HAS THE INTERNATIONAL HUMAN RIGHTS PARADIGM FAILED LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE? IF SO, WHAT CAN BE DONE TO FIX IT?

by

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Abstract

Two basic human rights principles are the prohibition against discrimination and the guarantee of equal and effective protection against discrimination on any ground to all people. However, these principles have not been applied equally to those who face discrimination based on sexual identity. There is still a prescribed death penalty in eight countries for homosexual behavior and homosexual sex is criminalized in approximately 80 countries. In Uganda there is an ongoing debate about a proposed “anti-homosexuality bill,” which would inflict the death penalty on repeat offenders. In Russia, Moscow, gay Pride has been banned for the next 100 years.

The goal of this thesis is to explore the power and weakness of international human rights protections for sexual minorities using Serbia, a transitional country, as a case study and to recommend best practices for fostering change. I assess the situation in Serbia by analysing the formal domestic and international legal framework in comparison to the social outcomes on the ground, as manifested by four years of Pride events. Until 2010, attempted annual Pride events were banned every year due to the “high-level of risk.” In 2010, the first Gay Pride took place in Belgrade inside a ring of protection of 5,000 police officers. In 2011 and 2012, Pride was banned once again.

I demonstrate that the successful 2010 outcome – when Pride actually took place – had much to do with pressure from the international community. However, it did not result in very much positive and measurable social change on the ground. My research suggests that law cannot achieve change on its own and that alternative “out of the legal box” methods are needed. I
suggest creating long term educational initiatives that can generate the necessary pressure from inside the state.
Preface

Section VI entitled “European Union and Human Rights Conditionality” in Chapter 4 of my thesis is based on the directed research paper that I wrote with the supervision of Professor Ljiljana Biukovic. This paper was presented in December 2012 at the First Annual EU Studies Graduate Conference in Victoria, BC.
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<th>Full Form</th>
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<tbody>
<tr>
<td>BiH</td>
<td>Bosnia and Herzegovina</td>
</tr>
<tr>
<td>CAT</td>
<td>Committee Against Torture</td>
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<tr>
<td>CCPR</td>
<td>Human Rights Committee</td>
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<tr>
<td>CED</td>
<td>Committee on Enforced Disappearance</td>
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<tr>
<td>CEDAW</td>
<td>Committee on the Elimination of Discrimination against Women</td>
</tr>
<tr>
<td>CERD</td>
<td>Committee on the Elimination of Racial Discrimination</td>
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<tr>
<td>CESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
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<tr>
<td>CMW</td>
<td>Committee on Migrant Workers</td>
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<tr>
<td>CoE</td>
<td>Council of Europe</td>
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<tr>
<td>CRC</td>
<td>Committee on the Rights of the Child</td>
</tr>
<tr>
<td>CRPD</td>
<td>Committee on the Right of Persons with Disabilities</td>
</tr>
<tr>
<td>CSCE</td>
<td>Conference on Security and Co-operation in Europe</td>
</tr>
<tr>
<td>ECOSOC</td>
<td>Economic and Social Council of the UN</td>
</tr>
<tr>
<td>EULEX</td>
<td>EU mission in Kosovo</td>
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<tr>
<td>FRY</td>
<td>Federative Republic of Yugoslavia</td>
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<tr>
<td>GLIC</td>
<td>Gay and Lesbian Info Center</td>
</tr>
<tr>
<td>GSA</td>
<td>Gay Straight Alliance</td>
</tr>
<tr>
<td>HLC</td>
<td>Humanitarian Law Center</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESR</td>
<td>International Covenant on Economic Social and Cultural Rights</td>
</tr>
<tr>
<td>ICI</td>
<td>International Commission of Jurists</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
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<tr>
<td>IGLHRC</td>
<td>International Gay &amp; Lesbian Human Rights Commission</td>
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<tr>
<td>ILGA</td>
<td>International lesbian, gay, bisexual, trans and intersex association</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>IPA</td>
<td>Instrument for Pre-accession Assistance</td>
</tr>
<tr>
<td>LGBT</td>
<td>Lesbian, Gay Bisexual and Transgender</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<tr>
<td>NHRI</td>
<td>National Human Rights Institution</td>
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<tr>
<td>ODIHR</td>
<td>Office for Democratic Institutions and Human Rights</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organisation for Security and Co-operation in Europe</td>
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<tr>
<td>PACE</td>
<td>The Parliamentary Assembly of the Council of Europe</td>
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<tr>
<td>SFRY</td>
<td>Socialist Federative Republic of Yugoslavia</td>
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<tr>
<td>SNP 1389</td>
<td>Serbian Peoples’ Movement 1389</td>
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<tr>
<td>SNP Nasi</td>
<td>Serbian Peoples’ Movement Nasi</td>
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<tr>
<td>TEU</td>
<td>Treaty of European Union</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
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<tr>
<td>UMNIK</td>
<td>UN mission in Kosovo</td>
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<td>UN</td>
<td>United Nations Organisation</td>
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<td>UNDP</td>
<td>United Nations Development Program</td>
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<td>UNTS</td>
<td>United Nations Treaty Series</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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<tr>
<td>Acronym</td>
<td>Full Name</td>
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<tr>
<td>WHO</td>
<td>World Health Organisation</td>
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<tr>
<td>YIHR</td>
<td>Youth Initiative for Human Rights</td>
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<tr>
<td>YUCOM</td>
<td>Lawyers’ Committee for Human Rights</td>
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Last, but not least, without the support of my wonderful and loving partner, Lisa Nevens, this thesis would never have been written. Thank you for convincing me to apply to UBC and for your amazing support and understanding. Also, thank you so much for putting up with piles of my books and papers around our tiny apartment for all those months. I don’t know how I would have done this without you.
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground...

*Article 26, International Covenant on Civil and Political Rights*

**Chapter 1: Introduction**

1.1. **Research questions**

The prohibition against discrimination and guarantee to all persons of equal and effective protection against discrimination on any ground is the basic human rights principle. However, it has not been applied equally to those who face discrimination based on sexual identity.¹

Lesbian, gay, bisexual and transgender (LGBT) people should, like all people, have the right to life, the right to security of the person, as well as the freedom from torture and cruel, inhuman, or degrading treatment. However, there is still a proscribed death penalty in eight countries for homosexual behavior, and in some 80 countries homosexual sex is criminalized.² In Uganda, until May 2011, there was an ongoing debate about a proposed “anti-homosexuality bill,” which would inflict the death penalty on repeat offenders.³ In 2012, the debate on the law was revived in the Parliament of Uganda, when a speaker, Rebecca Kadaga, promised it as a

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¹ The terms “sexual identity” and “sexual minorities” are used in this paper to refer to sexual orientation and gender identity. However, many of the documents in my international law analysis refer only to sexual orientation, rather than gender identity, and that is why my work is predominantly focused on this category. In my analysis of international law and categories of discrimination, I will be predominantly using the term sexual orientation. I explain more about this problem with terminology in Chapter 2.

² For the most recent information of LGBT rights around the world, see the official Web site of the International lesbian, gay, bisexual, trans and intersex association (“ILGA”).

“Christmas gift” to the people. The struggle to prevent the Ugandan Parliament from adopting this kind of legislation continues in 2013.

LGBT people should enjoy freedom of expression and freedom of peaceful assembly and association, yet in March 2012 Saint Petersburg, Russia, joined two regions that have passed laws banning what they call gay “propaganda.” The right to work, the right to education in a safe environment, and the right to family life are all guaranteed by the so-called International Bill of Human Rights. However, LGBT people still do not enjoy these rights in all countries, despite the fact that these international human rights documents are widely accepted by the states.

While the issue of sexual identity rights is getting more media coverage, international legal research on the topic is still scarce. The biggest international institutions, such as the United Nations (UN) and the European Union (EU), are slowly starting to include the problem of discrimination based on sexual identity in their agendas. However, systematic research and data collection concerning discrimination on grounds of sexual identity is still scarce. According to the 2011 LGBT Study conducted by the Council of Europe (CoE): “Despite the adoption of non-

6 The two regions are Arkhangelsk and Ryazan.
8 The International Bill of Human Rights is a common name that refers to the four major international human rights documents: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.
9 Supra note 2
discrimination legislation in many Council of Europe member states, it has been difficult to identify comprehensive data on the application of such laws.”  

The question that inspires this LLM thesis is whether the international human rights paradigm has failed lesbian, gay, bisexual, and transgendered people? If so, how and why, and what can be done to address this failure? The goal of my thesis is to explore the implications of international human rights failures for sexual minorities in Serbia as a transitional country, and to recommend best practices for fostering change.

This broad goal is broken down into the three questions below, which provide the outline for the thesis. Under each question, I explain how I will divide these main questions into smaller research queries in my thesis. I then place my research within the existing literature.

1.1. To what extent do international human rights instruments protect sexual identity minorities?

The international community recognises human rights as “the foundation of freedom, justice and peace in the world.” Key human rights developments have taken place at the international level, but international human rights law cannot be observed separately from the national human rights laws of those countries that have ratified international treaties. The states are the central actors, and they assume the daily obligations to protect and respect rights. The normative power of international human rights law, woven throughout the whole international human rights paradigm, is supposed to help enforce these rights. However, states are often reluctant to give away their sovereignty and can slow down the process on both international and domestic levels. They can do so when participating in the work of international organisations, or

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11 Ibid. at page 19.
they can exercise their discretion and not take on certain human rights obligations. In addition, they can be reluctant to protect those rights on the ground, or can create various administrative and other obstacles which impede the goal of international human rights law.

The principle of non-discrimination, with the open-ended list of protected grounds is present in all the major international human rights instruments. It has been more than 50 years since the Universal Declaration of Human Rights was adopted, and as the culture of human rights continued to spread around the world, so did the different mechanisms for protection and anti-discrimination legislation. Yet, when it comes to sexual orientation and gender identity at the UN level, all the international human rights mechanisms struggle to name explicitly sexual orientation or gender identity as grounds of discrimination.

For example, in 2010, the UN Social, Humanitarian Cultural Affairs Committee (“the Third Committee”) voted for an amendment to the special resolution addressing extrajudicial, arbitrary, and summary executions. The purpose of this amendment was to exclude sexual orientation as an enumerated basis on which some individuals are targeted for death. This left sexual minorities to be included or excluded through the free interpretation of the discrimination category “the others.” Without the reference to sexual orientation, states can choose whether to consider sexual identity as a protected ground or not. After a widespread international campaign and lobbying by LGBT organisations, another amendment was adopted, and the term sexual

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14 See Universal Declaration, supra note 12.
orientation was reinstated into the original text.\textsuperscript{17} This tug-of-war at the UN has widespread implications, and shows how contentious international human rights can get once sexual orientation is explicitly included in the debates, or in more significant documents like resolutions.

In order to answer my first research question, I will look into the two main international organisations that are pertinent for my case study of Serbia – the UN and the relevant European regional organisations.

The starting point for the analysis will be the UN human rights legal framework and its treaty body mechanism. In Chapter III, I will outline the UN human rights systems focusing on sexual orientation as a ground for discrimination. This analysis will also compare the differences in the treatment of sexual orientation through the practice of various UN treaty bodies. I will look into the main human rights documents and treaties, and analyse the extent to which they protect sexual minorities. In addition, I will analyse the recent debates that were occurring during the UN Human Rights Commission sessions in 2012, in order to demonstrate the different treatment of sexual orientation compared to other grounds of discrimination.

The second part of my international law analysis in Chapter IV will be related to the European organisations relevant to my case study of Serbia. Those are the European Union (EU), Council of Europe (CoE), European Court for Human Rights (ECtHR), and the Organisation for Security and Cooperation in Europe (OSCE). In addition, I will look at the EU as a relevant political factor and substantial influence on Serbia. Like other states in the Balkan region, Serbia aspires to become a member of this growing regional organisation.

\textsuperscript{17} “ILGA: UN vote restores equal dignity for LGB rights but is silent on trans and intersex people”, \textit{ILGA} (21 December 2010), online: ILGA <http://ilga.org/ilga/en/article/mLkWTZP1B7>.
1.1.2. To what extent do the international and domestic human rights laws protect sexual identity minorities in Serbia as a transitional country?

On the edge of the EU, Serbia as a “potential new member” state of the EU is still struggling with securing the most basic human rights and the visibility of LGBT people. In Chapter V, I will do a case study of Serbia. I will explore the very relevant historical and social background of the country, ask what the laws in this country look like, and how are they are applied to sexual minorities.

As a new and emerging democracy that is recovering from violent conflicts, the process of transition requires that Serbia adopt and apply certain international standards with respect to human rights. The Serbian Law on the Prohibition of Discrimination in the Republic of Serbia (the “Anti-Discrimination Law”) was adopted in 2009. This law was adopted after great international pressure and a major scandal (when the National Assembly decided to take it out of the parliamentary procedure). The Anti-Discrimination Law was withdrawn from the parliamentary procedure the night it was supposed to be presented for voting in the Serbian National Assembly, due to a phone call from Orthodox Church officials to the Cabinet of the President of Serbia. As my case study will explain in more detail, in 2009, a Pride event was cancelled one day before it was supposed to occur. In 2010, the first Gay Pride took place in Belgrade. The event was heavily protected by a ring of some 5,000 police officers; violent opposition injured 80 officers and resulted in extensive damage to the city centre. The following

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year, the Pride parade was banned due to the “high level of risk” and the government claim that it was unable to protect participants.  

When it comes to international human rights instruments, Serbia has ratified all the UN and European conventions, and even adopted some new human rights laws and created “modern” mechanisms of protection. But the question is how these legal transplants will function in a newly-established democratic system that is still overwhelmed by corruption.  

To answer these questions, I will examine whether international human rights guarantees have been honoured in the legal system of Serbia. I focus my research on freedom of assembly. Although this is only one of the many rights that LGBT people, like all people, should have, I use it primarily as a source of information on the outcomes on the ground when it comes to discrimination based on sexual orientation. The reasons for this methodological choice are described in more detail in Chapter 2.

My work will show that transferring international human rights culture into Serbia as a society in transition, is not a simple copy/paste process with a bit of international or regional political pressure. It will further suggest that discrimination against sexual minorities remains swept under the carpet, because the international community itself is not yet clear about how to relate to this problem. It is a simple logic that is frequently employed by states – if the international community does not treat sexual orientation the same as other grounds of discrimination, then why should we as a state?

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21 According to the Transparency International Corruption Perceptions Index, Serbia is ranked as highly corrupted with a 3.3 index. See “Corruption Perceptions Index 2011”, online: Transparency International <http://cpi.transparency.org/cpi2011/results/>. For more information on corruption in Serbia see Chapter 5 below.
I will judge the situation in Serbia by analysing the formal domestic and international legal framework in comparison to the social outcomes on the ground, such as the problematic Pride events mentioned earlier, levels of reported abuse, and the type of language used to justify ongoing discrimination. This part will draw on various sources of information, such as media reports, newspaper articles, research survey results, and statements from various government and public officials.

1.1.3. What can be done to improve the everyday lives of LGBT people in Serbia?

In the conclusion I will look at what can be done within Serbia in order to improve the protection of sexual minorities and, importantly, what role the international community can play in promoting this change. Demanding the adoption of anti-discrimination laws and regulations and then judging situations on the ground based on those formal legal texts creates a false picture of how much individuals have actually achieved those rights. Even when international organisations and their representatives recognise the need for other tools to combat widespread stereotypes and prejudice that exist in the case of sexual orientation, it is still the written laws that are used to evaluate the situation. International pressure is not focused enough on other recourses that are required in order to complement those legislative texts and make them meaningful.

I will recommend using non-legal methods, such as creating specific youth educational and training programs for human rights. These educational methods would help increase awareness and produce more effective social change on the ground. With these tools working together with the legal methods, it might be easier to stop the backlash that detrimentally affects the implementation of international human rights on the ground in the countries such as Serbia.
Backlash as a phenomenon has been identified and problematised by feminists.\textsuperscript{22} In 1991, Susan Faludi’s book \textit{Backlash: The Undeclared War against American Women} popularized the concept.\textsuperscript{23} Writing in the context of the women’s movement, Faludi calls it “hostility to female independence” and “fear and loathing of feminism.”\textsuperscript{24} It is a hostility directed at change, at the gains that women have made. At a more general level, Ann E. Cudd defines backlash in terms of progress and regress, and sees backlash in evidence: “when oppression is greater than in a previous period with respect to some social group,” and in that previous period, the social group made certain gains.\textsuperscript{25} For example, in my case study, the LGBT movement in Serbia managed to have a Pride parade organised in 2010. However, the next year this event was banned in the same way as the event was in 2009. Thus, there was a backlash against LGBT movement in Serbia, marked not only by this new/old ban of Pride parades, but also with increased violence against LGBT people.

However, the use of the backlash metaphor also comes with its critics. Some authors criticise the assumed victimology behind the backlash and the assigned role of victim to women.\textsuperscript{26} Behind those differences of opinion on the usefulness of the backlash metaphor, lies an attempt to explain a more complex process of social change. There can be progress at one level while there is regress at another. The example of the Belgrade Pride parades shows us that there was some positive change in raising awareness about the LGBT community in the country, and

\textsuperscript{22} For a more detailed account on backlash and feminist theory, see Dorothy E. Chunn, Susan B. Boyd, and Hester Lessard, eds, \textit{Reaction and Resistance: Feminism, Law, and Social Change} (Vancouver: UBC Press, 2007) at 4-10.


\textsuperscript{24} Ibid.

\textsuperscript{25} See Anita M Superson & Ann E Cudd. \textit{Theorizing Backlash: Philosophical Reflections on the Resistance to Feminism} (Rowman & Littlefield, 2002). Ann E Cudd emphasises that the other group that is adversely affected by the increased equality is not subject to oppression, as that group’s previous gains were unjustified and unjust.

in successfully organising the Pride event in 2010. However, this did not induce widespread social change or touch many aspects of the everyday lives of LGBT people in Serbia. The literature review below presents some of the complexities in relation to law and social change, as well as those concerning discrimination based on sexual orientation.

1.2. Literature review

As mentioned earlier, the literature on human rights law and social change is lacking in some aspects. In this section, I discuss some of the relevant articles and how they analyse the power and limitations of international human rights law as related to sexual orientation, problems that occur in post-conflict societies, and how to induce social change. I then place my work among the existing literature.

The international community recognises human rights as “the foundation of freedom, justice and peace in the world.” On a positive note, the most recent analysis of the jurisprudence and doctrine of the United Nations (UN) human rights system, conducted by the International Commission of Jurists, shows that treaty bodies are reacting to demands to protect people from discrimination based on sexual identity. The UN is waving red flags in all directions, and Partima Narayan demonstrates in her analysis that six of eight treaty bodies have interpreted their establishing conventions to include sexual orientation.

Michael O’Flaherty and John Fisher analyse the impact and dissemination of the Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity (the “Yogyakarta Principles”) and their legal background. The 2007 Yogyakarta Principles present a collection of human rights principles as related to sexual

27 See Universal Declaration, supra note 12.
orientation and gender identity. Yogyakarta principles are not legally binding since they have not been adopted by states. However, they represent an interpretation of existing human right treaties and have been used in the work of the UN and in some member countries. They were created after an initiative of human rights NGOs that gathered a group of experts to study the state of international law as applied to sexual identity.

In order to describe the problem of violence and discrimination that LGBT people face every day around the world, O’Flaherty and Fisher describe several legal cases and use reports by NGOs and international organisations. The stories and data cover different countries and continents. By analysing both the problems and the law, the authors give a broad view of the international human rights system for the reader to understand. This article is a very valuable resource on comparative law research on sexual orientation, gender identity, and international human rights law, and it is a good example of case law analysis from the UN, ECHR, and some of the relevant national jurisdictions.\(^\text{30}\) It seeks to demonstrate how effective the use of international law can be by using the Yogyakarta Principles as tools for advocacy and change.

Overall, when considering sexual orientation and gender identity at the UN today, there has been some notable progress with landmark decisions\(^\text{31}\) and inspiring speeches by officials.\(^\text{32}\) In 2011, the UN Human Rights Council adopted the Resolution 17/19, entitled “Human rights, sexual orientation and gender identity”, which is the first UN resolution on sexual orientation and gender identity (“UN Resolution on sexual orientation and gender identity”).\(^\text{33}\) However, this

\(^\text{32}\) See “Secretary-General’s remarks at event on ending violence and criminal sanctions based on sexual orientation and gender identity [as delivered]” (10 December 2010), online: United Nations Secretary-General Ban Ki-moon United Nations <http://www.un.org/sg/statements/?nid=4992>.
progress on the international level was not easy to achieve. Some of the literature below
discusses the difficulties and internal obstacles in achieving those positive results.

Kate Sheill and Douglas Sanders have both addressed the debates on this issue. Kate
Sheill’s article discusses the context of adopting the joint statement at the UN General Assembly
on human rights, sexual orientation, and gender identity – signed by 66 states in December
2008. From Sheill’s perspective, based on working at Amnesty International, a tremendous
amount of advocacy was needed just to adopt this document at the UN General Assembly. She
describes the “familiar” dynamics of UN fora whenever sexual orientation is mentioned. On one
side (those who oppose the reference to sexual orientation), there is always “hostility, prejudice,
misrepresentation,” and on the other side (those who are trying to advocate for protection against
discrimination based on sexual orientation), there is “analysis, evidence,” and, according to
Sheill, frustration. This kind of pattern of hostility and prejudice is something that I note in my
own research in the chapter below about the UN.

Furthermore, Professor Sanders talks about the intense debates that came up at some of
the UN World Conferences as soon as someone proposed to add the words "sexual orientation"
in a sentence. Yet his general view is that sexual orientation issues will be more openly
addressed at the United Nations once reforms at the level of individual states occur. In “Human
Rights and Sexual Orientation in International Law,” he maps out all the victories and considers
some of the defeats for sexual identity rights internationally, which in his view are temporary.
This raises a question of where change comes first, locally or internationally. I will demonstrate

34 See Kate Sheill, “Human Rights, Sexual Orientation, and Gender Identity at the UN General Assembly” (2009)
35 Ibid at 316.
36 Douglas Sanders, “Human Rights and Sexual Orientation in International Law”, (5 November 2005), online:
37 Ibid.
in my research how this relationship between international law and local change is complex and interdependent, and that the adoption of new human rights laws internationally and domestically does not mean that social change has occurred.

Another good example of these debates and the related legal struggles is the fate of the so-called “Brazilian Resolution,” which is explored by Timothy Gravey in “God v. Gays,” and in the above-mentioned article by Partima Naarayan. Even though Gravey concludes that it was a mistake to present the Brazilian Resolution without first getting enough support to ensure its passage, he considers it a success in terms of “raising the profile of human rights and sexual orientation.”

