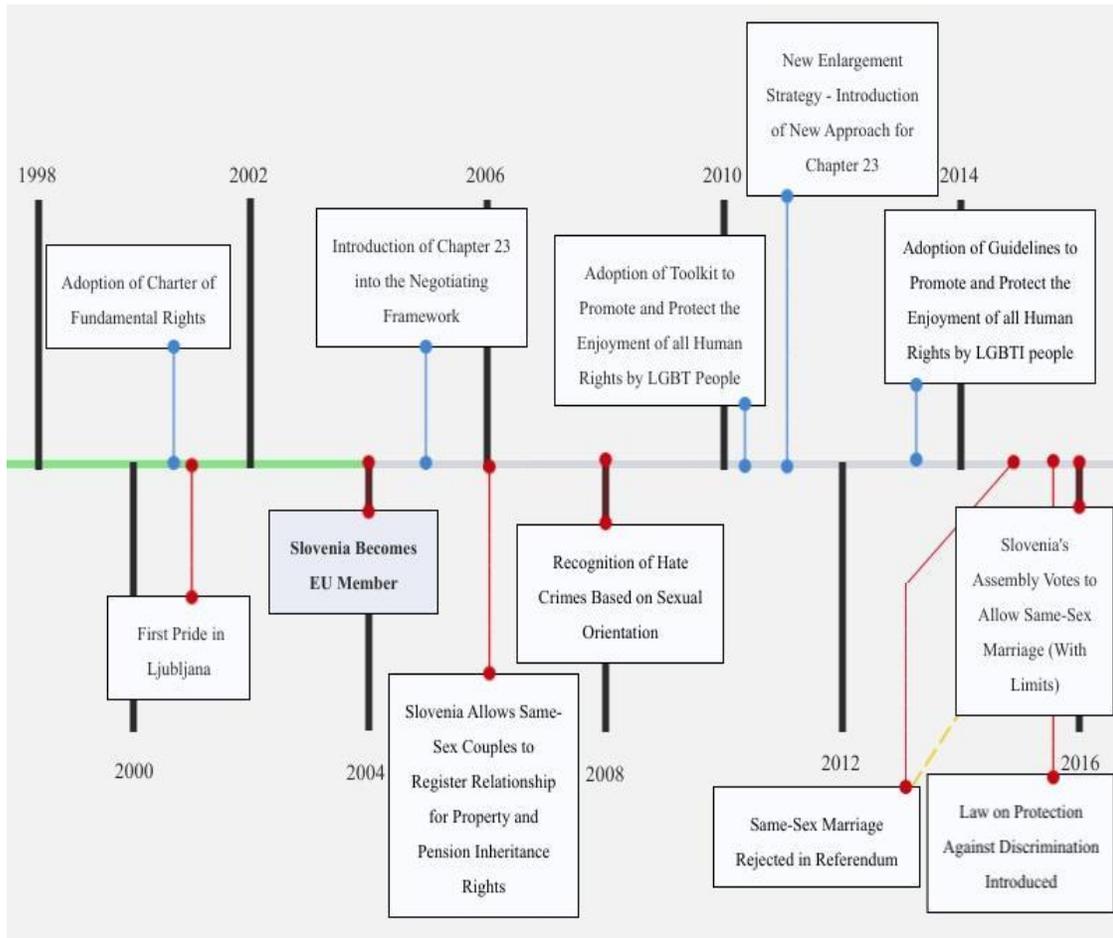
4.4 Slovenia

Slovenia's timing with regards to EU membership and the introduction of LGBT rights into the accession process is such that it is not the ideal illustration of how the new focus on fundamental rights shapes candidate states. Still, the progress Slovenia has made since obtaining membership does give a hint as to the influence of these changes outside the accession process. Slovenia was the first former Yugoslav state to successfully join the EU, completing the process just as LGBT rights were becoming important in the EU accession process. As a result, LGBT rights emerged as an important requirement when Slovenia was already well into its own accession process. For this reason, Slovenia does not necessarily serve as a good example of the impact of the prioritization of LGBT rights in the accession process. I still include Slovenia as a case study in this project because as the first former Yugoslav state to join the EU and the least homophobic state in the region Slovenia still possesses relevance in the question of the relationship between EU membership and LGBT rights in the western Balkans. Additionally, because Slovenia has been an EU member for much longer than Croatia and has made significant progress

on LGBT rights since becoming an EU member state, it can serve as a case study for how the EU can continue to influence LGBT human rights once the incentive of future membership is gone.