This example raises the question of whether it is important to make the issue of sexual orientation a part of the international debate. My answer is yes, even if the outcome of an initiative is negative. Sexual orientation and gender identity have been topics to avoid at the UN, as I will show in Chapter 3. The moment this topic starts being discussed more frequently at the international level it will increase the awareness of LGBT people and their interests. This increased awareness is good because many of the opponents argue that sexual identity is not a human rights issue or, in some cases, refuse to acknowledge that sexual minorities even exist. More frequent discussion of sexual minorities in these official fora also indicates that these issues are of heightened importance to officials of countries such as Serbia that have signed these initiatives, but not yet made the changes needed to protect people on the ground.

How much can this uneven progress at the UN influence outcomes on the ground in those member states that have agreed to take on these legal obligations? If we only rely on law and

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39 For more details on the Brazilian resolution see section Tug-of-war at the UN in Chapter 3 below.
40 Gravey ibid at 683.
legal reforms, and focus most of the attention on those, the answer may be: not enough.

Addressing this question, Kay Lalor notes the two opposing opinions on valuing some of the UN efforts to recognise sexual orientation as an issue in international human rights.\(^{41}\) In “Constituting sexuality: rights, politics and power in the gay rights movement,” she analyses the reactions of human rights scholars to the *Toonen v. Australia* decision, and discusses both those who see achievements at the UN as positive and those who are more cautious about these UN “wins.”\(^ {42}\)

One of those who recognises the positive achievements at the UN is Ignacio Saiz. In his text *Bracketing Sexuality: Human Rights and Sexual Orientation: A Decade of Development and Denial at the UN*, he analyses how any reference to sexual orientation has consistently been removed from draft human rights texts.\(^ {43}\) He believes that there has been progress at the UN when it comes to sexual orientation, and that this issue will be a battleground, but will not be ignored as before. Yet he also notes the lack of specific studies on human rights and sexuality and the need to undertake such efforts in the future.\(^ {44}\)

Emma M. Henderson takes a more cautious approach. In “I’d Rather Be an Outlaw: Identity, Activism, and Decriminalization in Tasmania,” she analyses the process that led to the *Toonen v. Australia* decision and argues that the victory may have achieved legal reform, but that it would take more in order to achieve social change. In order to support the argument that there is a lack of widespread social change, she uses examples like strong community resistance and

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\(^{42}\) *Toonen v. Australia*, supra note 31.


\(^{44}\) Saiz further considers other means of improvement like: “using all available mechanisms to hold governments to their obligations under the range of human rights treaties; factoring sexuality into the on-going process of gender integration and sharing best practices among different bodies; and strengthening contacts with human rights defenders working on sexuality issues while eliminating barriers to their effective participation in the UN system”. *Ibid.* at 67.
the exclusion of gay sexuality in public school sex-education curricula.\textsuperscript{45} This lack of wide-ranging social change is evident in my case study of Serbia, and I intend to look further at other possibilities that exist outside the “legal box.”

On the EU level, which is a part of the regional human rights analysis, Kees Waaldijk and Matteo Bonini-Baraldi argue that, with respect to combating sexual orientation discrimination, most of Europe can still be considered as being in a phase of ‘development’. In their book \textit{Sexual Orientation Discrimination in the European Union}, they analyse sexual orientation discrimination through the notion of “real legal certainty.”\textsuperscript{46} When it comes to discrimination based on sexual orientation, this legal certainty is, according to the authors, a central criterion for the good implementation of laws. But I question whether the solution to the problem of implementation is to define the laws in more detail, or whether there is more to be done in other areas, such as education.

On the other side, Sandra Fredman, in her book \textit{Discrimination Law}, offers a thorough analysis of the scope of discrimination laws, as well as the social context and legal developments when it comes to sexual orientation in Europe. She writes that we may also have to acknowledge the limits of the role that traditional legal provisions and processes can play in bringing about social change.\textsuperscript{47} Like at the UN, the literature in the European level raises questions about the role that law can play in changing discriminatory practices on the local level.

In the case of Serbia, however, of importance is not only how the EU relates to sexual orientation, but also how it can influence human rights in countries outside the EU that aspire to

\textsuperscript{45} Emma M. Henderson, “‘I’d Rather Be an Outlaw’: Identity, Activism, and Decriminalization in Tasmania”, in Carl Stychin and Didi Herman, eds, \textit{Sexuality in the Legal Arena} (London: Athlone, 2000) at p. 48.
\textsuperscript{47} Sandra Fredman, \textit{Discrimination Law} (Oxford University Press, 2011).
become members. In that respect, Frank Schimmelfennig, professor of European Politics at the Centre for Comparative and International Studies in Zurich, analyses conditionality as a tool to make a candidate country comply with certain conditions set out by the EU in order to be admitted as a full EU member. He argues that “accession conditionality has to be credible in two ways: target states need to be certain that they are rewarded with significant steps toward accession (soon) after complying with the EU’s political conditions – and that they will be excluded from EU membership otherwise.”

But are these requirements sufficient to make human rights matter in the process of EU accession? What are the ways the EU can induce change in countries like Serbia, and how that can be achieved? In her 2005 book *Europe Undivided*, Milada Anna Vachudova touches upon another power that the EU has that can induce change in countries that aspire to membership. She calls it “passive leverage.” It is the pressure on a government from inside the state to join the EU, and it comes from its citizens. This, according to Professor Vachudova, means that the overall cost of being excluded from the EU is too high for those states that are potential new members. Professor Vachudova also offers another perspective on future EU integration by analysing the role of ethnic identity in many states emerging from communism. Ethnic tensions in Eastern Europe were, unfortunately, confirmed by the fall of Yugoslavia, and especially with the war in Bosnia and Herzegovina. My case study will suggest that those same ethnic tensions and past conflicts still have influence in the society of Serbia, and have led to an increased presence of right-wing extremist groups.

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50 *Ibid* at 78.
51 *Ibid*. 

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In *Breaking the Cycles of Hatred: Memory Law and Repair*, Martha Minow and Nancy Rosenblum discuss how people react to violence, and identify the ways of breaking cycles of hatred.52 Both authors point out the limitations of the law and highlight the need to expose the social roots of violence. This book presents a valuable resource on the psychological, political and social aspects of analysing violent conflicts and societies in transition. This is something I will explore in my case study, in addition to the legal analysis.

What is important in *Breaking the Cycles Of Hatred*, is that the authors seek to demonstrate alternative, out-of-the-box solutions to achieve social justice and work on community rebuilding. Their research suggests that law cannot achieve change on its own. This limitation of laws is something that I explore in my thesis.

1.3. Contributions to the current literature

In order to place my work in this scholarly debate on law and social change, I will elaborate on how it contributes to each section, as defined by the research questions.

In the arena of international law and human rights analysis, my work builds on the established material and debates to explore the most recent developments after the adoption of the first-ever UN Resolution on sexual orientation and gender identity in June, 2011.53 This Resolution, entitled “Human rights, sexual orientation and gender identity,” contained the decision to convene a panel discussion on this topic during the 19th session of the Human Rights Council in 2011, and also requested the High Commissioner for Human Rights to conduct a study.

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53 *Supra* note 33.
I further explore possible solutions for improving protection from discrimination based on sexual orientation, after identifying current obstacles and opportunities in the work of these international institutions. One possible solution is to unify the approach of treaty bodies to interpret sexual orientation as a separate ground of discrimination, and to explicitly name it as such in future documents. I will suggest the possibility of establishing procedural rules to avoid the backlash and inner conflict that blocks the work of these human rights bodies.

This thesis aims to analyse the current legal practice regarding sexual orientation in the EU, and explain why there is an ongoing debate on the mutual recognition of same-sex couples in a marriage or civil partnership in the EU. It further looks at the EU as a relevant regional political factor with considerable influence on the legal and political system in Serbia. How much has the conditionality employed by the EU influenced outcomes on the ground when it comes to discrimination based on sexual orientation? This question will be answered through the Serbian case study.

Furthermore, my research applies institutional ethnography methods to the analysis of one particular society in transition, with a focus on sexual orientation and gender identity. This approach seeks to uncover all the relevant stakeholders, including those mentioned above, and looks at their relationships. It locates the role of human rights law in the lives of everyday people, and seeks to explore the extent to which it can effect social change. This new way of conducting research and investigating discrimination based on sexual orientation and gender identity, together with particularities of my case study, will make a substantial contribution to the general literature in this area.

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Chapter 2: Methodology

2.1. General overview

My research design follows the outline of my research questions, and is divided into similar parts. The three parts are structured differently, but are interdependent, and are used to map out the problem from different perspectives. Each of these parts consists of a main method and different sub-methods.

As with any international human rights-oriented analysis, this thesis starts from the top down – from international law to the national legal norms of a particular country. Even though the hierarchy of legal documents shapes the organisation of my research, the thesis focuses outside of the boundaries of legal doctrine. It questions the power and limitations of legal discourse in the international and domestic human rights fora in relation to discrimination based on sexual identity, and examines how laws are applied on the ground.

My research design is guided by the work of several authors. I am influenced by Elisabeth Comack’s work, since I am seeking to explore “law-society relations.” Based on her works, I am trying to find out the extent to which is it possible to use law “as a mechanism for realising substantive social change,” in Serbian society in my case.55 This means that I am looking into ways of improving the everyday lives of LGBT people in Serbia. My analysis seeks to explore both the prospects and limitations of engaging international human rights law in Serbian society. I further explore the relations of law and society by looking at the role of politics, the LGBT movement, right-wing groups, media and other influences.

My methodology draws on the principles of institutional ethnography and the work of Dorothy E. Smith. I will explore “actual people’s activities as they coordinate in those forms we

55 Elizabeth Comack, ed, Locating Law (Halifax, Canada: Fernwood Publishing, 1999) at p 68.
call institutions.”" I try to write from the perspective of peoples’ experiences on the ground, and explain how this experience relates to the legal institutions that are intended to enhance human rights.

Finally, I use an interdisciplinary approach in my reflections on the complexities of societies recovering from conflict. As mentioned above, Martha Minow’s work discusses the consequences of not “breaking the cycles of hatred,” by looking through the psychological, political and social aspects of analysing violent conflicts and societies in transition.57

Many of the methodological approaches I use are derived from the work of feminist researchers.58 This is particularly noteworthy in how I ask my questions and search for answers. Through my case study, I am researching the realities of the people on the ground. This bottom-up approach has developed within feminist theory and the women’s movement.59

Furthermore, my work is guided by these “grounded” approaches as I try to give back to the community from which I come, by developing potential ways to improve the situation on the ground for sexual identity minorities. This personalisation of my academic work has the benefit of making the research more applicable to the groups and society being studied, and avoids the critiques of being too abstract and of imposing solutions from the outside. The limitations of my insider approach are discussed below.

57 Supra note 52.
58 There are many diverse voices in feminist scholarship and research. Shulamit Reinhartz and Lynn Davidman argue that there is no one feminist method, but rather a diversity of perspectives, which have been an accomplishment of international feminist scholarship. See Shulamit Reinhartz & Lynn Davidman, Feminist methods in social research (New York, NY, US: Oxford University Press, 1992). See also Gayle Letherby, Feminist Research in Theory and Practice (McGraw-Hill International, 2003).
59 Ann Scales describes eight methodological steps of feminist legal methodology and “looking to the bottom” is one among them. See Ann Scales, Legal Feminism: Activism, Lawyering, and Legal Theory (NYU Press, 2006) at 100-119.
2.2. The problem of terminology and definitions

Throughout my thesis I use terms like “sexual identity” and “sexual minorities.” They are used to refer to sexual orientation and gender identity. Where documents only address sexual orientation, I use that term alone. However, I am aware of the danger of over-generalizing certain issues and putting them in the same box. My research is structured more around sexual orientation than gender identity. Furthermore, throughout my international law analysis, I focus mostly on sexual orientation as a ground of discrimination. Even though these two problems are similar, they are certainly not identical, and substantial differences exist between them. However, these differences are not highly significant for my thesis. My research is focused on the overall situation of LGBT people in Serbia, and in my case study I focus on the Pride parades and the public expressions of homophobia and hatred. These affect the LGBT community as a whole.

2.3. International law analysis

In my international law analysis, I use a legal doctrinal method as the primary methodology. However, this part also employs an institutional ethnography, to portray other ruling relations and go beyond legal documents. The analysis looks into the debates that occur when sexual orientation is explicitly included in the agenda of meetings of UN human rights bodies. This serves to demonstrate the different treatment of sexual orientation in international legal fora, as compared to other grounds of discrimination. A guiding question is how this difference will relate to the rights of sexual minorities in transitional counties such as Serbia,

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when those who impose the laws, the international community, are neither explicit nor consistent in their treatment of sexual identity. This section introduces what I seek to expose in my conclusion: the power and limitations of international human rights law when it comes to sexual minorities.

In my international law analysis of the UN and EU, I use legal doctrinal research. This method seeks to explore the relationship between the rules related to discrimination based on sexual orientation and gender identity in the international human rights system. It analyses the hierarchy of legal texts and institutions. Furthermore, it “explains areas of difficulty and, perhaps, predicts future developments.”\(^6^1\) The doctrinal research of UN human rights mechanisms compares the different interpretations of sexual orientation within the treaty bodies’ processes. It compares these different practices and makes recommendations as to the merits of the different approaches. The sources used for this part of the research are the legal documents produced by the relevant organisations. All of the treaties and decisions can be found in online databases available on the official websites of the organisations.\(^6^2\)

This part of the thesis also offers two additional perspectives. The first one considers the structure and organisation of the UN and the EU as institutions. How are the decisions made, and what is the role of international relations? These are some of the questions I explore in this part. I also look at how sexual orientation is treated within the work of the international bodies, by looking into debates surrounding the rights of sexual minorities that happen at major meetings.

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\(^{62}\text{The decisions here refer to those that are brought by the UN Treaty bodies, i.e., recommendations, general comments, concluding observations. Each of the treaty bodies has their own web page where the relevant decisions and various state and NGO reports that accompany them are sorted. See below, Chapter III and the UN treaty body reporting circles for more details on how those decisions are made.}\)
My analysis of debates relies on secondary sources, including reports on meetings, reports from NGOs that participated in the process, statements and speeches from the officials involved, and a few journal articles written by those witnessing the debates. The use of the so-called “Hansard method” would require transcript analysis. Those will not be available to me in the case of the UN human rights bodies.

The limitations of this approach are that I use secondary resources that interpret the debates instead of studying the texts of the spoken debates directly. This problem – particularly as related to NGO reporting – could diminish the objectivity of my research. However, by cross-checking information between sources, I can ensure to some extent that my conclusions are not guided by a biased spectator, such as when one of those sources comes from the institution itself and/or its representatives.

2.4. Case study

The main method of the second section of my thesis is the case study method. The country to be studied is Serbia. The goal of the case study is to investigate a society where all the relevant domestic and international actors interact. It will offer the background context of Serbia as a transitional country recovering after violent conflict, the current social and political situation, the outside influence from the international community, and the power and limitations of legal norms.

The overarching goal of my research is to make recommendations on how to improve the protection of sexual identity minorities in transitional countries. In order to do this, I have decided to do a case study of one particular transitional country – Serbia. There are benefits to

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63 Hansard is the name of the printed transcripts of parliamentary debates in British Parliament. They are named after its publisher Thomas Curson Hansard. See Thomas Curson Hansard and the Great Britain Parliament, The Parliamentary Debates (Published under the superintendence of T.C. Hansard, 1821).
having a single case study, as opposed to multiple ones. One benefit is that I will be able to go into more detail and do more qualitative research. On the other hand, this can hinder my efforts to draw more general and transferable conclusions. Below is a discussion of certain questions that arise from choosing this particular case study as well as the methodologies I intend to use.

2.4.1. Why Serbia?

A question I want to address before moving into the case study methodology is why the study focuses on Serbia. The following are three characteristics that I consider important for the conduct of my analysis:

a) Serbia was once a part of the bigger country of Yugoslavia. This feature gives my research conclusions greater potential transferability to at least the other counties in the region that were involved in the same conflict, and have a similar history and social conditions.

b) Serbia is a post-conflict society that is dealing with human rights abuses that occurred during the conflicts in the 1990s. It is also in the long process of joining the EU. The magnetism of the EU, and the conditionality it employs towards states that want to become members, creates a unique environment to study the power of international human rights and the politics of ruling relations.

c) There has been a backlash in Serbia when it comes to allowing pride parades, which I will use as one of the indicators to measure outcomes on the ground that are described below. The series of attempted annual Pride events have been banned every year except in 2010, due to the “high-level of risk.” This series of attempted annual parades displays the same scenarios and atmospheres being produced before each potential event, but with different outcomes. As I will demonstrate in my analysis, the one different outcome –
when a parade actually took place – had much to do with pressure from the international community. However, it may not have resulted in very much positive and measurable social change on the ground.

2.4.2. Why pride parades?

Pride parades have a long history in the LGBT rights movement and date back to June, 1969 and the so-called Stonewall riots in New York. Today, they are often used as an indicator to measure the situation of LGBT rights in a country, at least at the level of public acceptance. There are many debates about the goal and meaning of these events, but these are beyond the scope of my research.

Pride parades are used here primarily as a source of information on the outcomes on the ground when it comes to discrimination based on sexual orientation. They are the biggest LGBT event of the year and their value comes from the extensive public attention and media coverage they produce. This coverage puts the topic of sexual orientation in the center of attention for a short period of time, and it demonstrates the context in which international actors, domestic actors, and society interact. In my monitoring of pride parades, I consider the one that was successful as a positive outcome. Prides are an important first step. For example, the history of the LGBT movement and the Stonewall riots show us that these events are important in paving the ground for future activities of the movement. However, I recognise that the occurrence of pride events does not necessarily guarantee an improvement in the treatment of sexual identity

66 See *supra* note 64.
minorities in everyday life. For example, other rights, like the right to employment, education or marriage, might still be compromised, even if the Pride events are permitted. My case study will show that not only did these rights remain compromised after holding of the first Pride Parade in Belgrade, but the right of LGBT people to assemble freely in future Prides was diminished as well.

2.4.3. Background

In order to study the Serbian society and state, I must situate them in their particular historical, political, and economic contexts. This background examination consists of analysing this society that is still full of conflict, ruled by ethnic relations, and trying to deal with the violent past. I recognize my role as an insider in this part of the research and its potential implications. Being an insider brings with it the advantage of being aware of the complexities that result from cultural, historical and ethnic circumstances, about which outsiders are often ignorant. However, Tamar Herman warns that personal involvement can “turn researcher into a participating observer” and can “make a study potentially prejudiced.”67 I believe that my previous work in the region on topics such as the post-conflict situation, dealing with the past, and various contacts I have with other ethnic groups in the affected communities, enable me to have a broader view outside my own ethnic identity.

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2.4.4. “Moscow has fallen they are coming after London” – My Personal Involvement

My personal background has influenced my choice of case study. My interest in researching the topic of discrimination based on sexual orientation and the power of international human rights law was sparked after attending the first-ever Belgrade Pride parade in 2010.

Previously, in 2009, I followed the events that occurred as the day scheduled for the Pride Parade approached. I was then working for the human rights NGO called Youth Initiative for Human Rights, and participated in attempts to document the homophobic and threatening graffiti on the streets of Belgrade. They seemed to have appeared overnight, and one morning during my ride from home to downtown, I could see that every second building was sprayed with one of them. The messages included “Death to faggots,” and “Stop gay parade,” among others. It was not just my bus line, but many more, whichever way you came into downtown. Those messages remained there for months, some even for years, with a few still in place as late as May 2012.

I had planned to go to the Pride Parade with my friend that Sunday in 2009. We would be less suspicious, a woman and a man with no visible markings, and that way we could be safe to go to the venue, something the organisers of the event suggested. However, just as suddenly as those threatening graffiti appeared, on the morning before the event, I awakened to the news that Pride was banned. My friend called me on the morning it was supposed to occur. He and some of the organisers and foreign guests were using one of the NGO offices. They were hiding in there. It was not safe to go outside, my friend’s boyfriend explained to me, because “they were hunting in packs” and a foreign tourist had already been attacked. By “they” he meant groups of right-wing extremists and others, who apparently gathered downtown in hopes of breaking up the
Pride Parade. My friend and the others remained inside that office until cabs picked them up and drove them to a nearby “Western Embassy” for a meeting. Because of those “hunting packs” they were worried about letting the foreign guests go on foot anywhere that day.

The next year, during the 2010 Pride Parade in Belgrade, I was more involved, and became one of the volunteers. The main event was scheduled to start around 11 a.m. on Sunday, October 10, 2010. Participants were instructed to arrive between 10 a.m. and 11 a.m. After that, the police would close the circle around the venue and no one could enter or leave. I later found out that there were three circles of police. The first one was around the main venue, at the small park called Manjez. The second was one block around the first and the third was a few blocks around the second. The event itself was supposed to start in Manjez Park and there was going to be a walk around one block, followed by a party at the end of the walk at a Student Cultural Center on the edge of the park. This location and itinerary were, to my knowledge, chosen strategically - it was still close to the downtown area, and was surrounded completely by government-owned buildings. This way, there would be less danger of anti-pride protestors throwing dangerous objects from the surrounding buildings onto the procession participants (see Illustration 1).
I got up very early that morning, ready to get to the volunteer meeting that was scheduled for a few hours before the main event. However, I was unable to approach the meeting place. First, the public transport stopped early, so I had to continue my way downtown on foot. I soon saw the police units, which prevented me from getting to the meeting place. The circle around the venue was already established, a few blocks in diameter, and I was not allowed to get through. I asked to pass, but the police officers told me they were not authorised to do that, and suggested that I try and reach my destination from the other side of the circle. As I was walking
around the streets, I could see various police units, blue uniforms, green uniforms, special riot equipment, armoured trucks, police who patrol on horseback, and buses unloading them to the places around the town.

I called the organisers to tell them that participants could not get through the police ring, but they already knew of the problem, because other volunteers could not get through to them either. After slightly less than an hour, I managed to find a way around the police units. Shortly after that, a few of us who were able to get to the meeting place went on foot down the empty streets to Manjez Park. I assume that by the time we were in the park, they informed the police that the volunteers had problems getting in, and that is how other volunteers were able to join us a bit later at the venue.