As is evident in the timeline, Slovenia made many of its shifts towards more progressive LGBT rights policies after it was already an EU member, but along a similar timeline to Croatia's changes once the EU's new LGBT priorities had been enacted. As an EU member state, Slovenia is obliged to comply with EU standards in all areas, including fundamental rights. The fact remains, however, that without the incentive of future EU membership many states, particularly in Eastern Europe, lag behind in controversial areas unpopular with the general public including LGBT rights. For example, Poland's ruling Law and Justice (PiS) political party has used opposition to LGBT rights to boost their popularity among far-right Poles. As ruling party PiS has opposed progress on LGBT rights within Poland, despite the fact that Poland is an EU member state (Cienski 2019). Continuing to make progress on LGBT rights once membership is obtained is not necessarily a given in Eastern European member states.

Figure 4: Slovenia Timeline



Notably, in 2016 Slovenia became the first and, currently, only former Yugoslav state to recognize same-sex marriage. While Slovenia's same-sex marriage laws come with restrictions, same-sex couples still cannot jointly adopt and lack in vitro fertilization rights, it is was a dramatic legislative turn for LGBT rights in Slovenia. What is particularly remarkable in this case is that in voting to recognize same-sex marriage, Slovenia's parliament contradicted the will of the Slovenian people who, in 2015, had

voted in a referendum not to permit same-sex marriage. Slovenia's parliament just one year later countered that referendum to allow same-sex marriage with only the introduction of the restrictions which had not been included in the referendum. This demonstrates that even beyond potential shifts in public opinion around LGBT rights, top-down LGBT protections continue to be possible following EU membership.

While Slovenia as a single case cannot alone demonstrate a trend of states evolving on LGBT human rights after becoming EU members, it is an interesting case to consider how the EU's leverage can play out with regard to LGBT rights post EU accession. It is an example of how new EU expectations around fundamental rights and LGBT rights can change over time without Chapter 23 negotiations.

4.5 EU Accession from a Comparative Perspective

When considering the trajectory of these four cases it is important not to stop at comparing their trajectories over time but also to consider where they are in the present. Before examining the places in which there are differences, I first want to examine where there is an important similarity in the lack of change in transgender human rights across the former Yugoslav states. Slovenia, Croatia, and Serbia do legally recognize transgender individuals but all three require a diagnosis and medical intervention before an individual can officially alter their documentation. Croatia also requires the individual, if married, to be divorced. Serbia has additional requirements of divorce and sterilization ("Trans Rights Europe Map 2018" 2018). Kosovo does not legally recognize transgender individuals in any capacity. Blert Morina, a Kosovar transgender man, has filed a

complaint against Kosovo's Agency for Civil Registry after they refused to allow him to change his birth name which is ongoing (Halili 2018). The coming months, therefore, may bring changes in this area for Kosovo.

Transgender rights are not prioritized by the EU in fundamental rights, despite their expansion in the 21st century, in the same way lesbian, gay, and bisexual (LGB) rights are. There are clear differences, however, between the states with regards to LGB human rights in the present day. I have argued in this section that by examining the timeline of the EU's introduction of new priorities in fundamental rights, the introduction of each state to the accession process, and the shifts in LGBT rights in each state, while shifts in transgender rights are limited, illustrates the influence of the accession and negotiations process on LGBT rights. In this portion of the section I also argue that we can see the impacts of this in the present-day conditions of the LGBT community in each state.

Figure 5: ILGA Table

	ILGA score asylum (2018)	ILGA score equality and non-discrimination (2018)	ILGA score family (2018)	ILGA score hate crime and hate speech (2018)	ILGA score legal gender recognition and bodily integrity (2018)	ILGA score civil society space (2018)
Slovenia	33%	55%	56%	13%	45%	100%
Croatia	33%	51%	41%	51%	46%	100%
Serbia	0%	52%	4%	38%	0%	100%
Kosovo	33%	75%	7%	13%	0%	100%

By comparing the ratings of the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA) 2018 country reports in figure 5 we can see where the cases are different in their conditions as well as some places where they are similar. The most notable similarity is the civil society space score with all four states receiving a score of 100%. All four the cases are open to the activities of civil society, including LGBT NGOs and NGOs which advocate LGBT rights as one part of their work. This is particularly promising considering that, from the literature, we know that pressure from the EU or the international institutions more broadly can give local NGOs more influence and power (Ayoub 2016; Swimelar 2017; Mikuš 2011). In these cases where there is openness to civil society this is particularly relevant. Additionally, all four states received

low scores with regard to their LGBT asylum policy with Serbia in particular receiving a score of 0% (“Annual Review of the Human Rights...” 2018, 52, 80, 114, and 118).

For the most part, the differences in the cases demonstrate a clear divide between EU and non-EU cases. With variation to a certain extent there is a clear indication that Slovenia and Croatia have similar ratings which are notably higher than Serbia and Kosovo. This is most dramatic in the areas of family and legal gender recognition and bodily autonomy. From examining the timelines of each state, we know that Slovenia and Croatia, for the four cases, are the two which recognize same-sex couples in some capacity with marriage and partnership registration respectively. To return to the discussion on issues relating to the transgender community, we also know that while the states do not differ dramatically in terms of their legal treatment of the transgender community Kosovo does not recognize transgender individuals at all and Serbia has the strictest requirements for individual recognition. While none of the cases have policies, which are particularly friendly to the transgender community, there is some difference there which the ILGA has noted in their reports. From the ILGA reports we can discern concrete differences across the cases in the present day, corroborating what tracks across the timelines of the individual cases. As a result of the changes across time in the four cases there are now observable differences between the cases in the 2018 ILGA ratings.

By comparing the 2018 ILGA ratings for the cases we can see how the variation over time impacts the variation in LGBT human rights in the present. The fact that Slovenia and Croatia were motivated to promote LGBT human rights earlier than Serbia

and Kosovo means that there is variation in the quality of LGBT human rights today. As Serbia and Kosovo, presumably, progress towards EU membership I expect that there should be some movement towards the closure of the gaps between the cases.

Section 5: Conclusion

Examining these four cases it is clear that Europeanization shifts, or at least picks up, the progression of LGBT human rights in these states. Still, the case of Slovenia gives an interesting perspective in comparison to the other three cases. While the exact incentive is not clear, Slovenia demonstrates that progression on LGBT human rights is possible following EU accession. Based on pre-existing literature I would hypothesize that Slovenia, or any other EU member state, could be motivated to improve LGBT human rights through processes of norm diffusion altering the domestic norms around LGBT human rights to become more in line with “European” norms. Unfortunately, investigating changes in LGBT human rights in EU member states is not within the scope of my research here, but I hope this is an area other scholars will investigate in the future.

Ultimately, this project demonstrates the influence of the EU accession process on state actions to improve LGBT rights. From the four cases examined in this project it is clear the actions of the state can be shifted, and civil society can be empowered, likely as a result of the changes in the state. What is less clear, however, is if EU accession can influence the opinions of the public in these states, either directly or indirectly. Without being able to compare consistent polling of the public in all four cases over time it is next to impossible to make a reliable determination in this area. Proxy measures, for example

hate crime statistics, are unreliable due to underreporting particularly in states with higher rates of homophobia. Having higher rates of hate crimes reporting, for example, could indicate a state actually has less violent homophobic crime and high rates of reporting such crimes than a state with lower rates rather than more crime as it may seem from surface level analysis of the numbers alone. However impactful the measurable changes made due to EU accession may be, they are limited without shifts in the public conceptions of the LGBT community. Being unable to measure changes in the popular view of the LGBT community in the cases is certainly a limitation of this project.

This project demonstrates the ties between the process of EU accession and dramatic shifts in LGBT human rights across the former Yugoslav states in the EU's Eastern Enlargement. With this evidence tied up with the theoretical framework offering explanations as to the exact motivations and processes which motivate these changes in the context of the Eastern Enlargement, International bodies, including the European Union, should consider more proactively the impacts of their influence in candidate states. The implementation of fundamental rights into the EU accession criteria has had demonstrable impact in the Eastern Enlargement states. This is not an endorsement of a paternalistic approach to homophobia in candidate states. The literature indicates that part of the strength of the inclusion of LGBT human rights in the EU accession process is that it empowers LGBT NGOs and allies in civil society in candidate states. It is my opinion that the EU and other international bodies should lean into this facet of the accession

process to truly collaborate with local civil society and give further power to these organizations in their state's progression towards EU accession.

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