After we arrived at Manjez Park, my first volunteer assignment was to stay at the information booth and to hand out various materials to participants. However, someone was needed outside the second police circle to help let participants through. That is how I ended up spending most of my time, from 10 a.m. to 11 a.m. at the outskirts of the second police circle.

The intersection where I was is known to local people simply as London, since a casino named London was there.

As people arrived, I put yellow tape around their wrists and gave them a pink sticker for entrance to the after-party. Without the yellow tape, police would not let anyone through the second circle. It all seemed chaotic. As people came in, some were upset because of the yellow tape markings and asked whether this was a concentration camp. Others were scared, as they saw groups of anti-Pride protestors gathering outside.

I overheard a conversation between one of the organisers and a police officer who was on his radio, and who seemed to be the one coordinating the police units around us. According to
what I heard, there was confusion as to who was conducting security checks and searches of the people that were coming through. Was it the police outside at the third ring? Was it the ones closer to the venue? Was it the organisers? It seemed that no one knew the answer. In that chaos, I remember a woman who lived in a nearby building, carrying her groceries, angry that she could not get to her home. I put the tape on her hand and told her that was the only way she could get through and go home.

During my time at the London intersection, I was getting information from a police officer, who I assumed was coordinating the area. First, he asked me if I knew of the evacuation procedure. I said “No?! What procedure? Is there going to be a need for that?” Then he explained how we were going to retreat towards the venue if something happens. It did not concern me at that moment, as we were so isolated and far from anything that could be happening outside. A short while later, he told me that there was fighting at the hotel Moscow point, another key intersection in the city. Then, just before the 11 a.m. closing of the circle, he again approached me, this time saying that “Moscow is falling, they are coming after London.” We were then ordered to retreat towards the venue where the speeches by the organisers and officials were just about to start.

People seemed cheerful inside the park, and soon the speeches started. I noticed that the Minister of Human Rights, Svetozar Ciplic from the ruling Democratic Party, was booed by some of the participants during his speech, while Majda, one of the previous year’s organisers got the loudest cheers and applause. Very quickly, after the speeches were done, participants gathered for the march. The march itself lasted only a few minutes, as we all just went around one block. It was after the walk ended that we heard more news about what was happening
outside the perimeter. There were thousands of protesters fighting the police and destroying the city.

Despite that, the after-party started at the Student Cultural Center. It lasted almost an hour and then everyone needed to be evacuated. Police could not hold the hooligans back anymore. I was assigned to stand at the door and make sure that everyone took off or covered any visible markings: the yellow tapes, the pink sticker, even any colourful clothing or accessories - basically, anything that might indicate to other people where they had been. All the participants were then loaded in police vans, the ones with bars that are used to transport criminal suspects. Like that, we were dispersed to different parts of the city and left at the police stations there.

Among the last to leave were myself and a friend, who was also a volunteer. With a member of the EU parliament and other foreign guests, we crammed into the back of a police van and left for one of the downtown police stations. After we arrived inside, the police officers simply told us we were free to leave. It seemed funny at that point. That was it when it came to securing participants: we were free to leave while there were riots outside and we were in a central part of Belgrade. It was obvious that nobody was willing to leave the police station right then and, while the foreign guests were trying to get permission from the police officers to use toilets, people from the NGO accompanying them were trying to arrange to get them safely out of the station. After half an hour my friend and I decided to walk to the nearest bus stop. I thought that since we did not have any visible markings, and both looked girly enough for the right-wing protesters, we should be okay. So we walked down one of the usually-busy streets that was now completely empty to the viaduct where we got separated. As we approached the people there, we agreed not to mention the Pride, to not arouse any suspicions. I waited on one
side of the viaduct for my bus, and she waited for her bus across the street, pretending nothing happened.

I went home, turned on the TV, and listened to the main news story. The mayor of my city blamed the gays and lesbians who organised the event for the destruction and violence in “his” Belgrade. Many foreign media portrayed the fact that the Parade was held as a step forward. The outcome seemed positive. Because there was a Pride Parade in Belgrade, the Serbian government had shown that it respected European values. I was not sure what that Pride Parade meant for us, the LGBT community in Serbia, and I feared what the outcome would be for the following year if nothing substantial was done in the year ahead.

Less than a year later I began my research at UBC, and followed from the distance how another “similar scenario” repeated in 2011 in Belgrade, this time ending with a ban on the Parade, as in 2009. I was inspired to do my research to show that laws are not the best indicator of how the LGBT community lives in Serbia. Furthermore, I wanted to search for other methods outside laws to make social change. I was inspired to use my research to demonstrate that there are limitations to predominantly using law as a tool for social change. There needs to be a wider change on the ground, in order to actually improve the lives of LGBT people in Serbia.

2.4.5. Legal analysis

The legal doctrinal research for the Serbian case study, started in the previous section on international law, will continue in Chapter 5, as I will offer a brief overview of international human rights commitments which Serbia, as a state, has signed onto. In addition, I will look into the domestic legal system and its protection of human rights. Since some of the laws are relatively new, there is a lack of judicial decisions, and many cases take years to go through the
legal system in Serbia. The doctrinal analysis will also reflect how state institutions reacted to the pride events.

2.4.6. Sources

My goal in using various sources in the case study of Serbia, is to portray the actualities of people in their daily lives. In so doing, my case study research draws upon the above-mentioned work of Dorothy E. Smith, and the complexities of institutions, language and texts. She sees text not only as “situated in actual time and place,” but also as an integral part of a course of action. This means that texts are more than just passive objects made in particular circumstances. They are a part of a text-reader conversation, which is led by an actual person. Thus, texts are activated by people who read them.\(^6\) Therefore, I will analyse the atmosphere being produced around the pride parades by the media and various state officials.

News articles, press releases, statements from various public officials, and surveys on public opinion, are some of the sources I use in relation to the pride events, in order to better understand the atmosphere that was being produced. Two elements influence my use of the newspaper sources and focus the research – the timeframe and the scope.

The timeframe of my research is related to the years when the three previously described pride parade events were scheduled to occur; therefore, the newspaper research focuses on 2009 to 2011. Within that period, the main focus is around the times when the dates of the pride parades were officially announced and one week before and after the events were supposed to happen. All of the dates for the pride parades were announced during press conferences called by the organisers. The reason I focus on these periods is because of the extensive amount of media coverage and public debates on the issues relevant to my research. In addition, this data

\(^6\) Dorothy E Smith, Institutional Ethnography: A Sociology For People (Rowman Altamira, 2005) at 167.
collection includes media reports on any major incidents that occurred in the period from 2009 to 2011. I have located those articles by using a word phrase search, available on the newspaper websites. The basic phrase I used is “parada ponosa,” meaning the pride parade, and other variations like “povorka ponosa” and “gej parada.”

I looked into the online version of the texts of the various publications, especially mainstream daily publications like “Blic” and Danas, as well as some of the national media stations, such as B92 and RTS. RTS, a state-owned television station, was used during the 1990s by the Milosevic regime to spread hate propaganda. On the other side, B92, now a private television and radio station, used to be one of the rare independent and progressive media during Milosevic’s rule. Blic and Danas are both known to be more centrist and pro-European than the other daily newspapers in Serbia. These news articles are used not only to portray certain events, but also to follow statements made by relevant government and international officials.

However, given the timeframe and the scope of this project, I lack time to do a more substantial textual analysis. For these reasons, I will only be eliciting the relevant texts and information about the Pride events.

Thus far, in my research design I have briefly discussed my overall methodological and theoretical approach, by drawing from the work of Smith, Minow and Comack. The methodology of my case study comes from bringing these together and analysing the interactions and relations between international and domestic law texts and the actual practice in a case study of the Serbian state and society.

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69 “Blic Online | Najtiražnije novine u Srbiji” online: Blic <http://www.blic.rs/>.
70 See more on the role of RTS during the rule of Milosevic in Chapter 5 below.
71 Milosevic tried many times to ban the B92 radio, but even after the ban and takeover, B92 continued broadcasting through internet. See Eric Lee, How Internet Radio Can Change the World: An Activist’s Handbook (iUniverse, 2005) at 24-26.
In order to draw my conclusions and make recommendations, my case study relies on the feminist approach as it questions the relationship between law and society. This bottom-up approach starts with the actualities of people affected in the researched society, and questions all the ways in which those individuals interact with the law, institutions, and texts. By analysing the actions of all relevant stakeholders, I will be able to answer my research question on how to improve those realities.

Finally, all of the evidence gathered will be pulled from the case study and international legal review in order for me to draw conclusions. I will review different recommended best practices for educational and social programs, in light of the specific circumstance of the case study, as revealed in the first two sections. I will attempt to make my conclusions as broadly applicable as possible to the region or transitional countries generally, and not just Serbia.

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72 Smith, supra note 68.
Chapter 3: United Nations

3.1. Introduction

At the heart of the international human rights system there are nine core UN human rights treaties. These treaties serve not only as simple human rights documents, proclaiming certain rights, but they also form a system of human rights instruments and institutions. Each of the treaties has established an independent monitoring body—a committee of experts—to monitor the implementation of the treaty provisions by its state parties.

When member states consent to be bound by the treaty through ratification, accession or succession, these treaties become legally binding. This consent is often given via their authorised representatives. However, not all member states have to sign the human rights treaties. It is up to the states to decide which of the international human rights obligations they are willing to accept, and to what extent. That is why often, when signing a treaty, states can make unilateral statements, known as “reservations,” which have the power to modify or exclude legal effects of certain provisions.

In this section, I analyse this UN treaty body reporting system, focusing on discrimination based on sexual orientation. Sexual orientation is not explicitly mentioned as a prohibited ground of discrimination in any of the basic human rights documents. However, six of the UN treaty bodies have determined, either through case law or general comments, that sexual orientation is included in their founding documents under the open-ended list of grounds. They interpreted their establishing conventions in this way in reaction to demands to protect people from discrimination based on sexual identity.


74 See International Commission of Jurists (ICJ), 4th ed, Sexual Orientation and Gender Identity in Human Rights
I start my analysis with a basic overview of the relevant parts of the UN human rights system, noting the places where sexual orientation has been considered. While noting where and how the issue of discrimination based on sexual orientation is raised, I will analyse the degree to which sexual identity minorities are protected by the international human rights regime. I will summarise the most recent UN debates on sexual orientation, in order to describe the context in which the international human rights legal documents were drafted.

Finally, in addition to legal issues, I will also analyse political and administrative matters that often arise when talking about human rights at the UN. By analysing how sexual orientation issues are debated at the UN level, I can draw conclusions on how this treatment can affect member states. The goal of this chapter is to determine what kind of influence the UN has on the member states and their willingness to protect the human rights of sexual minorities. Later, in my case study, I will further explore what happens on the ground with these human rights texts and how they are actually applied.

3.2. Sketch of the system

The normative power of international human rights law, woven throughout the whole international human rights paradigm, is supposed to ensure that states fulfil their obligation to protect and respect human rights. However, while this system is more developed and rigorous than before, it has become massive and confusing. I will use narrative, as well as some visual tools, to portray different parts of the UN human rights monitoring mechanisms and how they interrelate. I start my analysis with a brief outline of the so-called “Treaty Bodies Mechanisms,” also known as “Conventional Mechanisms.”


The story of human rights at the UN started with the General Assembly adopting the Universal Declaration of Human Rights (“Universal Declaration”) on 10 December, 1948. The Universal Declaration was drafted by the Commission on Human Rights, one of the organs of the UN at the time. A series of other international human rights treaties followed shortly thereafter. Each of them established a special treaty body – a committee to monitor and further develop the rights enshrined in the treaty. As mentioned above, there are now nine core human rights treaty bodies (Table 1).

**Table 1 Human rights treaty bodies**

<table>
<thead>
<tr>
<th>Committee</th>
<th>Convention</th>
<th>Powers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Human Rights Committee (CCPR)</td>
<td>International Covenant on Civil and Political Rights (1966)</td>
<td>Reports</td>
</tr>
<tr>
<td>5. The Committee Against Torture (CAT)</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984)</td>
<td>Individual complaints, reports and inquiries</td>
</tr>
<tr>
<td>7. The Committee on Migrant Workers (CMW)</td>
<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)</td>
<td>Individual complaints and reports</td>
</tr>
<tr>
<td>8. The Committee on the Right of Persons with Disabilities</td>
<td>International Convention on the Rights of Persons with Disabilities</td>
<td>Reports</td>
</tr>
</tbody>
</table>

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76 This table is created as result of research on information available at the OHCHR official website (Ibid).
These committees can perform three different functions in accordance with the provisions of the treaties that created them. They can:

1. Consider state parties’ reports submitted to them – the so-called “reporting cycle”
2. Perform additional monitoring functions (individual complaints, inquiry procedure).
3. Publish general comments on the treaties.

What follows is a short summary of these functions.

### 3.2.1. Reporting cycle

The reporting cycle is the most common function, and all of the committees have one. A state that has ratified a UN human rights treaty or convention is typically obliged to submit a report to the treaty monitoring body. After submitting an Initial Report, each state is required to submit Periodic Reports to the relevant committee. In general, this process is designed to look like a dialogue, where the treaty body presents the state with a list of issues and questions based on concerns raised in the report, and the state can choose to reply to those. In addition, during the cycle, there is a scheduled session where issues can be raised and discussed with the state under review. This is an open process and not limited to the state and the treaty body representatives. There are many opportunities for input from different actors, such as those from the UN system, national human rights institutions (NHRIs), or non-governmental organisations (NGOs). At the
end of this dialogue, the treaty body issues **Concluding Observations** with recommendations, and continues to monitor the application until the start of the next reporting cycle.\(^77\)

### 3.2.2. Additional monitoring functions

There are three main procedures for bringing complaints of violations of the human rights treaties’ provisions before the human rights treaty bodies. **Individual complaints** or communications allow individuals to complain directly to the treaty body. Five of the human rights treaty bodies (CCPR, CERD, CAT, CEDAW and CRPD) can, under certain circumstances,\(^78\) consider individual complaints. **State-to-state complaints** allow state parties to complain to the relevant treaty body about alleged violations of the treaty by another state party;\(^79\) however, this procedure has never been used.\(^80\)

Finally, there are **inquiries**. Only two committees (CAT and CEDAW) can, on their own initiative, initiate inquiries, but only if they have significant and well-founded reasons to believe there are serious or systematic violations of their convention by a state party. To date, CEDAW has only conducted one inquiry, in 2003, on Mexico’s alleged systematic breaches of the convention.\(^81\) The CAT has been more active in its use of inquiries, with seven conducted to date.\(^82\) One of these was an inquiry into torture in the former state of Serbia and Montenegro,

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\(^77\) For more details on the reporting cycle see OHCHR, “Fact Sheet No. 30”, online: OHCHR publications office <http://www.ohchr.org/english/about/publications/sheets.htm>.

\(^78\) Those circumstances are: accepting Optional Protocols or making a necessary declaration defined in the articles of the convention. The Human Rights Committee -First Optional Protocol to the International Covenant on Civil and Political Rights; The Optional Protocol to the Convention on the Elimination of Discrimination Against Women; The CAT necessary declaration under article 22 of the Convention Against Torture; The CERD - declaration under article 14 of the Convention on the Elimination of Racial Discrimination; and The CRPD -Optional Protocol to the Convention on the Rights of Persons with Disabilities. For the CMW, when 10 state parties have made the necessary declaration under article 77, it will become operative.

\(^79\) For more details on state-to-state complaints see “Human Rights Bodies - Complaints Procedures”, online: OHCHR <http://www2.ohchr.org/english/bodies/ petitions/index.htm#interstate>.

\(^80\) Ibid.


\(^82\) “Confidential inquiries under article 20 of the Convention against Torture”, online: OHCHR
based on the 1997 submission of the Humanitarian Law Center (HLC), a non-governmental organization based in Belgrade.  

3.2.3. General comments

The committees also publish comments on thematic issues, which present their interpretation of the content of their human rights provisions. Since sexual orientation as a ground of discrimination is not explicitly listed in any of these documents, some of the committees have made an effort to mention it while addressing certain issues.

Beyond this group of treaty based bodies, there are two relevant UN bodies with a focus on human rights: the General Assembly Third Committee (the “Third Committee”) and the Human Rights Council. There is also the Office of the United Nations High Commissioner for Human Rights (OHCHR), whose mandate is to PROMOTE and PROTECT all human rights, and support the work of the United Nations human rights mechanisms.

The General Assembly (GA) is the central legislative body of the UN. The Third Committee serves, just as in some national parliaments, as a body that specialises in considering certain topics in detail, and proposes related resolutions or similar documents for the GA to adopt. In the case of the Third Committee, one of the topics is human rights. Some of the most important UN discussions on human rights are held there. However, the political side of the GA – a political organ comprised of the delegated state representatives – is very evident at the Third

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83 In 1997 Slobodan Milosevic was still in power. He remained in power until the fall of his government in October 2000 (for more details on this see Chapter 5). The UN representatives conducted a visit in 2002, five years after the submission, and concluded that there were no current systematic cases of torture. For more, see UN Committee Against Torture (CAT), Report of the UN Committee against Torture, UNGAOR, 59th Sess, Supp No 44, UN Doc A/59/44, (2004).
Committee. When sexual orientation and gender identity are mentioned, the Third Committee turns into a political tug-of-war, as I will show below.

The Human Rights Council was created by the GA on 15 March, 2006, by Resolution 60/251.\textsuperscript{85} It replaced the earlier Commission on Human Rights that drafted the UNDHR.\textsuperscript{86} With this, the \textit{Universal Periodic Review} (UPR) was created as a cooperative mechanism which, according to the OHCHR NGO handbook, is “intended to complement, not duplicate, the work of the human rights treaty bodies.”\textsuperscript{87}

According to its founding resolution, the main goal of the Human Rights Council is to promote universal respect for “the protection of all human rights and fundamental freedoms for all”.\textsuperscript{88} In order to avoid the political obstacles that occurred in the work of some of the UN bodies where members are just delegated by their states, there are certain criteria for membership in the Human Rights Council. Member States must take into account the contribution of candidates to “the promotion and protection of human rights, as well as their voluntary pledges and commitments in this regard.”\textsuperscript{89}

Was this enough to enable the Human Rights Council to work on issues like discrimination based on sexual orientation and gender identity? The examples below will show that this was not enough to prevent the political tug-of-war and various other obstacles that occur.

\textsuperscript{86} It is designed to address criticisms of politicisation and selectivity levelled at the former Commission on Human Rights. See, for example, Jo Becker, \textit{Campaigning for Justice: Human Rights Advocacy in Practice} (Stanford University Press, 2012) at 59-77.
\textsuperscript{89} \textit{Ibid.}
To summarise, there are Treaty Bodies Mechanisms and other UN human rights bodies, like the Third Committee and the Human Rights Council. All of the treaty body committees monitor the implementation of the set of human rights defined in their conventions. They can all review state reports through reporting cycles. However, in reality, rights overlap. One of the overlapping issues is how these committees view discrimination based on sexual orientation and gender identity. Is there a harmonised approach? As I will argue below, the answer is no.

Finally, the UPR, established in 2006, is a relatively new mechanism, which attempts to complement the treaty bodies and monitor all the human rights issues in the member states. In addition to the reports that a state under review has to submit, the OHCHR has to prepare a 10-page compilation from all the other, relevant UN documents.  

3.3. Discrimination based on sexual orientation

The most recent analysis of the jurisprudence and doctrine of the UN human rights system, conducted by the International Commission of Jurists, shows that the treaty bodies are reacting to demands to protect people from discrimination based on sexual identity. Six treaty bodies have interpreted their establishing conventions to include sexual orientation, but the committees have included this ground in different ways.

So far, there have been two different interpretations of this ground. Sexual orientation has been subsumed under “sex” by the HRC and CEDAW Committees, while others have

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90 This includes reports of the Treaty bodies, special procedures and other relevant documents.
91 See supra note 74 and Narayan, supra note 28.
92 CERD committee has not dealt with issues of discrimination against sexual minorities. For more about this gap see O'Flaherty and Fisher, supra note 30 at 216.
93 In 1994, the Human Rights Committee became the first UN treaty body to consider sexual orientation. In the individual communication (also known as an “individual complaint”), Toonen v Australia the committee decided that sexual orientation is to be understood as included in the “sex” ground in article 2, paragraph 1, and article 26 of the ICCPR. In this case, Nicholas Toonen, a gay activist, challenged two provisions of the Tasmanian Criminal Code which criminalised consensual sex between adult males. See Toonen v Australia, supra note 31 at para 8.7. As a result, Australia's last sodomy laws were repealed. There have been several other individual communications since, and the committee has recognised that different treatment of same-sex couples when it comes to pension
chosen to recognise it as an independent ground under “other status” (CESCR Committee). The benefit of interpreting it under “sex” is that this is already a defined

benefits was in violation of article 26 of the ICCPR. See, for example, Human Rights Committee, Young v Australia Communication No. 941/2000, UN Doc CCPR/C/78/D/941/2000, 78th Sess, (2003). However, refusing to provide marriage rights to same-sex couples was not a violation of this convention, according to the committee. See, for example, Human Rights Committee, Joslin et al. v New Zealand Communication No. 902/1999, UN Doc CCPR/C/75/D/902/1999, 75th Sess, (2002) at para 8.3. The Human Rights Committee frequently raises the issue of discrimination on the basis of sexual orientation in some of its concluding observations, which are part of the reporting procedure. Michael O’Flaherty, a member of the UN Human Rights Committee, shows in his research that:

“[D]uring the period 2000-2006, it did so regarding 13 of the 84 countries under review. It criticised the criminalisation of homosexual sexual relations (multiple countries), a failure to prohibit employment-related discrimination, failure to include the category of sexual orientation in broad anti-discrimination legal regimes (multiple countries), a lack of education programmes to combat discriminatory attitudes and unequal ages of consent for sexual activity.” O’Flaherty and Fisher, supra note 30 at 218.

CEDAW Committee issued General recommendation No. 28 on the core obligations of state parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (“General comment no. 28”) in 2010, which was meant to clarify the meaning Article 2 of the CEDAW convention. See CEDAW, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc CEDAW/C/GC/28, 47th Sess, (2010). This article regulates the right of women to be free of discrimination and, according to it, “[t]he discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity,” General comment no. 28 at para 18. This shows that the committee has decided to include sexual orientation under the category of sex. Sexual orientation was considered in some of its concluding observations. See also Wouter Vandenhole, Non-Discrimination and Equality in the view of the UN Human Rights Treaties (Oxford: Interesantia Antwerpen, 2005) at 155. CEDAW also reacted to the situation in Uganda in 2010 and recommended that its government should adopt anti-discrimination legislation and de-criminalise homosexuality. See CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women – Uganda, UN Doc CEDAW/C/UGA/CO/7, 47th Sess, (2010) at para 44.

Sexual orientation was included in five of the General Comments the CESC Committee has published (see, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights, 42nd Sess, UN Doc E/C.12/GC/20, (2009)). General comment No. 20 also mentions gender identity (See ibid at para 32). Committee has also used its concluding observations to make recommendations for particular countries under review. CESC has also a standing committee called The Committee on Non-Governmental Organizations (“NGO Committee”). This NGO Committee is relevant, since it has authority to decide on NGO participation in the work of the UN and CESC by granting them consultative status. What is relevant, is that in 2010 it decided to make a move forward when it comes to LGBT organisations. After the vote at both the CESC and NGO Committee, International Gay and Lesbian Human Rights Commission (IGLHRC) was granted this status and allowed to participate in the work of this treaty body. For more on the work of the NGO Committee and this decision, see “ECOSOC opens the UN to LGBT voices, but takes disciplinary action against three other NGOs”, (2010), online: ISHR <http://www.ishr.ch/archive-new-york/855-ecosoc-opens-the-un-to-lgbt-voices-but-takes-disciplinary-action-against-three-other-ngos>; and “United Nations Grants Official Status to U.S.-based International LGBT Rights Group”, (19 July 2010), online: IGLHRC <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1169.html#votes>.

The non-discrimination clause was interpreted to include sexual orientation by the General Comment this treaty body produced. See General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc CRC/GC/2003/4, (2003). In the most recent General Comment that dealt with the subject of the right of the child to freedom from all forms of violence, the CRC listed those who are lesbian, gay, transgender or transsexual, in the category of children who are “likely to be exposed to violence” (see CRC, General comment No. 13 (2011)The right of the child to freedom from all forms of violence, UN Doc CRC/C/GC/13, (2011) at Article 72 para (g)).
ground, and comes closer to actually naming sexual orientation as a separate ground of discrimination. However, this approach makes sexual orientation less distinctive than it ought to be, as it is subsumed by another category. On the other hand, interpreting sexual orientation as included under “other status” has a danger of making it into a second class and un-named ground that may more easily be overlooked.

These different practices of interpretation should be unified. In my opinion, the best option is to interpret sexual orientation as included under the “other” category. This option would require explicitly naming “sexual orientation” in all the documents these treaty bodies produce in their future work. Whenever there is talk about discrimination, sexual orientation would be named because it would not be subsumed by another category. This practice would make sexual orientation a standard ground when considering grounds of discrimination. Furthermore, this approach would make it a distinct ground, and if used in future documents, it could make a strong statement to member states and the international community as a whole.

The other monitoring and reporting process, the UPR, is similar to the Reporting Cycle. UPR has produced 195 recommendations related to sexual orientation or gender identity to date.98 Out of these, 61 recommendations have been rejected by the states under review, meaning that the states did not even want to consider the complaints related to protection from discrimination based on sexual orientation. As for those recommendations that the state under review accepted, it is up to the states themselves to act in response. The UPR is a relatively new mechanism, and there needs to be more research in order to assess its effectiveness.99

97 See also Vandenhole, supra note 94 at 184.
98 For this result I used the “keyword(s) search in recommendations” at the UPR’s Info Database. See “Database of UPR recommendations”, online: UPR-info <http://www.upr-info.org/database/>.
3.4. Tug-of-war at the UN

From an outsider perspective, one might say that all was quiet or, better yet, progressing, when it came to sexual orientation and gender identity at the UN, until sexual orientation was removed from a resolution on extra judicial executions. On 16 November, 2010, an amendment was adopted to delete the words “sexual orientation” from a resolution at the Third Committee. It was a narrow vote, with 79 members voting in favour of this amendment, 70 against, and 17 abstentions.\textsuperscript{100}

A media frenzy ensued by NGOs and the gay rights campaigners. The resolution was sent for a vote to the General Assembly without the words sexual orientation in it. However, on 21 December, 2010, the General Assembly voted to reinsert sexual orientation into the resolution. The amendment, proposed by the United States, was adopted by a vote of 93 for, 55 against, and 27 abstentions.\textsuperscript{101} According to the International Service for Human Rights (ISHR), which is an international non-governmental organisation based in Geneva “[…] [LGBT] and human rights NGOs mobilised around the world to support this effort. This, along with lobby by the US, proved sufficient to rally the UN membership to change its course.”\textsuperscript{102}

This was not the first attempt to keep documents with reference to sexual orientation out of the UN,\textsuperscript{103} and is unlikely to be the last. The first time that a resolution which specifically addressed sexual orientation was proposed at the UN was in 2003. It encountered similar opposition to the one on extra judicial executions.

\textsuperscript{100} See “ILGA: UN vote restores equal dignity for LGB rights but silent on trans and intersex people”, (21st December 2010), online: ILGA <http://ilga.org/ilga/en/article/mLkWTZP1B7>.
\textsuperscript{101} Ibid.
\textsuperscript{102} See “GA restores sexual orientation into EJEs resolution, adopts key texts on death penalty, Iran, DPRK”, (December 2010), online: ISHR <http://www.ishr.ch/general-assembley/983-ga-reintroduces-sexual-orientation-reference-into-ejes-resolution-adopts-key-texts-on-death-penalty>.
\textsuperscript{103} Sanders describes early examples and numerous failed attempts to just insert language related sexual minorities into UN documents: Sanders, supra note 36.
The story of the failed Brazilian Resolution started when the Brazilian delegation to the UN Commission on Human Rights tried to introduce it on 17 April, 2003. The resolution only contained six points. One of these was to express deep concern “at the occurrence of violations of human rights in the world against persons on the grounds of their sexual orientation.” On another point, this resolution merely reminded states of the existing human rights framework that “should apply regardless of sexual orientation.”

This proposal was put forward during the final days of the Human Rights Commission’s 53rd Session, and many states and LGBT organisations were not expecting it. A few states supported the proposal, but it ran into strong opposition, with some state representatives even claiming that it was not a topic worthy of UN discussion. There were reports of the use of delay tactics, such as proposing a large number of amendments at the session, in order to stall the debate. Libya, Egypt, Malaysia, Pakistan, and Saudi Arabia together proposed amendments not only to every single paragraph of the resolution, but also to its title, asking that all references to sexual orientation to be removed. Some states tried to prevent this resolution from even coming up for a vote. Pakistan first proposed to vote on “no action”, a process which would have removed the topic from discussion.

Even though this Pakistan proposal failed, on the last day of the 53rd Session of the Human Rights Commission, after some more delaying tactics, the Brazilian Resolution was finally addressed at around 4.45pm, 15 minutes before the session was scheduled to close. Even

104 Supra note 38.
105 Ibid.
106 Ibid, IGLHRC Campaign Dossier at 5.
107 Ibid, IGLHRC Campaign Dossier at 5.
108 Ibid. This “no action” motion was rejected by 24 votes against to 22 votes for, with 6 abstentions.
then, the delays continued as Pakistan, Malaysia, Saudi Arabia, Bahrain, Zimbabwe and Malaysia were reported to have held a one and a half hours procedural debate. In the end, the chair made a proposal to postpone the debate on the resolution until the next session. The proposal was adopted and the next session was scheduled for the year 2004. Unfortunately, in 2004, Brazil withdrew the resolution from the session. According to some, the most likely reason for this was pressure coming from the main opponents of this document – the Catholic-Islamic alliance. Ultimately, this short, one-and-a-half page resolution never made it to a discussion, let alone a vote.

Eight years after the first attempt to introduce a resolution with a focus on sexual orientation, South Africa proposed another resolution on sexual orientation to the UN Human Rights Council. This newly-formed body was created in 2006, in order to improve protection of human rights in the world, and was supposed to be comprised of people with appropriate expertise and experience. However, when it came to sexual orientation and gender identity, things became complicated. As with the Brazilian Resolution, South Africa ultimately postponed its resolution to the June session, after some pressure tactics from other states. During that 16th session, only a joint statement on ending violence against persons on the basis of their sexual orientation or gender identity was made by Colombia, on behalf of 85 states. Once again,

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109 Gravey, supra note 39 at 671.
110 Gravey, supra note 39 and Sanders, supra note 36.
several states disapproved of the joint statement, claiming it was an attempt to create new rights, and even an intervention in the domestic affairs of states contrary to the UN Charter.\textsuperscript{113}

Despite the opposition, in June, 2011, South Africa went further and proposed Resolution on sexual orientation and gender identity.\textsuperscript{114} This time, South Africa had prepared support in advance. The Resolution on sexual orientation and gender identity was supported by Brazil and 39 additional co-sponsors. On 17 June, 2011, the resolution was adopted with 23 votes in favour, 19 against, and 3 abstentions.\textsuperscript{115} Even though this resolution is not legally binding on states, it carries political weight. As such it is an important indicator of international community opinion, and can serve as a vehicle to advocate for change domestically. This ground breaking document further requested that the Office of the High Commissioner for Human Rights (OCHR) prepare a study on violence and discrimination on the basis of sexual orientation and gender identity.\textsuperscript{116} Another important sign of progress was that following the 19th session at the Human Rights Council, a panel discussion was to be held to discuss the findings of the study.\textsuperscript{117}

Consequently, in December 2011 the OCHR issued the UN’s first report on sexual orientation and gender identity, entitled, “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.”\textsuperscript{118} The report emphasised the need for more extensive study and regular reporting in the future.\textsuperscript{119}


\textsuperscript{114} \textit{Supra} note 33.

\textsuperscript{115} \textit{Ibid}.


\textsuperscript{117} \textit{Supra} note 33.


\textsuperscript{119} \textit{Ibid} at para 81.
The next big step was a public debate. After years of avoiding even a discussion on the topic of sexual orientation and gender identity at the UN, it was now scheduled as an official part of the Human Rights Council’s session on March 7, 2012. What happened at the meeting was recorded by cameras and is available to the public online. As the chair read out the topic of the discussion, members of the opposing states started leaving the room in protest. Pakistan, Senegal, Mauritania, and the Russian Federation remained in the room and spoke against discussing sexual orientation and gender identity at the Human Rights Council, and claimed that it had no legal foundation in international law.

This example shows that there is still a need for constant advocacy and lobbying in order to maintain the achieved level of protection against discrimination based on sexual orientation and gender identity at the UN. Getting a majority vote is a challenge, even in an institution like the Human Rights Council, whose primary goals are to protect human rights and prevent discrimination. Arguably, there needs to be change at the local level in the opposing member states, in order to combat this problem at the international level. Until then, sexual orientation and gender identity will be clouded by prejudice in the work of the UN. This sends the concerning message to states in transition, such as Serbia, that sexual orientation and gender identity rights are contested, and therefore not an important issue to be concerned about.

Another interesting aspect of these LGBT initiatives on the UN level, is the list of states that support them. The voting list of states can be usually found at the bottom of each resolution and statement. The supporters are not only those states that have some domestic protections for

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sexual minorities, such as Canada, Netherlands, and Norway. Some supporting states do not have domestic protections for sexual minorities or, if they do, do not fully enforce them at the local level. Serbia is one such state. Serbia’s representatives at the UN bodies have, according to the authority they have, voted in favour of the above-mentioned statements at the Human Rights Council (in 2006 and 2011) and at the GA (2008). In 2011, Serbia continued its good international track record by co-sponsoring the Resolution on sexual orientation and gender identity. However, not much of this international attitude has been transferred into domestic practice in Serbia, as I will demonstrate in Chapter 5.

3.5. Conclusion

International human rights law is still fragile when it comes to sexual orientation, and is just starting to become more aware of gender identity. Consideration of the rights of lesbian, LGBT persons remains contested in the Human Rights Council. The practice of the treaty bodies shows that there have been different interpretations of sexual orientation as a ground of discrimination. There is a need for harmonisation in this area. The best way, I believe, is to interpret sexual orientation as a separate ground of discrimination, and explicitly name it as such in future documents.

However, the bigger problem is the stereotypes and prejudices that exist among some of the member states and their representatives. This manifests even through the Human Rights Council, and the most recent debates that have made “protection of human rights” look like a sports arena where two opposing sides clash.

Outside the UN arena, in Serbia, local human rights NGOs and LGBT activists are calling on this UN human rights system as one of their main tools to induce change on the ground. They
are using the UN human rights system to put pressure on the state to comply with UN standards. However, controversies and debates about sexual orientation at the UN level can send mixed signals to states such as Serbia. In order for protections against discrimination based on sexual orientation to become more consistent, it would help if Treaty Bodies and the Human Rights Council would all adopt the practice of interpreting sexual orientation as an “other” ground in existing human rights documents, and explicitly name it as a separate ground in all future documents.
Chapter 4: Europe – the regional level

4.1. Introduction

Europe is a very busy continent when it comes to international organisations. The organisations that are relevant to human rights protection to both Serbia, my case study, and Europe as a whole, are the European Union (EU), Council of Europe (CoE), European Court for Human Rights (ECtHR) and Organisation for Security and Cooperation in Europe (OSCE). In this chapter, I will analyse the existing legal documents in these organisations, focusing on legal norms whose goal it is to provide protection against discrimination based on sexual orientation. I will also examine the legal, political and social contexts in which LGBT rights are applied, and the most recent developments concerning the issue of sexual orientation discrimination within these organisations.

As mentioned earlier, the European organisations that are the subject of this chapter are relevant factors when it comes to human rights legislation and protections in Europe and beyond. The Council of Europe, for its part, is one of the oldest organisations on the continent. It was established in 1949, in the aftermath of WWII, and was inspired by the idea that close union between the European countries might increase the chances of maintaining peace and preventing war. With 47 members, it now covers almost the entire European continent. Some non-European members are also included in the work of this organisation, as they are parties to the CoE treaties, which have a wider membership clause. Democracy, human rights, and the rule of law are the fundamental values, and some authors consider the CoE to be the main “human

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122 “47 Countries - 800 million citizens”, online: Council of Europe <http://hub.coe.int/>.
123 For example, Canada has signed Convention on the Transfer of Sentenced Persons, and six more conventions (for more information on those so called “Observer states” see ibid).
rights watchdog” for Central and Eastern European countries. The only policy area that is not within the CoE’s mandate is national defence.

In order to become a member of the CoE, a state must agree to respect human rights as enshrined in the ECHR. This means that states that wish to become members of the CoE have to accept all the rights protected in this document as legally binding. What was new about this human rights document, compared to the similar ones by the UN, is that it also came with its own powerful supervision mechanism. That mechanism was the permanent human rights tribunal – the ECtHR. By signing the convention, all the states had to submit to the jurisdiction of this tribunal. This was an important step forward for the application of human rights in practice, as ECHR contained many of the same rights already guaranteed by the Universal Declaration. However, unlike the Universal Declaration, this document was legally binding; in addition to that, it contained one very important feature – the forceful enforcement mechanism enshrined in the ECtHR.

The ECtHR’s decisions are legally binding to CoE member states. The ECHR was also the first human rights instrument that allowed individuals to file complaints against states. The ECtHR, as its guardian, is one of the leading human rights institutions in the world.

The OSCE traces its origin to the Cold War period and the Conference on Security and Co-operation in Europe (CSCE). Today, it is the biggest regional organisation, and has human rights, democracy, and the rule of law as its core guiding principles. Its strong presence in the

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126 Conference on Security and Co-operation in Europe (CSCE) functioned as a series of meetings and conferences that served as a multilateral forum for dialogue and negotiation between East and West. The organisation changed its name in 1994, as it gradually transformed from series of conferences into an international organisation. For more information on OSCE membership, see “Who we are”, online: OSCE <http://www.osce.org/who/87>.
Balkan region during the conflict in the 1990s lingers to this day, with a number of active offices remaining in those states.\textsuperscript{127} The OSCE also monitors the human rights situation, including discrimination based on sexual orientation, in its 56 participating states. Since 2001, the OSCE has had a Mission to Serbia.\textsuperscript{128}

Finally, the EU has emerged in recent decades as one of the most important political and economic actors in the world. There are two important aspects in the work of this organisation that I will analyse further below. First, I will examine the inside perspective, and explore how these rights are regulated from within the EU and its member states. In the EU, human rights protections for sexual identity minorities vary from state to state, and the EU is not yet fully capable of dealing with these discrepancies. Second, I will consider the outside perspective, and explore how the EU applies human rights conditionality to states seeking to become its members. The enlargement of the EU is of key significance for Serbia and the Balkan region.\textsuperscript{129}

The analysis that follows is, therefore, structured in two parts. First, there will be a brief overview of the current anti-discrimination legislation and protection of LGBT persons in these four organisations. This legal analysis will include the most recent developments and ongoing debates within the institutions. I will seek to answer the questions of how these organisations have been dealing with discrimination based on sexual orientation, and what are the most recent developments regarding protection from this form of discrimination. Second, I will analyse what sort of influence these organisations have with respect to human rights in member states. I will

\textsuperscript{127} At the moment, there are active OSCE missions: Bosnia and Herzegovina, Kosovo, Serbia, Macedonia and Montenegro. See more about the presence of OSCE in South-Eastern Europe at the official website of this organisation: “Organization for Security and Co-operation in Europe”, online: OSCE <http://www.osce.org/>.

\textsuperscript{128} On 11 January 2001, the mission established was first named OSCE Mission to the Federal Republic of Yugoslavia; it was later renamed in 2003 as the OSCE Mission to Serbia and Montenegro, and finally, as the OSCE Mission to Serbia in 2006. For more information, see the OSCE Mission to Serbia web site: “OSCE Mission to Serbia”, online: OSCE <http://www.osce.org/serbia/43337>.

focus primarily on the EU and the conditionality it applies to the states that wish to become members.

In summary, in this chapter, I will describe the work that these organisations have done so far in the field of protection from discrimination based on sexual orientation, and their power and authority regarding the protections extended by member states.

4.2. Council of Europe

The Council of Europe is the oldest political organisation in Europe, and is often viewed as the leader in the promotion and protection of human rights on the continent. The ECHR, one of the most influential human rights documents in Europe, was adopted in 1950 by the CoE. All member states of the CoE are parties to the Convention. In fact, its adoption is a precondition to joining the organisation. With this document, a permanent judicial institution was established, the ECtHR, which will be analysed further below.

The CoE has regulated relations with other organisations like the European Union, the OSCE, and the United Nations. In May, 2007, it signed a Memorandum of Understanding with the EU, confirming the role of the Council of Europe as “the benchmark for human rights, the rule of law and democracy in Europe.”

In terms of the CoE in relation to human rights, the main decision-making body is the Committee of Ministers, made up of the ministers of foreign affairs of each member state or their representatives. The Committee of Ministers is in charge of adopting relevant treaties, conventions and recommendations. Recommendations are not legally binding on member States, while Conventions are only binding on those states that ratify them. The Committee of Ministers

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130 For more details on CoE’s external relations, see “Council of Europe External Relations”, online Council of Europe <http://www.coe.int/t/DER/default_en.asp>.
is also in charge of monitoring the respect of commitments by member states\textsuperscript{132} and supervising
the execution of ECtHR judgments (Article 46, paragraph 2). However, execution of these
ultimately relies on the will of the member state.\textsuperscript{133}

Another permanent body of the CoE is The Parliamentary Assembly (PACE). PACE is
comprised of members that are appointed by the national parliaments of each member state. It
has initiated many international treaties, and is the deliberative body and the driving force of the
Council of Europe.

The Commissioner for Human Rights has a mandate to promote awareness of, and
respect for, human rights in its member states. It is an independent, non-judicial institution of the
CoE.\textsuperscript{134}

Last, but not least, the European Commission for Democracy through Law, better known
as the Venice Commission, is the Council of Europe's advisory body on constitutional matters.
Established in 1990, it is comprised of independent experts who advise individual countries on
constitutional matters, in order to improve the functioning of democratic institutions and the
protection of human rights. It usually follows legal reforms in the countries and publishes its
opinion on changes. Its opinion is well regarded, and states strive to make changes in their legal
systems that are in accordance with this commission’s guidelines and opinions.\textsuperscript{135} While these
opinions and guidelines are considered important and persuasive, they are not legally binding.

When it comes to the protection of sexual identity minorities at the CoE, there has been a
lot of progressive work. For example, on 7 April, 2011, the Committee of Ministers adopted the

\textsuperscript{132} See “About the Committee of Ministers” online: Council of Europe
<http://www.coe.int/t/cm/aboutCM_en.asp#P55_1842>.

\textsuperscript{133} For more details on the executions of the ECtHR Judgements, see the section on ECtHR below in this Chapter.

\textsuperscript{134} See “Commissioner for Human Rights”, online: Council of Europe
<http://www.coe.int/t/commissioner/About/welcome_en.asp>.

\textsuperscript{135} See Thomas Buergenthal, Dinah Shelton, David P. Stewart, \textit{International Human Rights in a Nutshell}, 4th ed
(West, 2009).
“Convention on preventing and combating violence against women and domestic violence,” which is the first international treaty to include explicitly both sexual orientation and gender identity as prohibited grounds of discrimination.136

The Commissioner for Human Rights of the Council of Europe makes regular visits to member states and writes regular reports on human rights. Discrimination on the ground of sexual orientation is considered regularly in these reports.137 There have also been other documents, such as recommendations, with the goal of battling homophobia and discrimination based on sexual orientation in the CoE member states. The “Recommendation on measures to combat discrimination on the grounds of sexual orientation or gender identity” in 2010, simply “invites the member states” to guarantee that the principles and measures set out to fight homophobia and discrimination against LGBT persons are applied.138 As explained above, these Recommendations are “soft law” and are not legally binding. This document is careful to balance the wording, so as not to infringe on the sovereignty of member states, or on other protected rights. For example, the Explanatory Report states the following:

States should therefore deal with the issue of sexual orientation and gender identity in a respectful and objective manner in curricula or in sex and health education classes, for example, and set up initial and in-service training programmes or support and guidance for teachers and other educational staff to address these issues, in particular from an anti-discrimination perspective.139

136 See Council of Europe, Convention on preventing and combating violence against women and domestic violence, CETS No.: 210, (2011), online: Treaty Office on <http://conventions.coe.int>. This Convention needs 10 ratifications including 8 Member States in order to enter into force. As of January 20th, 2013 it has only been ratified by Turkey.
137 More about this monitoring work can be found on the Commissioner for Human Rights of the Council of Europe web site. See “Country monitoring”, online: Council of Europe <http://www.coe.int/t/commissioner/Activities/visits_en.asp>.
139 Council of Europe, Committee of Ministers, Recommendation CM/Rec(2010)5 of the Committee of Ministers to
However, a limitation follows, stating that:

[A]ll measures should take into account the rights of parents regarding education of their children, such as the right to ensure education and teaching in conformity with their own religious and philosophical convictions, as enshrined in Article 2 of Protocol 1 to the European Convention on Human Rights and Fundamental Freedoms.\textsuperscript{140}

This provision can be easily abused, for example, for the banning of positive school programs by labelling them as contradictory to the leading religious convictions in a given country.

One of the most important developments so far, has been a 2011 report on LGBT persons, following a two-year study carried out by the Office of the Council of Europe Commissioner for Human Rights.\textsuperscript{141} This study contains a socio-legal analysis of the situation of LGBT persons across member states, and it is the largest and most comprehensive report to date. Some of the findings are that, “for a long time LGBT persons in many Council of Europe member states remained – and in some member states still are – invisible” and that “there are still provisions in the criminal law of some Council of Europe member states which explicitly discriminate on the basis of sexual orientation.”\textsuperscript{142}

This report emphasises that “there is considerable resistance among many people to discuss the full enjoyment of universal human rights by LGBT persons.” This resistance also means that the CoE is unable to evenly apply human rights standards in all its member states when it comes to sexual orientation and gender identity.

\textsuperscript{140} \textit{Ibid} at para 32.
\textsuperscript{141} \textit{Supra} note 10.
\textsuperscript{142} \textit{Ibid} at 22-23.
4.3. European Court for Human Rights

The ECtHR is a permanent judicial institution that functions as a guardian of the European Convention on Human Rights, which was adopted in 1950 by the CoE. Article 14 of the ECHR prohibits discrimination based on an open-ended list of grounds; however, sexual orientation is not explicitly mentioned. There are also additional protocols to the Convention.

Optional Protocol No. 12 was adopted in 2000, in order to improve protection against discrimination, and extends the application of this general prohibition against discrimination to rights not guaranteed in the convention. It entered into force in April, 2005. The only way Article 14 can be used against states that have not ratified the Optional Protocol No. 12, is where there is a *prima facie* violation of one of the rights or freedoms in the ECHR. Even though it does not represent new human rights obligations for ECHR state parties, only 17 CoE member states have signed and ratified this Protocol. This decision by certain states not to join the protocol, and the fact that this important and necessary update only came into force 55 years after the adoption of ECHR, shows that states are trying to limit the court's jurisdiction over certain cases against them. This is because ECHR has a more powerful enforcement then the ones established at the UN.

In 2010, the ECtHR delivered the problematic *Schalk and Kopf v. Austria* [*Schalk*] decision. In this case, the main institution governing human rights in Europe managed to create a problematic outcome for LGBT people. The case was brought by an Austrian same-sex

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144 Before this protocol was adopted, the principle of non-discrimination was only applied in relation to the rights guaranteed in the convention.
145 This is because all of the state parties to the ECHR are also parties to the ICCPR, and have already accepted a similar clause on non-discrimination in ICCPR Article 26. For the complete list of states that signed this Protocol, see Council of Europe, *Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, CETS No 177, open for signature in 2000, entered into force in 2005, online: Treaty Office <http://conventions.coe.int/>.
couple, who were denied the right to marry.\footnote{Ibid.} The Court held that same-sex couples have a right to “family life”, in the sense of Article 8 of the ECHR, and that it “would no longer consider that the right to marry, enshrined in Article 12, must in all circumstances be limited to marriage between two persons of the opposite sex”.\footnote{Ibid at para 61} However, the Court’s ultimate conclusion was that, in this instance, Austria had not breached Article 12 (right to marry), because the Article does not impose an obligation on the Austrian Government to grant a same-sex couples access to marriage. Furthermore, it held that there was no violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life).

Why did the Court come to this conflicting conclusion in Schalk? According to Sandra Fredman, it was because the Court is “unwilling to move ahead of what it regards as the consensus among contracting States.” This is a convincing explanation in the particular case of Schalk, since, according to the decision, “[...] there is not yet a majority of States providing for legal recognition of same-sex couples. The area in question must, therefore, still be regarded as one of evolving rights, with no established consensus, where States must also enjoy a margin of appreciation.”\footnote{Ibid at para 105.} Thus, this Court has produced a contradictory outcome when interpreting the European Convention on Human Rights in respect of sexual orientation.\footnote{See, for example, Paul Johnson, ‘An Essentially Private Manifestation of Human Personality’: Constructions of Homosexuality in the European Court of Human Rights”, (2010) Hum. Rts. L. Rev. 67.} On one hand, it said that there is a right to marry for same-sex couples; on the other, it said that it is not discrimination to deny the right to marry to same-sex couples, since most of the states have not accepted same-sex marriage. According to this decision, more action is needed on the national level.
In theory, states have to comply with the final judgements of the ECtHR. ECtHR can order a state, found in violation of articles of ECHR, to pay compensation to the victim, adopt general measures (to make legislative reforms), or adopt individual measures (restitution, reopening of procedure).\textsuperscript{151} The state’s compliance is supervised by the Committee of Ministers of the Council of Europe. However, in practice, some states cannot be made to comply with decisions. If pressure from the Committee of Ministers does not work, the Committee can refer a case to the Court, if it considers that the respondent state is refusing to abide by the judgment (Article 46, paragraphs 3 and 4).\textsuperscript{152} This means that it goes back and forth between the ECtHR and the Committee if the state does not comply. There are no formal sanctions for non-compliance and the only way to enforce the judgements is to put pressure on the state with these procedures at the ECtHR and CoE.

This constant international pressure should make a state comply, but does not always work. For example, it failed in the case of Russia’s gay pride bans in Moscow. In the 2010 judgement Alekseyev v. Russia (no. 4916/07, 25924/08 and 14599/09), the Court held that there had been a violation of Articles 11 (freedom of assembly and association), 13 (right to an effective remedy), and 14 (prohibition of discrimination) of the European Convention on Human Rights.\textsuperscript{153} In response, Russia issued a ban on gay pride marches in the Russian capital for the next 100 years.\textsuperscript{154}

\textsuperscript{151} Supra note 143 at Article 46. See also “Supervision of the execution of judgments and decisions of the European Court of Human Rights”, online: Council of Europe <http://www.coe.int/t/dghl/monitoring/execution/Presentation/Pres_Exec_en.asp>.\textsuperscript{152} This was possible after the entry into force of Protocol No. 14, on 1st June 2010. See Council of Europe, Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, CETS No.: 194, open for signature in 2004, entered into force in 2010, online: Treaty Office < http://conventions.coe.int/>.\textsuperscript{153} For the full text of the judgement, see Alekseyev v. Russia, No. 4916/07, 25924/08 and 14599/09, (2010), ECHR, online: HUDOC <http://hudoc.echr.coe.int/>.\textsuperscript{154} “Moscow bans gay pride for century”, BBC (17 August 2012), online: BBC <http://www.bbc.co.uk/news/world-europe-19293465>. 
A final issue that has hindered the efforts of the E CtHR to effectively apply human rights since its inception, is the lengthy backlog of cases, and the court’s inability to process complaints in timely manner.155 Many of the human rights applications remain pending, often for a few years, before they are resolved. All of the 47 states of the CoE agreed to its jurisdiction, and any individual residing on their territory can submit a complaint. This backlog is happening because the court is overwhelmed by the huge caseload, as this is one of the busiest and most accessible regional human rights institutions in the world.

4.4. OSCE

The OSCE draws its origin from the Cold War period, and a previous Conference on Security and Co-operation in Europe (CSCE), whose goal was to ease the tensions between the East and West.156 Currently, it is comprised of 56 member states, mostly European countries, plus some countries in central Asia (as a consequence of the disintegration of the Soviet Union), and the United States and Canada. The OSCE is primarily known for its work in monitoring elections; however, it is also actively involved in human rights issues, engaging in dialogue with the local NGOs and state institutions.157 In its work, it mainly provides technical and financial support to the states; however, unlike the other international organisations, the OSCE process is a political process, and does not create legally binding decisions.

The main human rights institutions within this organisation are the Office for Democratic Institutions and Human Rights (ODIHR), and the Office and High Commissioner on National

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156 The OSCE was established in 1975, with the adoption of Helsinki Final Act. One of the principles agreed upon by the founding states was, “Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief”. For more information about the Helsinki Final Act, see “Signing of the Helsinki Final Act”, online: OSCE <http://www.osce.org/who/43960>.
157 Some of the examples of this engagement are listed in the Belgrade Pride analysis, such as press releases and meetings with the police officials. See below (Chapter 5).
Minorities. Even though none of the OSCE instruments have binding legal power, the organisation has developed political influence when it comes to human rights.\textsuperscript{158} The OSCE has field missions in 20 countries, one of which is in Serbia. Those missions have different goals. For example, the focus of the OSCE’s Mission to Serbia is to offer advice on the implementation of laws, to monitor democratic institutions, to assist law enforcement bodies and the judiciary in training and restructuring, and to support media development.\textsuperscript{159}

The OSCE and the ODIHR have published several reports and documents analysing aspects of discrimination based on sexual orientation, as well as organised projects aimed at dealing with specific issues. Thus far, the biggest focus has been on the issues of hate crimes and freedom of assembly. For example, the OSCE/ODIHR publishes Annual Reports\textsuperscript{160} on hate crimes in the OSCE region, as well as “Guidelines on Freedom of Peaceful Assembly.”\textsuperscript{161} One of the ODIHR projects, called the Tolerance and Non-Discrimination Information System, has as its goal, to “share and promote practices and initiatives and to provide information on issues related to tolerance and non-discrimination throughout the OSCE region.”\textsuperscript{162}

One of the recommendations for participating states at an OSCE high-level conference on tolerance and non-discrimination is to “include gender and sexual orientation as grounds of discrimination in relevant legislation and in the development of policies.”\textsuperscript{163} This suggests that the OSCE finds that the laws and policies at the international and national levels do not

\textsuperscript{158} Christian Tomouchat argues that the impact of Helsinki Final Act human rights provisions on Eastern European countries was far greater than the one of the ICCPR. See Christian Tomuschat, \textit{Human Rights: Between Idealism and Realism} (New York, Oxford University Press, 2003) at 165.

\textsuperscript{159} See OSCE Mission to Serbia, \textit{supra} note 127.

\textsuperscript{160} See “Office for Democratic Institutions and Human Rights (ODIHR) – Hate crime”, online: OSCE <http://www.osce.org/odihr/66388>.

\textsuperscript{161} For guidelines on freedom of peaceful assembly, see OSCE, \textit{Guidelines on Freedom of Peaceful Assembly}, (Warsaw, Poland: OSCE/ODIHR, 2010), online OSCE <http://www.osce.org/odihr/73405>.

\textsuperscript{162} “Tolerance and Non-Discrimination Information System (TANDIS)”, online: TANDIS <http://tandis.odihr.pl/?p=about>.

adequately protect sexual minorities from discrimination, and that there is a need to include sexual orientation as a ground of discrimination. However, as mentioned earlier, these are merely suggestions resulting from a political process, and are not legally binding.

4.5. European Union

4.5.1. General overview

The European Union traces its origin from the European Coal and Steel Community (ECSC), and the European Economic Community (EEC), formed in 1951 and 1958 respectively. In 1993, the Maastricht Treaty established the European Union, and the European Communities transformed from a mostly economic alliance into a supranational organisation.

One of the important features of this organisation is that EU legislation takes precedence over national legal provisions. The EU is based on two founding treaties: the Treaty on European Union (TEU; Maastricht Treaty, effective since 1993, as amended by the Lisbon Treaty) and the Treaty on the Functioning of the European Union (TFEU; Treaty of Rome, effective since 1958, as amended by the Lisbon Treaty). These treaties function like a constitution of the organisation, as they set out objectives, rules for EU institutions, how decisions are to be made, and regulate the relationship between the EU and its member countries. They have been changed several times by amending treaties. The last change occurred with the Treaty of Lisbon, which entered into force on December 1, 2009. The Treaty of Lisbon is particularly important when it comes to human rights in Europe, because with it, the Charter of

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165 Ibid.
Fundamental Rights of the European Union (the “EU Charter”) entered into force, and was given binding legal effect equal to the Treaties. The EU Charter guarantees various civil, political, economic, and social rights to EU citizens and residents.

Besides the treaties, there are other EU rules, such as regulations, directives and decisions that take precedence over national law, and are binding on national authorities.\textsuperscript{168} Directives are legally binding, and member states have to adapt their laws to meet objectives and goals set out in the Directives, however, they are free to decide how to do so. Conversely, regulations are directly applicable, and have binding legal force throughout every member state, on a par with national laws as soon as they are passed.\textsuperscript{169} Decisions apply in specific cases only, are addressed to a particular member state, and can require authorities and individuals in member states either do something or stop doing something.

The EU has a well-developed system of institutions. The main legislative institutions in the EU are the European Parliament, Council of the European Union (Council), and European Commission (EC).\textsuperscript{170} The European Union Agency for Fundamental Rights (FRA) is a specialised agency of the EU when it comes to fundamental rights. It provides expert advice to the institutions of the EU and to member states, including issues related to discrimination based on sexual orientation.\textsuperscript{171}

Despite all these legal instruments and institution, only certain protections are guaranteed to the sexual minorities on the EU level. The primary document of the EU, the Treaty on

\begin{itemize}
  \item The EU can also issue non-binding instruments, such as recommendations and opinions. Supra note 164 at Article 288.
  \item Member states do not have to take action themselves to implement EU regulations.
  \item For more information on EU institutions, see “EU institutions and other bodies”, online: European Union <http://europa.eu/about-eu/institutions-bodies/index_en.htm>.
  \item For more information on this agency, see “The European Union Agency for Fundamental Rights (FRA)”, online: <http://fra.europa.eu/en>.
\end{itemize}
European Union (TEU),\textsuperscript{172} proclaims that “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”, are the values on which the European Union is founded.\textsuperscript{173} The principle of non-discrimination is one of the fundamental values as well.\textsuperscript{174} However, in practice, the legal protection available differs among member states. One of the reasons for this, is that in its early stages, the EU was focused primarily on economic problems. Thus, the principle of non-discrimination existed in the very limited context of economic freedoms. This was because the EU was initially just an economic community and human rights did not play a significant role.\textsuperscript{175}

More than 50 years after the first non-discrimination clause in the Treaty of Rome, the EU had finally made a significant step forward in improving human rights protection in the EU. In 2010, after the Treaty of Lisbon, accession of the EU to the ECHR became a legal obligation.\textsuperscript{176}

When it comes to sexual orientation as a ground of discrimination, there are many internal disagreements among the 27 member states. Why does this occur? What kind of institutional protection guarantees are there for sexual identity minorities in the EU legislative framework? How do these differences affect the rights of sexual identity minorities?

To answer these questions, I will first review the EU’s anti-discrimination legislation, and analyse the extent to which it protects individuals from discrimination based on sexual orientation. I will then explore the current legislative initiatives, whose goal is to improve the

\textsuperscript{172} Supra note 166 at Article 2. TEU, also known as the Maastricht Treaty, was changed several times after it first came into effect in 1993. Those changes were made by the amending treaties. Latest change was made by the Treaty of Lisbon, which entered into force on 1st December 2009. The previous changes were made by the Treaty of Nice and Treaty of Amsterdam.

\textsuperscript{173} Ibid.

\textsuperscript{174} Ibid.

\textsuperscript{175} See more on development of human rights conditionality in the section below.

\textsuperscript{176} This happened after more than 20 years of the initial discussion on the issue. See “European Convention on Human Rights - Accession of the European Union”, online: Council of Europe < http://hub.coe.int/what-we-do/human-rights/eu-accession-to-the-convention>.
protection of sexual identity minorities at the EU level, how LGBT rights are treated in member states, and some of the problems that occur on the wider EU level as a result of those differences.

4.5.2. Protection of sexual minorities in the EU

The protections that are guaranteed to sexual minorities are enshrined in the treaty laws and one directive. The main legal documents of the EU which contain relevant provisions, are the TFEU, the EU Charter, and the European Union Employment Equality Directive. As mentioned above, the TFEU contains a general statement on the main values of the EU, but it also has Article 19 (former Article 13), which includes sexual orientation as a prohibited ground of discrimination. Similarly, Article 21(1) of the Charter of Fundamental Rights of the European Union includes sexual orientation in the list of prohibited grounds of discrimination.

The European Union Employment Equality Directive prohibits discrimination based on sexual orientation in the private and the public sectors, but only in the place of employment. However, other areas, such as social security, bullying at school, and recognising same-sex relationships, are left out. This makes a difference, according to a report published by European Union Agency for Fundamental Rights (FRA), which is an advisory body of the European Union. The FRA states that LGBT people are not protected against discrimination outside employment in a number of EU member states, including Cyprus, Estonia, Italy, Latvia, Malta, Poland, and Portugal. Currently, EU legislation covering all areas of life only prohibits discrimination on the grounds of race and ethnic origin.

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178 Supra note 164.

In practice, however, it is different. According to the FRA report from 2011, a citizen with a same-sex partner who wishes to reside in another member state may encounter different situations in different EU countries.\footnote{FRA, \textit{Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States} (Synthesis Report), (Luxembourg: Publications Office of the European Union, 2011).} In fact, in 19 Member States, the same-sex spouse would not be treated as a spouse.\footnote{\textit{Ibid} at 28. Only eight Member States would treat same-sex or an opposite-sex spouse for the purposes of entry and residence rights the same way. Those states are Belgium, Denmark, Finland, the Netherlands, Portugal, Spain, Sweden, and the UK.} In 2010, there was a debate on this issue at the European Parliament on the mutual recognition of same-sex couples in a marriage or civil partnership in the EU.\footnote{See \textit{supra} note 54 for more about the ongoing debate.} The Commissioner for Justice, Fundamental Rights and Citizenship, Viviane Reding, explained in her concluding remarks, that there is a law, and that this is a matter of applying what is written down.\footnote{“Discrimination of same-sex married or in civil-partnership couples (debate)”, (7 September 2010), online: European Parliament/EPTV <http://www.europarl.europa.eu/ep-live/en/plenary/search-by-date?start-date=20100907&end-date=20100908&date=20100907&format=wmv&askedDiscussionNumber=13#>.} This means that EU has already tried to regulate the problem of discrimination based on sexual orientation, but the problem occurs when states interpret how to apply those legal obligations. This happens because, when it comes to the Directives, states have...
a discretionary right on how to execute them. EU member states have politically committed
themselves to certain legal obligations; however, their realisation depends on the states
themselves, and as long as the discrepancies in national laws don’t compromise the EU law they
are safe. This limits EU powers.

These are not the only challenges. Despite all efforts, the European Union is still
struggling to prevent future backlashes against the protection of sexual minorities within its
member states. First, there are problems with discriminatory laws. Lithuania, Latvia, and
Hungary have all proposed so-called “gay propaganda laws.” These bills make discussing gay
rights positively in the media, or at events, a criminal offence. Another example is the “Law on
the Protection of Minors against the Detrimental Effects of Public Information,” which Lithuania
passed in 2009. According to that law, information determined to be harmful to minors includes,
that “which promotes sexual relations; […] which expresses contempt for family values,
encourages the concept of entry into a marriage and creation of a family other than that stipulated
in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of
Lithuania.” Since marriage in the Lithuanian Constitution is defined as between a man and a
woman, and that is the concept of traditional family, it is easy to conclude that this norm can be
used to suppress any content about same-sex relationships.

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187 Law on the Protection of Minors against the Detrimental Effect of Public Information, No IX-1067 (As last amended on 22 December 2009 – No XI-594), online: Seimas of the Republic of Lithuania

188 The constitutional definition of marriage in Lithuania is that it can be concluded between a man and a woman. See Constitution of the Republic of Lithuania, (1992), online: Seimas of the Republic of Lithuania
The right to freedom of assembly, guaranteed by Article 12 of the EU Charter, has also been hard to achieve in some member states. For example, in 2010, just two days before Lithuania’s first Pride parade, the courts issued a ban, claiming that the threat from counter demonstrators was too great, and therefore, the Pride march would be a threat to public order. However, just one day before the event, the Lithuanian Supreme Administrative Court overturned the decision, and allowed the 2010 Baltic Pride to go ahead.\textsuperscript{189} Even then, some state officials tried to stop the parade. Petras Grazuli, one of Lithuania’s MPs, was among the anti-pride protestors, and jumped over the police fence in an attempt to stop the pride parade.\textsuperscript{190} This incident shows that there are not only legal obstacles in some countries, but also strong opposition from government officials.

Recently, there have been initiatives to regulate and improve the treatment of sexual identity minorities in Europe. The most active when it comes to protecting the rights of sexual minorities, is the European Parliament.\textsuperscript{191} The European Parliament is considering how to fill in legal gaps when it comes to protection against discrimination. The solution it has proposed is a new Directive. Unfortunately, the work on this was blocked as the European Parliament had to repeat its call to adopt the EU-wide Anti-Discrimination Directive\textsuperscript{192} that would forbid discrimination based on religion or belief, disability, age, or sexual orientation in access to goods

\textsuperscript{189} “Victory for gay rights in Lithuania”, online: Amnesty International <http://www.amnesty.ie/node/1490>.
\textsuperscript{190} The case against this MP is still pending. For more information about the incident, see “Court delays ruling on Lithuanian MP charged with attacks during LGBT Pride”, 15 min (30 March 2012), online: 15 min < http://www.15min.lt/en/article/in-lithuania/court-delays-ruling-on-lithuanian-mp-charged-with-attacks-during-lgbt-pride-525-207610> ; for more information on the Baltic Pride see LGL Vilnius, Changing Faces. First March for LGBT Equality in Lithuania, (Lithuania: gėjų lyga, 2012), online: For LGBT equality, against homophobia in Lithuania <http://www.atviri.lt/>.
\textsuperscript{191} However, according to ILGA, Europe transgender issues continue to be under-represented. See “What the European Parliament has done for LGBT rights”, online: ILGA-Europe <http://www.ilga-europe.org/home/guide/eu/lgbt_rights/european_parliament>.
and services, education, and social benefits. This happened because several states refused any
dialogue on the draft law, and unanimity in the Council of European Union is required, following
the consent of the European Parliament.\textsuperscript{193}

\textbf{4.6. European Union and human rights conditionality}

Today, many organisations and states (including the above-mentioned UN, CoE, OSCE,
and the EU) use conditionality as a tool, in order to induce compliance from states when it comes
to human rights.\textsuperscript{194} Of them, the EU has been the most successful in making this conditionality
trick work. States seeking to join the EU that are already members of the UN, CoE and the
OSCE, are now racing to get positive reports from those organisations, in order to make progress
in the process of gaining EU membership. I will analyse why the EU human rights conditionality
works, and explain why it has been more successful than that of other organizations, in
particular, regional ones like CoE and OSCE. I will also explore the role of human rights in the
process of EU enlargement today, which has particular relevance to Serbia.

In order for a state to join the European Union (EU), it needs to satisfy certain conditions
for enlargement. These conditions are defined by the enlargement process, and have been
developing ever since the creation of the EU. There have been five EU enlargements so far, the
last of which happened in 2004, with Bulgaria and Romania joining later in 2007.\textsuperscript{195} These five
enlargements had different procedures. The first of them had only the individual negotiations and
agreement with the candidate states, while the later ones were equipped with a more pre-defined

\textsuperscript{193} According to the \textit{EUobserver}, Germany and around eight other EU countries are blocking this initiative arguing
that the EU treaty does not give EU the right to pass laws on social problems. For more information see Andrew
Rettman, “EU anti-discrimination directive: buried, but not dead”, \textit{EUobserver} (15 November 2011), online:

\textsuperscript{194} The United States (US) also began using respect for human rights as a condition for development aid in 1973
714 (1974).

\textsuperscript{195} Even though Romania and Bulgaria joined later, they constitute the part of the part of fifth enlargement.
structure and specific criteria, that are highlighted as part of the process. EU conditionality transformed throughout the process of enlargement. 196 Putting human rights into the heart of the process, and making them an important requirement, was not easy to achieve.

Not long after the signing of the Maastricht Treaty, a big step toward human rights conditionality was made at a meeting in Copenhagen. In June 1993, the European Council decided to formulate criteria that candidate countries should meet if they wish to get full membership. It requested of the candidate countries the following:

- Stability of institutions guaranteeing democracy,
- The rule of law,
- Human rights,
- Respect for and protection of minorities. 197

These are the basic conditions that are applied to the states seeking membership today. The EU Treaties and the Association Agreements signed with candidate states form a legal basis for this conditionality. 198 The European Commission monitors the applicants’ behavior during the process and publishes regular reports regarding applicants and whether they have met each

196 James Huges distinguishes three stages in the normative development of conditionality. The first stage, is the “European Agreement” with the individual states, where each country had its own model. This process had many incoherencies, and the only condition then, was for the state to be a European state. The second stage, was the establishment of the Copenhagen criteria. The declaration of the European Council in Copenhagen crystallised the criteria for EU membership, by stating that a country that meets the economic and political conditions and accepts aquis communautaire, can become a member. The “political conditions” mean that the country has to achieve “stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.” As the third stage, Huges considers the Treaty on European Union. In Article 49 of the Treaty on European Union (Consolidated version 1997), it is stated that “Any European State which respects the principles set out in Article 6(1), may apply to become a member of the Union.” The principles defined in the Article 6(1), are the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. See James Hughes, Gwendolyn Sasse and Claire Gordon, Europeanization and Regionalization in the EU’s Enlargement to Central and Eastern Europe: The Myth of Conditionality (Palgrave Macmillan, 2005) at 20.


criterion. In these reports, the European Commission follows the Copenhagen criteria, and is able to give opinions on the situation of human and minority rights in each candidate country it reviews. Two things are particularly important about the Copenhagen Criteria: they provide specific requirements that must be met; respect for human and minority rights are among the requirements. This means that there is finally going to be more dialogue with candidate states about human rights issues. Conversely, for member states, this also means debating and regulating the political, economic, and security concerns that they have, with respect to the new “potential members.”

Applying for EU membership is a long process that starts officially when a country submits an application, triggering a sequence of procedures. What happens between the application and becoming a member state is known as the pre-accession process, and is where conditionality comes in play. Conditionality means that the candidate country has to comply with certain conditions set out by the EU, in order to be admitted as a full EU member. Frank Schimmelfennig, professor of European Politics at the Centre for Comparative and International Studies (CIS) in Zurich, notes that “accession conditionality has to be credible in two ways: target states need to be certain that they are rewarded with significant steps toward accession (soon) after complying with the EU’s political conditions, and that they will be excluded from EU membership otherwise.” This is also known as a politics of “carrot and stick,” when the EU is offering benefits, financial assistance, and even some trade preferences, subject to compliance with its conditions.

It is one thing to know the conditions that the EU imposes, but how does EU track compliance? One part of the answer to this question, is discovered by reviewing the mechanisms

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199 For the complete list of progress reports, see “European Commission”, online: <http://ec.europa.eu/>.  
the EU uses in applying and measuring conditionality. Heather Grabbe notes several of the mechanisms, including gate-keeping, benchmarking, and monitoring.\textsuperscript{201}

**Gate-keeping** refers to a part of the process that is divided into progressive stages. It allows the EU to use the threat of exclusion, or slowing down the progress to the next stage of the process, if the candidate country has not fulfilled all the requirements. These progressive stages in the accession process vary, from signing association agreements, through opening of the negotiations to the entry as a full member.\textsuperscript{202} A country cannot obtain candidate status if it has not achieved all the necessary steps to get to that point. Once the EU has given a green light for candidate status, the next gate to be reached is the start of formal negotiations.\textsuperscript{203} Then, once again, in order to open this gate and move forward to the next level, certain requirements have to be met.

The **benchmarking and monitoring** processes are used to create specific examination procedures to track the progress of a candidate country. Benchmarks are a way for the EU to flag certain important issues, or make recommendations and policies that have to be implemented within a certain period. For example, Romania was specifically asked, in 2000, to do certain tasks related to state orphanages, in order to be permitted to join negotiations.\textsuperscript{204} Another example is Accession Partnerships, where key priority areas are set up that indicate exactly where candidate countries need to make progress.

As for monitoring, the EU has traditionally produced regular progress reports, which are published by the European Commission, and are generally standardised. These reports evaluate

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{201} See Heather Grabbe, *The EU’s Transformative Power: Europeanization through Conditionality in Central and Eastern Europe* (Palgrave Macmillan, 2006) at 10.
\item \textsuperscript{202} For the complete list of the progressive stages, see Vachudova, *supra* note 49 at 126.
\item \textsuperscript{203} In this process, Serbia has achieved a candidate status, however, the date of the start of the official negotiations hasn’t been announced yet.
\item \textsuperscript{204} For more about the Romania orphans case, see “Orphans row rocks Romania-EU ties”, *BBC* (4 February 2004), online: BBC <http://news.bbc.co.uk/2/hi/europe/3459599.stm>.
\end{itemize}
\end{footnotesize}
economic and political criteria as well as the ability to assume the obligations of membership that is *acquis communautaire*. They assess a country’s progress over the previous twelve months, and:

- Review relations between the country and the EU,
- Analyse the situation in the country in terms of the political criteria for membership,
- Analyse the situation in the country on the basis of the economic criteria for membership,
- Screen each chapter of legislation as they review the country’s capacity to assume the obligations of membership that is the *acquis* expressed in the Treaties, the secondary legislation, and the policies of the Union.206

Based on all this information, the EU determines the level of progress of the potential candidate country. The reports are very effective, and are often followed by extensive media coverage in the country in question.207

The gate-keeping and benchmarking methods have been used effectively in Central and Eastern European (CEE) countries. In 2006, negotiations toward signing the Stabilisation and Association Agreement (formerly called European Agreements) with Serbia and Montenegro were interrupted, because of the failure to capture Ratko Mladic, a wanted war criminal. A similar scenario occurred with Croatia, where the arrest of Ante Gotovina became a necessary pre-condition for advancement in the membership process.

205 *Acquis communautaire* is a term referring to the body of European Community laws. See “Acquis communautaire”, online: Eurofund <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/acquiscommunautaire.htm>.


207 Vachudova, supra note 49 at 129. Vachudova describes in more detail the potential political repercussions to governments of those under review in these reports. See Chapter 5 below, regarding the Serbia Progress Reports during the period of the three Pride events.
Today, many organisations use conditionality as a tool, in order to induce compliance from states when it comes to human rights, but the EU has been the most successful in making conditionality effective. This has been the case when respect for human rights is concerned – when the EU applies pressure, countries are more willing to comply than when being requested to do the same by the UN, ECHR, CoE or OSCE. In fact, the EU has developed a practice of using monitoring and other reports on human rights, as well as ECHR decisions, to evaluate the progress of the candidate countries. States that are members of the CoE and the OSCE are now racing to get positive reports from those organisations, in order to make progress in the process of gaining EU membership. This is interesting to note, since the candidate states coming from Central and Eastern Europe were already members of those organisations. Respecting the human rights framework, for example, the ECHR, was something that those organisations requested from their member states, and now it has been brought back onto the table again in the process of EU accession (see Figure 1).

208 Some international organisations require respect for human rights and democracy from third countries when entering into agreements with them. For example, the International Monetary Fund and the World Bank have applied economic conditionality concerning market liberalisation to developing states struggling with debts.
The EU was developing conditionality parallel to other organisations, but it emerged as a bigger and more powerful player in human rights than the CoE and OSCE. In order to achieve this, the EU first combined economic and political conditionality, making them interdependent. The EU has a highly effective means of influence, with very appealing passive and active leverage, and various tools to make the states comply with the conditions it sets out. In contrast, organisations like the CoE and OSCE have comparatively less to offer, and are less consistent regarding the conditions needed to join. They cannot offer benefits of joint market, or the rights derived from European citizenship, such as freedom of movement of people. They are also known to be less strict in tracking and monitoring compliance. For example, the CoE, even though it is a leading organisation in creating human rights legislation in Europe, is more generally renowned to have only one strict condition – the prohibition of the death penalty.
Vachudova points out that one other specific power that the EU has that can induce changes in countries that aspire for membership, is what she calls “passive leverage.”\textsuperscript{209} This refers to the pressure on a government from inside the state to join the EU, and it comes from a state’s own citizens.\textsuperscript{210} This, according to Vachudova, means that the overall cost of being excluded from the EU is too high for those states that are potential new members.\textsuperscript{211} The influence of the EU’s passive leverage has even been known to change governments. In 1997, the EU refused to open accession negotiations with Slovakia, which resulted in the fall of Slovak Prime Minister Vladimir Maciar’s government.\textsuperscript{212}

On the other side, the influence of this leverage has often been weighed by domestic political elites, who try to calculate how much it pays for them not to fulfil required conditions. The main question thus becomes: how much are the elites open to this influence? Frank Schimmelfennig points out in his research that compliance with EU conditions depends on the costs to the domestic political elites, and argues that sometimes, this domestic power cost is too high and can obstruct compliance. Overall, he finds that the success of political conditionality depends on three factors:

- The conditional offer of EU membership to the target government,
- The normative consistency of the EU’s enlargement decisions,
- Low political compliance costs of the target government.\textsuperscript{213}

\begin{itemize}
  \item \textsuperscript{209} See Vachudova, supra note 49 at 63-79.
  \item \textsuperscript{210} Ibid at 78.
  \item \textsuperscript{211} Ibid.
  \item \textsuperscript{212} For more details on the fall of Meciar’s government, see Vachudova \textit{ibid} at 159.
  \item \textsuperscript{213} Schimmelfennig, \textit{supra} note 200 at 921.
\end{itemize}
Schimmelfennig’s analysis is supported in the case of Serbia. As will be discussed in greater detail in the case study below, the political costs to the targeted government influenced outcomes on the ground when it came to Belgrade Pride parades.

Another obstacle in the conditionality game, is often, the danger that outcomes and policies used by the governments can undermine the laws and institutions that are designed to improve human rights protection. Onthon Anastakis notes that this often happens in post-conflict societies, “where the rule of law is weak and the goal of law and order takes precedence over other democratic bottom-up goals and criteria.” For example, having a good anti-discrimination law will not be of much value when there are various institutional obstacles, weak legal remedies available, and bad government policies in ensuring the enforcement of the decisions.

Furthermore, there is a general problem with the EU’s practice of only “putting out fires” when it comes to human rights concerns in potential member states. This makes the application of human rights conditionality inconsistent, and even dependent on political, economic, and other interests. By using a more proactive approach, and institutional and policy templates, human rights conditionality could have more successful outcomes on the ground.

Last, but not least, the EU needs to address its internal problems. It has been criticized for creating double standards in favour of older member states that only had to agree to contracts, and became member states when human rights barely had a role in the process of accession.

214 Othon Anastakis, “The EU’s political conditionality in the Western Balkans: towards a more pragmatic approach” (2008) 8:4 Southeast European and Black Sea Studies 365 at 366.
215 Vachudova, supra note 49 at 229-230.
216 In the beginning, the EU, as an organisation, was only an economic community, and the only requirement was for a state to be European in order to join. Later, a state needed to be characterised as democratic, in order to satisfy security concerns that arose. Before the Copenhagen criteria, there was a vacuum when it came to human rights; they barely mattered when it came to the process of joining the EU. However, certain roots can be traced in the clauses of the EU’s international agreements. In the late 1970s, the European Communities (EC) started linking development aid with a respect for human rights, and it slowly developed a practice of putting human rights clauses
Since the EU conditions have changed over time, some scholars believe that the EU has “promoted norms which lack a foundation in EU law and remain controversial, even in the ‘old’ member states.” For example, an introduction made by the Copenhagen criteria is the direct reference to minority rights. Minority rights were not included in the EU treaties with Spain or England, since at that time, in 1980s, the European Communities did not have the power to negotiate political aspects of integration, as explained earlier.

4.7. Conclusion

European international organisations have been dealing with human rights issues for a long time, but sexual orientation has only recently been addressed. It was just in 2011, that the first big study on this topic was conducted by the CoE, which raised many concerns. How much are these organisations capable of making change? The CoE, with its wide membership and weak criteria, cannot ensure that legal obligations are respected by all its member states. The ECtHR, with its backlog of cases, is still cautious, and avoids going beyond what is considered general agreement established by consensus, thus waiting for the states to change their practice, instead of taking the lead in making change. The OSCE, with its very broad membership, is cautious in naming sexual orientation in its documents.

The EU, on the other hand, has emerged as the most influential organization, and the more successful one in terms of ensuring human rights compliance. It has developed coordination with the other organizations, which is why the CoE’s opinion matters more to states

in its external agreements. The early enlargement process did not leave enough space for human rights. Moreover, It did not give human rights enough prominence – putting in a human rights clause once in a while seems more like an afterthought than a serious attempt to highlight the importance of the issue. For more on history of conditionality, see Karen E. Smith, “The use of political conditionality in the EU’s relations with third countries: how effective” (1998) 3:2 European foreign affairs review 253 at 262.
seeking EU membership. The CoE’s positive opinion is seen as a prerequisite for EU membership. 218

Recently, sexual orientation protections have gradually been developing in the EU, but many member states still have divergent practices. The most recent attempt to harmonize legislation and adopt a new anti-discrimination Directive has been blocked, and it is not yet clear when any progress will occur.

This chapter’s analysis shows that even with all of these international organizations working together, it is still not possible to ensure protection from discrimination based on sexual orientation in all their member states. There is still a lack of power to execute those legal changes in member states, because states still claim sovereignty, as in the case of freedom of assembly. In the CoE, the best example for this is Russia, while in the EU, one of the examples is Lithuania.

218 Vachudova, supra note 49 at 127.
Chapter 5: Society in transition – a case study of Serbia

5.1. Introduction

People who were born in Serbia during the 1980s have the unusual privilege of saying that by the time they were in their twenties they had lived in four different countries without ever having moved. This is one of the well-known consequences of the fall of the former Yugoslavia, and the violent conflicts during the 1990s. Serbia was once a part of a bigger country, called the Socialist Federative Republic of Yugoslavia (SFRY), which, when it started falling apart, first became the Federative Republic of Yugoslavia (FRY), then Serbia and Montenegro, and finally, in 2006, just the Republic of Serbia. Since then, “balkanisation” became a word meaning “to divide (a region or body) into smaller, mutually hostile states or groups.”

Since 2000, the Republic of Serbia has been a multiparty, parliamentary democracy with a democratic Constitution, has adopted all the major human rights instruments, has established national human rights institutions, and is on its way to becoming an EU candidate. It has been a member of CoE, OSCE, and the UN for many years. Despite this, the LGBT community is still unable to hold a Pride Parade and exercise their freedom of assembly. This case study explores the failures of those international efforts in Serbia, in relation to the protection of sexual minorities.

Since 2001, in this now, “new-in-name” state – which is still struggling to deal with its role in violent conflicts, nationalism and patriarchy – a newly awakened LGBT movement has tried to organise its first Pride Parade. The case study in this chapter follows the period from 2009 to 2011, and three attempts to organise a Belgrade Pride parade. I will first give

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background context, portraying the conditions in which these parades are supposed to occur. This part will offer a brief analysis of the previous conflict, education, political elites, right-wing groups, legislative framework, and LGBT movement. In the second part, I will focus on the events that occurred from 2009 to 2011, regarding to the Belgrade Pride parades. The media is one of the influential actors in this case study, and their work will be discussed in detail, following the pride parade analysis. In the concluding part of this chapter, I will bring the background elements and pride parade analysis together, to explain the different outcomes on the ground.

5.2. Country background

Serbia, as a state, is a subject to international law. In order to ensure the respect of human rights, it needs to have both good laws and effective state institutions that can uphold the rights without prejudice or discrimination. It also needs to have political elites who are willing to create state policy that will prevent discrimination. When LGBT activists in Serbia want to organise a Pride parade in Belgrade and exercise their right of freedom of assembly, these minimum conditions are necessary.

However, the process of creating state institutions and state policy is still deeply connected with the legacy of the 1990s and the politics of Slobodan Milosevic. The recent conflict has shaped the conditions in which the Pride parades are supposed to occur. It has shaped the current laws, which are applied by state institutions, such as the police and judiciary. Those institutions are run by the political elites who are responsible for creating the overall atmosphere in the society. Furthermore, through the education system, elites can influence new generations and form the basic system of values. To explore how these factors function together,
I will follow the threads of the violent conflict in the 1990s, which lead to how society in Serbia relates to homophobia and violence today.

5.2.1. The conflict

The armed conflict in the former Yugoslavia started in 1991; many have since tried to explain why and how Yugoslavia fell apart. Lepa Mladjenovic, a feminist and LGBT anti-war activist, notes that the hatred, which was manufactured by the states, had a significant role in the war in the former Yugoslavia. Six republics made up Yugoslavia: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia (which included the regions of Kosovo and Vojvodina) and Slovenia. The geographical segmentation of Yugoslavia corresponds to a large extent, with the ethnicity and the type of religion practiced by citizens living in that territory. The period from 1991 to 1996 saw wars in Slovenia (1991), Croatia (1991-1995), and Bosnia and Herzegovina (1992-1996). These wars, especially the one in Bosnia and Herzegovina (BiH), had some of the most horrifying consequences since World War II. The fall of Yugoslavia was marked with genocide, ethnic cleansing, detention camps and the mass rape of women. As a response to these atrocities, in 1993, an International Criminal Tribunal for Former Yugoslavia

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222 According to Biljana Stojkovic, ethnicity is essentially connected with the type of religion: “so we have Serbs who have to be orthodox Christians, Croatians who are, as we perceive them, inherently Catholics, Bosnians must be Muslims, etc. Other combinations are strange, almost impossible, and atheism is seen as a communist deviation unacceptable for Serbia. In this way, when ethnicity is emotionally fused with religious ideology, and when there is no understanding of what tolerance means, we have groups of citizens closed up within their community, mostly hating other groups because of their differences.” She argues that the situation is not unique for Serbia but is also very similar in all other states originated from former Yugoslavia. See Biljana Stojkovic, “Serbia and secularism”, (22 August 2012), online: Pescanik <http://pescanik.net/2012/08/serbia-and-secularism/>. 
223 Judges of the ICTY have, in particular, ruled that rape was used by members of the Bosnian Serb armed forces as an instrument of terror. See “About the ICTY”, online: ICTY <http://www.icty.org/sections/AbouttheICTY>.
(ICTY) was established, in order to prosecute those most responsible for these acts.\textsuperscript{224} During that period, Slobodan Milosevic and his Socialist Party of Serbia ("Socialist Party") were in power in the Republic of Serbia, and had a decisive role in the conflict.\textsuperscript{225} Milosevic used the media extensively to spread hate propaganda, and used police and security forces to confront his opponents.\textsuperscript{226} During the rule of Milosevic and his political party, Serbia endured some of the harshest sanctions ever imposed by the international community.\textsuperscript{227} Waves of mostly Serbian refugees poured into Serbia. Consequently, in 1993 Serbia experienced one of the biggest hyperinflations in the world.\textsuperscript{228}

In 1995, international negotiations took place in Dayton, which concluded with the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina on December 14, 1995, which is, today, widely known as the Dayton Peace Agreement. However, not long after the war in BiH ended, a new conflict broke out in what was then known as Serbia’s Autonomous Province of Kosovo. After an international intervention and the NATO air raid on...

\textsuperscript{224} See the Security Council Resolution 827 that established this tribunal (Security Council Resolution 827, SC Res 827, UNSCOR, 48th Year, 3217 Mtg, UN Doc S/RES/827 (1993)).
\textsuperscript{225} In 1993, BiH filed an application against Serbia at the International Court of Justice (In 2007 International Court of Justice issued a final judgment. It ruled that the Yugoslav/Serbian Government failed to prevent the Genocide in Srebrenica. See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, [2007] ICJ Rep 43, online: International Court of Justice <www.icj-cij.org> at 238.
\textsuperscript{226} It was only in May, 2011, that the RTS, a national TV channel, officially apologised for its role during the 1990s. See “State broadcaster ‘sorry’ for 1990s - B92 English”, B92 (24 May 2011), online: B92 <http://www.b92.net/en/news/politics-article.php?yyyy=2011&mm=05&dd=24&nav_id=74507>. Members of OTPOR, a mass youth movement against Slobodan Milosevic’s regime, were often victims of unlawful deprivation of freedom, and in some cases, even torture. For details on some of those cases, see Humanitarian Law Center, OTPOR-Analysis, (HLC, 2000), online: Humanitarian Law Center <http://www.hlc-rcd.org/?p=13778&lang=de>.
\textsuperscript{227} The number of registered refugees in Serbia in 2004 was just over 267,000, while the number of internally displaced persons (IDPs) was 226,000. See “UNHCR Global Report 2004 - Serbia and Montenegro”, online: UNHCR <http://www.unhcr.org/42ad4dbe0.html> [UNHCR Global Report].
\textsuperscript{228} Yugoslavia then had an extreme high inflation (300,000,000 % in January 1994). See, See “Study on the state of agriculture: Serbia Country report”, (December 2006), online: Agricultural and Rural Development <http://ec.europa.eu/agriculture/analysis/external/applicant/> at 5.
Serbia, Milosevic was forced to sign another agreement. In 1999, the UN Security Council adopted Resolution 1244 giving authority over Kosovo to the UN.\footnote{Security Council resolution 1244 (1999) on the situation relating Kosovo, UNSCOR 54th Session (4011th mtg.), UN Doc S/RES/1244 (1999).}

After the general elections in Serbia in 2000, Slobodan Milosevic refused to admit the election results and his defeat. On October 5, people stormed the national parliament in Belgrade and the offices of the RTS, a national TV station that was the carrier of Milosevic’s propaganda. Milosevic was thrown out of power and the Democratic Opposition of Serbia (DOS) established a new government.\footnote{DOS was comprised of 18 parties led by Vojislav Kostunica’s Democratic Party of Serbia (DSS) and Zoran Djindjic’s Democratic Party (Democratic Party).} A number of high Serbian state and military officials were sent to the ICTY, including the overthrown President.\footnote{Milosevic was never convicted at the ICTY. He died before the trial against him finished. See ICTY, Press Release, “Slobodan Milosevic Found Dead in His Cell at the Detention Unit”, (11 March 2006), online: ICTY <http://www.icty.org/sid/8794>.}

From then on, Serbia began the process of democratic change and transition. However, after overthrowing Milosevic, the new government had its own internal disagreements, and never managed to enact more decisive measures to resolve the crimes committed in the past. Vesna Pesic, a sociologist, and once a leader of the DOS, argues that Milosevic’s nationalist model remains unchanged after his fall.\footnote{Vesna Pesic, “Serb Nationalism”, (18 July 2008), online: Pescanik < http://pescanik.net/2008/07/serb-nationalism/>.} She argues that even though there was a common agreement among the leaders of DOS to bring down Milosevic, their reasons for wishing his departure were different.\footnote{Ibid.} Among the DOS leaders there was no agreement on the future system of values or a common understanding of the past. Soon after gaining power, the DOS fell apart.\footnote{Vesna Pesic argues that those deep differences were present in Serbian political history over the past two centuries, and that the division was “between Western-leaning liberals or modernisers and conservative, nationalist narodnjaci keen to defend Serbian patriarchal society from Europe and ‘Western corruption’”. See Pesic, ibid.}
Elected Prime Minister in 2001, Zoran Djindjic led a reformist government with the goal of taking Serbia into the EU; however, he did not have the necessary political support. In March, 2003, he was assassinated by the ultranationalist Unit for Special Operations, also known as the “Red Berets.” Political uncertainty followed the assassination of Djindjic, and soon after his death, the government fell and new one was elected.

5.2.2. Transitional justice

Serbia went through a process of transition from a de facto dictatorship to a democratic society after the overthrow of Milosevic. Part of this process involved transitional justice mechanisms, which are judicial and non-judicial measures implemented by societies to redress legacies of massive human rights abuse. But how have these transitional measures worked in Serbia, and where on the road to transition is the current Serbian society? How is Serbian society dealing with its past?

Analysing how Serbian institutions, and society as a whole, have dealt with those past atrocities is important, in order to determine the current social, political and cultural order in the country, and other relevant background conditions in which the LGBT Pride parades are supposed to occur. Criminal prosecution, truth commissions, repatriation programs, educational reforms, and political elites all matter, in order to determine where Serbian society is in relation to the past conflict and the rule of law.

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236 After the assassination of the Serbian Prime Minister, some of the members of the party split and formed Liberal Democratic Party. The first and current party leader is Cedomir Jovanovic.
Even though Milosevic was thrown out of power, his party suffered defeat in the 2000 elections, and he was later sent to the ICTY to be tried for war crimes,\textsuperscript{238} the roles and responsibility of those closely connected with the Milosevic regime were never examined. For example, the Law on Lustration, passed in 2003, has never been implemented.\textsuperscript{239} Lustration is, according to Priscilla B. Hayner, a process by which people are removed from public employment because of their affiliation with the previous regime. This type of process has never happened in Serbia.\textsuperscript{240}

One of the judicial transitional justice methods is the war crimes trials. The ICTY, as an international tribunal, tries high ranking state officials in The Hague. The majority of cases heard at the ICTY deal with alleged crimes committed by Serbs and Bosnian Serbs.\textsuperscript{241} However, Serbian authorities had problems cooperating with the ICTY, especially when Serbia was asked to extradite the two most wanted fugitives, Ratko Mladic and Radovan Karadzic, both facing charges of genocide in Srebrenica. Eventually, after great international pressure,\textsuperscript{242} they were located in Serbia. Ratko Mladic was the last to be found and, in May, 2011, he was sent to The Hague.\textsuperscript{243}

In addition to international criminal trials, there are also the domestic war crimes trials, in which lower ranking officials and direct perpetrators are charged for some of the crimes they

\textsuperscript{238} See more about Milosevic case at the official ICTY web site. See “ICTY - TPIY”, online: ICTY <http://www.icty.org/>.
\textsuperscript{239} Humanitarian Law Center, BIRN and Documenta, Tranzicijona pravda u postjugoslovenskim zemljama Izveštaj za 2009. godinu, (2009), online: HLC <http://www.hlc-rdc.org/?p=14351> [Joint NGO report].
\textsuperscript{240} See Priscilla B Hayner, Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions (Taylor & Francis, 2011) at 9.
\textsuperscript{241} See ICTY, supra note 238.
\textsuperscript{242} The EU even suspended the talks in the spring of 2006, due to insufficient cooperation with the ICTY. Supra note 228 at 3.
allegedly committed.\textsuperscript{244} Despite these international and domestic efforts, many have still not been held accountable by either judicial institution.\textsuperscript{245} Many victims are also still missing, their families waiting for answers about what happened to them. According to a 2012 report by Amnesty International, some 14,000 people remain unaccounted for.\textsuperscript{246} In addition to the missing persons, according to UNHCR figures, approximately 210,100 displaced persons still reside in the country.\textsuperscript{247} As a result, a network of civil society organizations and individuals started an initiative to establish a Regional Commission on Truth Telling (RECOM). This process is ongoing, and in order to achieve its goals, will require official support from all states in the region.\textsuperscript{248} Until then, cases of war crimes and grave human rights violations will not be fully brought to light.

Criminal trials, conducted internationally and domestically, speak of the extent of atrocities. But how do the new Serbian authorities relate to the crimes committed in the past? The best example for this is Srebrenica. After a lawsuit by BiH against Serbia at the ICJ, Serbia was found responsible for not preventing genocide and for not punishing those responsible.\textsuperscript{249} There have been many ICTY judgements, as well, convicting Bosnian Serb Generals for the genocide in Srebrenica.\textsuperscript{250} In January, 2009, the EU Parliament even adopted a Resolution on

\textsuperscript{244} For more information on domestic trials, see The Office of the War Crimes Prosecutor website. See “Office of the War Crimes Prosecutor”, online: <http://www.tuzilastvorz.org.rs/html_trz/o_nama_eng.htm>.

\textsuperscript{245} Similar outcomes are in Bosnia, Croatia and Kosovo. For more details see Joint NGO report, \textit{supra} note 239.


\textsuperscript{248} The Coalition for RECOM adopted the Draft Statute on March 26, 2011, following a three-year consultative process. This process involved more than 6,000 civil society activists, including victims, families of disappeared persons, judges, prosecutors and lawyers. See “The Coalition for RECOM : Pages : Inicijativa za REKOM”, online: <http://www.zarekom.org/The-Coalition-for-RECOM.en.html>.

\textsuperscript{249} See Bosnian Genocide judgement, \textit{supra} note 225.

\textsuperscript{250} See, for example, \textit{Prosecutor v Radoslav Krtic (Krtic Case)}, IT-98-33-T, Judgment (02 August 2001), (International Criminal Tribunal for Former Yugoslavia, Trial Chamber), online: ICTY <http://www.icty.org>.
Srebrenica, recognising July 11 as the day of commemoration of the Srebrenica genocide in the EU. It called on the countries of the Western Balkans to do the same.\textsuperscript{251}

Despite these judgements and international concerns, for a long time, the Serbian government refused to react to, or to at least adopt a Declaration, as some sort of symbolic reparation to the victims. In March, 2010, the Serbian National Assembly finally held a debate on Srebrenica. This was supposed to be an important way for Serbia to make symbolic reparations to the victims of genocide. The debate was marked with moments of various political calculations about the number of victims, and with expressions of concern for “all those Serbian victims,” when the victims of the genocide in Srebrenica were, in fact, Bosnian Muslims. Some members of the Serbian National Assembly even portrayed Ratko Mladic as a hero, while others emphasised their concern about the use of word genocide in the document. After a long debate, and by a narrow vote, a Declaration condemning the crimes in Srebrenica was passed 30 minutes after midnight.\textsuperscript{252} The word genocide was never used.\textsuperscript{253} A few months after adopting this document, the National Assembly adopted another Declaration, condemning crimes against Serbs.\textsuperscript{254}


\textsuperscript{252} Youth Initiative for Human Rights (YIHR) published transcripts from the parliamentary debate on Srebrenica Resolution. See YIHR, "Usvajanje Deklaracije Narodne skupštine Republike Srbije o osudi zločina u Srebrenici", (2010), online: YIHR <http://rs.yihr.org/rs/article/149/>.

\textsuperscript{253} During the night of 31 March and 1 April, a local group of activists of the Youth Initiative for Human Rights [YIHR] spray painted graffiti “That difficult foreign word genocide” on the pavement at the square outside the Serbian National Assembly. They were detained over night for questioning, and the graffiti was removed before the morning. See Lejla Mazlic “YIHR in Serbia reminding authorities on Srebrenica genocide”, HRH Sarajevo (5 April 2010), online: Human Rights House <http://humanrightshouse.org/Articles/13894>. After the arrests and detention of the activists, Republic Ombudsperson, Sasa Jankovic, made a recommendation to the police authorities to aplogise to the activists, since it was unlawful use of authority. See “Inicijativa mladih traži izvinjenje - B92 Vesti”, B92 (2 June 2011), online: B92 <http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=06&dd=02&nav_category=12&nav_id=516209>.

• **The Constitution**

Another goal of transitional justice is to strengthen the democratic rule of law. Often those laws, and how they are applied, can tell a story about both the rule of law and the society’s main values and goals.

Serbia’s highest legal document, the Constitution, was adopted by an overwhelming majority in parliament after a two-day referendum, and entered into force in November, 2006. It was adopted during the same period that Kosovo was announcing its intent to declare independence. The most interesting feature of the new Constitution is the Preamble, which states that “the Province of Kosovo and Metohija is an integral part of the territory of Serbia”, and that, furthermore, there is a “constitutional obligation of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations.”

Keeping Kosovo within Serbia is a part of the presidential oath. The goal of preserving Kosovo inside Serbia was a large part of a media campaign for the adoption of the Constitution, and that is why some critics of the Constitution believe it was only adopted because of Kosovo.

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255 It was adopted after a two day referendum, and marked frenzied and multiple calls made by almost all political parties, asking people to go out to vote in order to adopt it. On the morning of the second day, even a Serbian Orthodox Church Patriarch came out to vote, and called out to people to vote for the new Constitution.

256 As a consequence of this, Serbia did not recognise Kosovo, or documents issued by Kosovo state. Serbian officials would often leave conferences that were attended by Kosovo representatives. Furthermore, Serbia refused to recognise Kosovo stamps in passports, which would make movement to and from Kosovo more complicated. See, for example, “Kosovo Country Specific Information”, online: U.S. Department of State <http://travel.state.gov/travel/cis_pa_tw/cis/cis_4170.html>. Even airplanes flying from Kosovo could not fly over Serbian airspace. See Fatos Bytyci, “Serbia-Kosovo talks could end border charades”, Reuters (17 September 2010), online: Reuters <http://in.reuters.com/article/2010/09/17/idINIndia-51568820100917>.


The next concerning feature of the constitution is Article 1, which proclaims that the “Republic of Serbia is a state of Serbian people and all citizens who live in it.”\(^{259}\) This positioning of Serbians as a primary People living in Serbia could be interpreted problematically to enhance nationalism. It might also be interpreted as a statement that other citizens living in Serbia are second class citizens.

Article 11 of the Constitution declares Serbia as secular state.\(^{260}\) However, the interference of the church in state matters is enormous, and often welcomed by politicians and state institutions. Professor Biljana Stojkovic, an evolutionary biologist at the University of Belgrade, offers many examples of that influence:

[...] priests are members of Republic broadcasting agency, where they should supervise TV programs and be some sort of moral advisers in consistence with the spirit of orthodox Christianity. They are also members of several University Councils, and National Education Council, with similar tasks of spreading influence of church.

Furthermore, they are advisers of politicians; many politicians go to visit Serbian Patriarch whenever they are facing some difficulties in political practice. These visits are always important part of politic marketing on television. We have to watch long TV report about these meetings where our political representatives kiss priests hands. Additionally, offices in State buildings are full of religious symbols (crosses and icons).\(^{261}\)

This shows that even though there is no official state religion, the dominant religious organization is the Serbian Orthodox Church, which often receives preferential treatment.\(^{262}\)


\(^{260}\) Ibid at Article 11.

\(^{261}\) Stojkovic, supra note 222.

\(^{262}\) According to the US Department of State report, “non-Serbian Orthodox religious organizations continued to report difficulty in obtaining permission from local authorities to build new worship facilities.” See Department Of State The Office of Website Management, Bureau of Public Affairs. “Serbia”, (11 March 2010), online: US Department of State <http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136056.htm>; Another example of preferential treatment, is data that the majority of the budget that is designed for civil, non-governmental organizations, goes to Serbian Orthodox Church. See Stojkovic, ibid.
• Corruption and transparency

A lack of transparency, and corruption in the legislative, executive, and judicial branches of government still present a big problem for the rule of law in Serbia. According to the 2011 Transparency International Corruption Perceptions Index, Serbia is “highly corrupted,” with a 3.3 index score.\(^{263}\) Serbia suffers from systemic corruption in all areas, according to the annual report of the Anti-Corruption Council, an independent national institution established to fight corruption. However, even the members of this Council encountered many difficulties and obstructions in performing their job duties, including threats, and had to ask the government for protection.\(^{264}\) Since the work of this institution was often blocked and ignored, and it did not provide adequate results, the EU Commission and CoE recommended forming a new institution to control corruption, the Agency against Corruption, which officially started its work in 2010.

National Human Rights Institutions (NHRIs) have been established by the new laws that were supposed to prevent corruption, increase transparency, and ensure respect for human rights and the rule of law. However, the adoption of those laws, and the functioning of each of these institutions, has encountered various obstacles, delays and lack of support. The obstacles included withholding offices, not providing the necessary minimum requirements for these NHRIs to commence their operations,\(^{265}\) making regulations that have many gaps, or completely.

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\(^{263}\) *Supra* note 2121. The Corruption Perceptions Index is based on how corrupt the public sector is perceived to be. On this scale, “0” means that a country is perceived as highly corrupt, while “10” means that a country is perceived as less corrupt.


\(^{265}\) Law that was supposed to establish the Ombudsperson office in Serbia: The Law on the Protector of Citizens was adopted in 2005 (See *Zakon o zastitniku gradjana*, Official Gazette of the Republic of Serbia, No 79/2005,54/2007). However it was only two years after it was adopted that Sasa Jankovic, a Republic Ombudsperson was elected. And even then that institution couldn’t function because of lack of any office space and staff which was supposed to be elected by National Assembly. For more details see *Sasa Jankovic, 2007 Annual Report on Protection of Citizens* (Belgrade, 2008), online: Ombudsman <http://www.ombudsman.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>
ignoring requests from the institutions, and, in some extreme cases, breaking the laws whose implementation they are meant to supervise.

- **Judiciary**

  The judiciary in Serbia is proclaimed to be independent. Two of the biggest problems in Serbia's judiciary are the huge backlog and corruption. In 2009, overall judicial reform was conducted in Serbia, resulting in the re-election process of all the judges and prosecutors. However, the involvement of some of the candidates in the past human rights abuses was never considered. The election process was filled with many irregularities. Among the elected judges were those who had had an active role in election fraud in 2000, when Milosevic tried to overturn election results in his favour. The whole process was marked as a “matter of serious concern” by the European Commission in its 2010 Progress Report for Serbia. The European Commission further noted that the reappointment procedure for judges and prosecutors was “carried out in a non-transparent way” and therefore, it put at risk the principle of the independence of the judiciary.\[translated by the author.\]

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\[translated by the author.\]

\[266\] For example the Law on Free Access to Information of Public Importance, was brought in order to establish necessary transparency in the work of the state institutions. However it cannot be applied against the biggest the highest authorities: the National Assembly, the President of the Republic of Serbia, the Government of the Republic of Serbia, the Supreme Court of Cassation of Serbia, the Constitutional Court and the Republic Public Prosecutor. *Law on Free Access to Information of Public Importance*, Official Gazette of the Republic of Serbia Nos. 120/2004, 54/2007, 104/2009 and 36/2010, (Unofficially consolidated text and translation into English), online: Commissioner for Information of Public Importance and Personal Data Protection <http://www.poverenik.rs/en/pravni-okvir-pi/laws-pi.html>.

\[267\] Ministry of Culture, in whose job description it is to control the implementation of this law, has also broken the law. See YIHR 2006 report *supra* note 257 at 7.

\[268\] *Supra* note 259 at Article 4.

\[269\] See Joint NGO report, *supra* note 239.


• The Police

As mentioned above, Milosevic’s regime used police and other security services to deal with its opponents. However, making progress in policing, and changing old habits, is not easy to achieve. In October, 2001, the OSCE published a report entitled “Study on Policing in the Federal Republic of Yugoslavia.” According to this study, “the reason why so many situations are accompanied by assaults, resistance and resentment is because the police officers not only fail to act, but fail to understand that it is their duty to act, according to a professional code of conduct.” 272 This shows that there is still a lack of training and reform of the Serbian police, in order for it to properly serve its citizens.

• Political elites

The Republic of Serbia is a multiparty parliamentary democracy. The main legislative body of Serbia, the National Assembly, is made up of 250 deputies chosen in direct general elections for a period of four years. The deputies in the National Assembly elect the Government of the Republic of Serbia, which, together with the President of the Republic, represents the country’s executive authority. Boris Tadic, from the Democratic Party, recognised as the party of the assassinated Prime Minister Zoran Djindjic, was once again elected as a president in February 2008. Leading the coalition “For European Serbia,” the Democratic Party also won the most seats in the National Assembly in its May 2008 elections. 273 The Serbian Radical Party (“Radical Party”) won the second most votes after the Democratic Party. It was the main opponent of reforms after 2000, and its leader, Vojislav

273 The election was held barely a year after the previous parliamentary elections.
Seselj, is in detention at the ICTY facing charges for crimes against humanity.\textsuperscript{274} However, the Radical Party split in September 2010. Tomislav Nikolic and Aleksandrar Vucic, once close associates of Seselj, formed a new party, the Serbian Progressive Party (“Progressive Party”). They, and many other members of Radical Party, replaced their “Seselj” support badges with a pro-European program.\textsuperscript{275}

After the elections in 2008, the coalition “For European Serbia” did not win enough seats to form its own government, so they compromised, and formed a government by entering into a coalition with the Socialist Party.\textsuperscript{276} The new government coalition consisted of the Democratic Party, led by Boris Tadic; the Socialist Party,\textsuperscript{277} led by Ivica Dacic, a former Milosevic spokesperson; United Serbia, led by Dragan Marković, the Mayor of Jagodina; the Party of United Pensioners of Serbia; and 6 of 7 minority representative MPs. On October 21, 2008, the Democratic Party and the Socialist Party signed a “Declaration on Reconciliation,” stating that their future cooperation would be based on “overcoming disputes from the past.”\textsuperscript{278} Just like that, the past of the Socialist Party was forgiven and forgotten. There is a children’s song in Serbia that goes “Mir mir mir niko nije kriv,” meaning “peace peace peace no one is to blame.” Teachers often use it to stop fights and make children be friends again, by making them declare that no one is to blame for the previous argument. That is how children’s fights are resolved in Serbia, and that is how the role of Socialist Party, during the rule of Milosevic, was resolved.

\textsuperscript{274} For more details on Seselj case, see “The Cases”, online: ICTY <http://www.icty.org/case/seselj/4>.
\textsuperscript{275} Since their leader, Vojislav Seselj, willingly surrendered to the authorities in The Hague, his party members have worn badges with his face, on which a message “Seselj hero” was written.
\textsuperscript{277} The 0Socialist Party is a former Milosevic party, and is now lead by Ivica Dacic. Mr Dacic served as the party PR during Milosevic regime.
The main political goals of the new government in Serbia, where the unemployment rate in 2009 was 16% and rapidly growing, are EU accession and keeping Kosovo as a part of Serbia. After the setback in 2006, when negotiations with the EU were cancelled, because of lack of cooperation with the ICTY, Serbia was finally able to officially apply for EU membership in December 2009. As a part of the EU integration, Serbia receives significant pre-accession financial assistance, focused on areas such as strengthening the rule of law, human rights, education, transport and environmental protection.

The second main political goal is based on revisionist national tales, in which Kosovo is often seen as a Serbian “holy land.” On February 17, 2008, Kosovo, with a majority Albanian population, declared independence. Serbia does not recognise Kosovo as an independent state, and blocks its membership in the UN and other international organisations. Under the pressure of the EU, Serbian and Kosovo officials began negotiations in 2011. However, Kosovo remains the focus of Serbian nationalism, and relations between Serbia and Kosovo are of international concern. Citizens of Serbia see the Battle of Kosovo as the most important event in Serbian history (22%). As noted above, this view of Kosovo is enshrined in the Constitution, and is a central political concern. It is also a much-used tool for political propaganda, both mainstream and among right-wing extremist organisations.

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279 The unemployment rate for Serbia in 2011 ended up at a staggering 23%, according to the Vienna Institute for International Economic Studies. See “Country Expertise-Serbia”, online: The Vienna Institute for International Economic Studies <http://www.wiiw.ac.at/?action=publ&id=countries&value=47>.

280 Under the so-called Instrument for Pre-accession Assistance (IPA), Serbia’s national IPA allocation for 2010 totalled €197.9 million. See Serbia 2010 Progress Report, supra note 271.


282 In 1389, Serbs fought the battle of Kosovo against the Ottoman Empire and many died. This event become a key event in Serbian history. Furthermore, since many of the Serbian Orthodox Churches are there, some groups consider Kosovo to be a Serbian Holy land.

283 At this moment, that concern is mostly in the hands of the EU, as the UN mission in Kosovo (UMNIK) is being replaced by the EU mission in Kosovo (EULEX).

• **Right wing extremist groups**

Several right-wing extremist organisations operate in Serbia. These groups are relevant to this case study, as they have become important and violent social actors in Serbia, which will be demonstrated in the Belgrade Pride analysis below. They also direct some of their attention and resources to counter the efforts of the LGBT movement. The common values that connect all of them are Serbian patriotism, Orthodox Christianity, respect for traditional values, negative attitudes towards the EU, cooperation with Russia, and their politics toward Kosovo. These groups often protest against the EU integration and oppose the extradition of Serbian generals and officials to the ICTY. Several political parties have expressed similar views, including the Radical Party, the Democratic Party of Serbia, the New Serbia and the Serbian Progressive Party (“Progressive Party”).

In 1994, Nebojsa Krstic, a theologian, launched a publishing house named Obraz, which engaged in Church and patriotic publications. Following the crisis in Kosovo, Krstic turned Obraz into an ultranationalist movement. After he died in a car accident in 2001, Obraz continued its course under the leadership of Mladen Obradovic. Dveri Srpske (Dveri) is another prominent nationalist organisation. According to the 2009 Helsinki report, it is an extremely

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287 This party was once part of the coalition that defeated Milosevic. It is led by Vojislav Kostunica.
288 *Ibid* at 34.
289 Obraz in Serbian means “dignity” or “Honor”.
290 The founder of Obraz even received a Saint Sava award 1991 from the Serbian Orthodox Church Patriarch Pavle. See Helsinki 2009 Report, *supra* note 264.
rightist organization that “runs the project Movement for Life campaigning for homophobia and against abortion.”\textsuperscript{292} It also publishes a magazine under the same name.\textsuperscript{293}

Other right-wing organisations that share similar values are: the Serbian Peoples’ Movement Nasi (SNP Nasi) and the Serbian Peoples’ Movement 1389 (SNP 1389).\textsuperscript{294} In addition, some football fan groups are known to carry pictures of Mladic and Karadzic and chant: “knife, wire, Srebrenica.”\textsuperscript{295} Overall, the number of the right-wing groups and associations has increased in Serbia over the years after the democratic changes in 2001.\textsuperscript{296}

- **Education**

Education plays a crucial role within the complex process of political, economic and social transition in the post-conflict period. Of special concern for the process of reconciliation are the history textbooks used in schools. Will they help the process of reconciliation, or keep the old divisions and deepen the conflict between the divided communities? Dubravka Stojanovic, professor at the Belgrade University and a Serbian historian, did a comparative analysis of the interpretation of the wars of the nineties in Serbian textbooks published in the nineties, and in those published after the political changes in 2000. She concluded that, even though there was a shift in the history books, “Serbs once again turned to be the victims, and the historic injustice once again remained the key explanation of events.”\textsuperscript{297} In today’s textbooks, for the final years of primary “secondary school in Serbia, students aged 15 to 19, the most recent history on the

\textsuperscript{292} Helsinki 2009 Report, *supra* note 264264.
\textsuperscript{293} *Ibid.*
\textsuperscript{294} 1389 is a year of the historic battle of Kosovo. SNP is an abbreviation and stands for Serbian Peoples’ Movement
\textsuperscript{295} Korac, *supra* note 258.
dissolution of Yugoslavia contains the interpretations which were present in textbooks during the times of Milosevic.

A more general problem with Serbian history education, according to Professor Stojanovic, is that critical thinking and a multi-dimensional approach are not being used in Serbian schools.298 These approaches would, according to her, create citizens who are more resistant to manipulation.

Professor Stojanovic’s research from 2010 provides an example of the current misconceptions in Serbian society about events that occurred long ago. She asked people some general history questions from the primary school books. One of the questions was who was in the alliance of Serbia at the Thessaloniki front? The answer seemed easy since it was France and there are many examples of gratitude to France in Serbia, such as public monuments. To Professor Stojanovic’s surprise, 70% of the interviewees claimed it was Russians and/or the Greeks. This, according to Prof. Stojanovic, shows not only how bad Serbian education is, but also demonstrates the need to “transfer today’s alliance, into the year 1916.” This means that today Russia and Greece are seen as the allies of Serbia, so that people in Serbia believe that it must be them who helped Serbia in important historic battles, and not those Western countries that are “always” against Serbia.

Another concern about Serbia’s educational system, according to Professor Biljana Stojkovic, is the role of religion. Religion first entered the Serbian curriculum in 2000, when students in primary and secondary schools were required to attend classes either on one of the seven "traditional" religious communities or on civic education.299 Stojkovic claims that since

299 According to the US State Department report, even though the representatives from the Ministry of Religion stated that the law also permits registered, non-traditional religious groups to offer classes, none have attempted to
2000, several ministers of education were members of right-wing political parties who explicitly showed their sympathy for religious education. The most shocking event, was when a Serbian minister of education, Ljiljana Colic, suspended the teaching of evolution on September 7, 2004. She was forced to resign later that year after many protests.300

- Gender equality

Serbia is still a patriarchal society, with deep-rooted stereotypes regarding the role and responsibilities of women and men in the family and in the wider community. This patriarchal matrix manifests itself through a high level of violence against women, in particular domestic violence, through women’s disadvantaged situation in the labour market, and through their low level of participation in political and public life.301 Zarana Papic notes the connection between ethnic and gender violence. According to her, this connection is very visible in the breakup of Socialist Yugoslavia.302 During violent conflicts, the roles of women vary. They are often portrayed as mothers, with their primary function being childbearing,303 as well as objects to be stolen or broken and, in the extreme cases, to be raped, as a means of ethnic domination.304

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300 Ljiljana Colic was forced to resign after protests of teachers and university professors on 16 September 2004. See Stojkovic, supra note 222.
302 Zarana Papic, “Women in Serbia: Post-Communism, War, and Nationalist Mutations” in Jelisaveta Blagojevic, Svetlana Slapsak and Katerina Kolozova (eds), Gender and Identity: Theories from and/or on Southeastern Europe, (Women's Studies and Gender Research Center, 2006) at 122.
303 This notion of motherhood has been utilized in many ways in the breakup of former Yugoslavia. See, for example, analysis of the media reactions in Serbia and Croatia to a rape joke by an Albanian politician in Kosovo: Dubravka Žarkov, The Body of War: Media, Ethnicity, and Gender in the Break-up of Yugoslavia (Duke University Press, 2007).
304 Not many of those wartime cases have been prosecuted, and there is a need for other mechanisms to achieve transitional justice for the victims of wartime rape. See Vesna Nikolic-Ristanovic, “Sexual Violence, International Law and Restorative Justice” in Doris Buss & Ambreena S Manji, eds, International Law: Modern Feminist Approaches (Hart, 2005) at 275.
There is also a strong connection between gender, patriarchy, nationalism, and violence that remains visible after the conflict. Reports showing increased violence against women during 2008 and 2009 confirm this negative trend. Women are still often viewed in their traditional roles, expected to stay at home and give birth to the children. When these gender and traditional family stereotypes become a central element of identity, fear and hatred towards those that are different can increase, because they are portrayed as threatening that identity. That is why homophobia is connected closely to gender inequality, stereotypes and nationalism. Some of those examples will be exposed in the case study below, where the notions of “protecting the family,” “serbhood” and “traditional values” are promoted by those who oppose the Pride Parades.

5.2.3. LGBT movement in Serbia

There is very little official data on LGBT issues and human rights violations in Serbia, but many reports and studies by LGBT and human rights NGOs have documented events. The LGBT movement in Serbia bears some of the consequences of the past conflict. Just before the start of the violent conflict in Yugoslavia, Arkadija, an LGBT lobby group, was formed. It officially registered in 1994, when homosexual sex was decriminalised. Arkadija was short-lived, because social circumstances, such as civil war in the former Yugoslavia, the rise of nationalism, and economic depression took priority. During the war period, some LGBT activists joined the anti-war movement. Today, there are many LGBT organisations, online communities, and initiatives that deal with LGBT human rights. Some of these were founded by

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305 Helsinki 2009 Report, supra note 264.
the former members of Arkadija. Currently, the biggest LGBT organisations in Serbia are Labris, Queeria, and Gay Straight Alliance (GSA), all of which have their offices in Belgrade.

Shortly after the fall of Milosevic in 2001, LGBT organisations, encouraged by the democratic changes, attempted to organise the first Pride Parade.\textsuperscript{309} It was a disaster. Police were outnumbered, and they could not or would not protect participants. Gathered at the central city square, Trg Republike, the participants were attacked by a crowd of people, including football hooligans and members of the right-wing group Obraz. Many were injured. What followed was a long period of silence and there was no public discussion of the LGBT people.\textsuperscript{310}

On the other side of that public void, many legal changes were happening. In 2005, the Serbian National Assembly adopted four laws which specifically banned discrimination based on sexual orientation. Those laws are the Labour Code, the Law on Higher Education, and two media laws: the Law on Public Information and the Law on Broadcasting.\textsuperscript{311} The last legal obstacle was removed in 2006, when the new Penal Code came into force, and the age of consent was equalised for all sexual relationships.\textsuperscript{312} On May 14, 2008, the Serbian Medical Society finally officially recognised that homosexuality is not a disease.

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\textsuperscript{307} Serbia was the 10\textsuperscript{th} to last in COE countries to decriminalise homosexual sex. See supra note 10 at 24.

\textsuperscript{308} For more details, see Lepa Mladjenovic, “Notes of a feminist lesbian during wartime” (2011) 8:3 The European Journal of Women’s Studies 381.


\textsuperscript{310} This does not mean that the LGBT organizations in Serbia stopped working, but rather LGBT issues were invisible in media and public life in this period.


\textsuperscript{312} The age of consent in Serbia is 14, regardless of sexual orientation and/or gender identity.
In 2008, after a long dormant period, the Belgrade Queer Festival was organised. Some of the participants were violently attacked by young men from Obraz. The district prosecutor in Belgrade dismissed the allegations of discrimination on the basis that there was no evidence, and declined to file criminal charges.

The third public incident occurred in February, 2009. The Gay Straight Alliance (GSA) rented the Media Centre at the Sava Convention Centre for 26 February, to present a report entitled “This is our country”, regarding the state of discrimination against LGBT people in Serbia in 2008. However, two days before the scheduled press conference, the organisers received a call from the management of the Sava Center, informing them that their reservation was cancelled. It was cancelled because the organiser was a gay organization. After pressure from NGOs and the media, the Sava Center director, Dragan Vucicevic, and Belgrade’s mayor, Dragan Djilas, eventually issued public apologies to the GSA.

The incident in the Sava Center occurred just before the general Anti-Discrimination Law was to be presented to the National Assembly. This law was not only about discrimination based on sexual orientation and gender identity, but would, if adopted, provide general protection from discrimination. The work on the draft of the Anti-Discrimination Law started eight years earlier, in 2001, and then went through a long consultation process, with NGOs and government Ministries working together, and organising public debates. There were more than enough

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314 Ibid.

315 GSA report 2009 at 42.


occasions for any interested party to express their objections or provide input.\textsuperscript{318} Despite this, the night before the Anti-Discrimination Law was to be debated and voted on in the National Assembly, the government received a call from Orthodox Church officials, who also had support from other “traditional” religious communities in Serbia. As a result of this call, the proposed law was withdrawn from the National Assembly consideration the next morning.\textsuperscript{319}

Again the NGOs were the ones to react the loudest and they started campaigning more fiercely for the law in the media.\textsuperscript{320} They were joined by international officials.\textsuperscript{321} This was an important law for the new pro-European government, as it was part of reforms intended to align the national laws and policies with EU \textit{acquis}, and for Serbian citizens to get a visa-free regime to travel in Europe.\textsuperscript{322} On March 13, 2009, the proposal was back in National Assembly with a few alterations.\textsuperscript{323} The debate in National Assembly was marked with delaying tactics, like submitting over 400 amendments, and homophobic speeches as some members said they were...

\textsuperscript{318} Ibid.
\textsuperscript{319} Ibid at 8-9.
\textsuperscript{320} According to the Labris media report, as a part of this media campaign, more than 200 texts were published. See Labris 2009 Report, supra note 313 at 9.
\textsuperscript{322} Adopting and enforcing anti-discrimination was one of the required benchmarks by the EU. For more on visa liberalisation in the Western Balkans, see “Europeanisation through mobility: visa liberalisation and citizenship regimes in the Western Balkans”, 2012/21 CITSEE Working Paper Series, online: CITSEE <http://www.law.ed.ac.uk/file_download/series/374_europeanisationthroughmobilityvisaliberalisationandcitizenshipregimesinthewester.pdf>; the need for the comprehensive Anti-Discrimination law was identified by the by the European Commission’s 2008 progress report on Serbia. According to that report, widespread discrimination, in particular against the Roma community, people with disabilities, ethnic minorities and people of different sexual orientation, prevails. See EC Commission, \textit{Serbia 2008 Progress Report} (Brussels: EC 2008), online: European Commission <http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm> at 39.
\textsuperscript{323} The clause prohibiting discrimination on the ground of gender identity was removed from Article 21, but in Article 20, an alternative clause prohibiting discrimination against transsexuals was added: “It is forbidden to deny rights or to grant privileges, be it publicly or covertly, pertaining to gender or gender change.” Furthermore, in Article 18, it was added that the conduct of priests and other religious officials, which is in accordance with religious beliefs, does not constitute discrimination. See Anti-Discrimination Law, supra note 18 at Articles 18, 20, 21.
“jeopardised” by this law, while others compared homosexuality with sodomy and pedophilia.\textsuperscript{324}

On March 26, 2009, the Serbian National Assembly finally adopted the comprehensive Anti-Discrimination Law. According to Article 61 of the Law, the National Assembly had a duty to elect a Commissioner for equality, a new National Human Rights Institution in Serbia whose purpose was to monitor implementation of the Law.\textsuperscript{325}

The homophobic outbursts in the National Assembly were a mirror of the high level of homophobia in the Serbian society. According to the public opinion polls conducted in 2008, 67% of the population think that homosexuality is an illness.\textsuperscript{326} Half of the population believes that “homosexuality is very dangerous for society.” Furthermore, 45% see the Pride Parade as a kind of provocation, and as many as 58% say that they “have nothing against homosexuals, as long as they keep their activities private.”

The topic of homosexuality also has political implications, as 40% of the population agrees that “if a party I vote for started talking about the rights of homosexuals, I would stop voting for it.”\textsuperscript{327} This 2010 survey shows there is a correlation between traditional attitudes regarding gender, family, religion, and nationalism, on the one hand, and negative attitudes towards homosexuals on the other. Another study by Labris, from 2006, shows that stereotypes and prejudice still exist in the University and High School textbooks.\textsuperscript{328}

\begin{footnotes}
\item[325] See Anti-discrimination Law, \textit{supra} note 18.
\item[326] See Gay Straight Alliance (GSA) and Centre for Free Elections and Democracy (CeSID), \textit{Prejudices Exposed—Homophobia in Serbia 2010 (Research Report)} (GSA, 2010), online: Gay Straight Alliance <http://gsa.org.rs/2010/07/predrasude-na-videlo-homofobija-u-srbiji-2010/#more> at 8.
\item[327] Ibid.
\item[328] See, for example, Ivana Cvorovic, Ljiljana Zivkovic, \textit{Istopolna orijentacija u fakultetskim udžbenicima i literature} (Belgrade: Labris, 2006) [Same Sex Orientation in Faculty Textbooks and Literature]. See also Dragana Vuckovic \textit{Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity,(Sociological Report: Serbia)} (COWI and Danish Institute for Human Rights, N.d.), online: Council of
\end{footnotes}
5.3. Belgrade Pride

5.3.1. Legislative framework

Before the case study about the three Belgrade Pride parades, I will briefly lay out the international and domestic legal framework relevant for those events. This legal framework analyses relevant legislation in relation to discrimination based on sexual orientation, as well as other necessary legal conditions for the Pride events to occur.

As mentioned earlier, Serbia has signed all the major human rights conventions. Serbia, as a member of the UN, has committed itself to the Universal Declaration. In addition, Serbia has signed all the major human rights conventions, including the nine conventions mentioned previously in Chapter 3. Those conventions provide protection from discrimination, and their monitoring treaty bodies have interpreted that sexual orientation is one of the grounds of discrimination. Freedom of association and assembly are protected in Article 20 of the Universal Declaration of Human Rights and Article 21 of ICCPR. Furthermore, Serbia has kept a good track record at the UN when it comes to initiatives whose goal is to improve lives of LGBT people, such as the Resolution on Sexual Orientation and Gender Identity.

At the regional level, Serbia has signed and ratified the main human rights document in Europe - the ECHR - and the additional Protocol 12, which includes a general prohibition against discrimination. Article 11 of the ECHR guarantees Freedom of assembly and association. Moreover, the ECtHR, in several of its decisions, has expressed clearly that banning of gay prides represents not only a limit on freedom of assembly and constitutes discrimination, but that


329 Universal Declaration, supra note 12; ICCPR, supra note 13.

330 Resolution on Sexual Orientation and Gender Identity supra note 33.
States have a positive obligation to protect the participants of an assembly from violent counter-demonstrators.331

All of those international human rights documents and ECtHR decisions are legally binding on Serbia, as Article 15 of the Constitution of Serbia clearly states that “[g]enerally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly”.332

At the domestic level, discrimination on the grounds of sexual orientation is prohibited by four special laws (Labour Code, Law on Higher Education, Law on Public Information and Law on Broadcasting), and by the comprehensive Anti-Discrimination Law. According to the Law on Public Information, it is unlawful to publish ideas, information or opinion which promotes discrimination, hate or violence against a person, or a group of persons, only because of their sexual orientation, regardless whether a criminal offence was committed by such publishing. The Law on Broadcasting prohibits discrimination on the grounds of sexual orientation.333 The Law on Higher Education explicitly mentions sexual orientation in its anti-discriminatory provision.334 Discrimination is also defined as a criminal offence, according to the Penal Code (Articles 128, 317 and 387).335

However, the most significant legal document protecting people from discrimination based on sexual orientation is the Anti-Discrimination Law. Article 21 specifically bans

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331 In 2005 case, Bączkowski and Others v. Poland, the court concluded that administrative bans imposed by the Polish authorities on the organisers of the Pride event represent discrimination, and are a violation of freedom of assembly. The ECtHR found that there were violations of Article 11 (freedom of association and assembly), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination). In this case, a Mayor of Warsaw refused to grant permission for the Pride Parade, because the organizers did not submit a traffic plan, and there were other counter-protests scheduled which could result in violent clashes. See Bączkowski and Others v. Poland, No. 1543/06, (2007), ECHR, online: HUDOC <http://hudoc.echr.coe.int>; see also, Alekseyev v. Russia, supra note 153.
332 See The Constitution, supra note 259.
333 See Law on Broadcasting, supra note 311.
334 See Law on Higher Education, supra note 311.
discrimination based on sexual orientation. This law also bans hate speech. Article 11 stipulates that:

It is forbidden to express ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public organs and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways.336

This law establishes a new National Human Rights Institution, the Commissioner for Protection of Equality (the Commissioner). There are two legal remedies available to those who are discriminated against, according to the Anti-Discrimination Law: a complaint to the Commissioner, or filing a complaint to the court and resolving the issue in a civil procedure.

These laws and their provisions related to discrimination based on sexual orientation often encounter difficulty when it comes to their application. Although the Law on Broadcasting prohibits discrimination on the grounds of sexual orientation, some media still publish slurs against LGBT persons.337 Many of the medical studies textbooks discuss same-sex orientation mostly in a negative context.338 Furthermore, the Commissioner established by the new Anti-Discrimination law has experienced many procedural difficulties. For example, if a person has moved to another address, the Commissioner has no authority to ask for the new address of that person, and therefore, is unable to serve them with the necessary documents.339 The Commissioner cannot initiate the process on her or his own initiative, but may only act upon individual complaints or complaints from other interested parties, such as NGOs.

336 See Anti-Discrimination Law, supra note 18 at Article 11.
337 For examples of some of those violations see Vuckovic, supra note 316 at 22-23.
338 See Cvorovic, supra note 328 at 27-43.
339 For one of the examples of this limitation, see Jovanka Todorovic Savovic & Darko Koenig, Slucajevi nasilja i diskriminacije prema LGBTIQ osobama u 2011. godini (Belgrade: Labris, 2012) at 17 [Research conducted by Labris on violence against LGBTIQ people in Serbia]. Dragana Vuckovic, in her report, mentions an example of the biology text book for the third grade students of medical high schools, where it is stated that “there are also such characteristics which in a lesser form deviate from normal behavior and are considered as deviant forms of behavior. Such characteristics include for example, the tendency towards criminal behavior, the use of alcohol and drugs, homosexuality, as well as many other characteristics which deviate from the standard of usual behaviour”.

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When it comes to Pride parades, guaranteeing the freedom of assembly needs to be regulated adequately. The Constitution of the Republic of Serbia guarantees freedom of assembly to all citizens. According to Article 54 of the Constitution, freedom of assembly may be restricted by the law only if it is necessary to protect public health, morals, the rights of others, or the security of the Republic of Serbia. According to the Law on Assembly, all gatherings, demonstrations and other forms of assembly held outdoors need to be reported to the appropriate state body. That state body is the Ministry of Interior, and it is regulated in more detail by the Law on Assembly.

However, the Law on Assembly does not provide enough assurances for this right to be applied, and conflicts with the Constitution in some cases. This law has a complex history since it was passed during the 1990s, when Milosevic was in power, and used it extensively to prevent public gatherings of which he disapproved. Despite recommendations from the Venice Commission and OSCE, the law has not been amended.

According to a Belgrade Center for Human Rights report, the following issues are of concern when it comes to the Law on Assembly. First, the law does not specify the obligation of police to protect peaceful gatherings. Second, public gatherings that are on the move (the Pride

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340 See The Constitution, supra note 259 at Article 54.
341 Ministry of Interior is a ministry in Serbia, which is in charge of policing.
parade would be defined as such) are limited when it comes to the location and time. Third, the police have too much discretion when deciding which of the public gatherings to ban.\textsuperscript{345}

While Article 10 stipulates that only a court can issue a permanent ban, Article 11 authorises the police to ban an assembly for the purpose of “preventing a disruption of public transport, a threat to public health, morals or the safety of people or property,” and it can do so without a special court procedure.\textsuperscript{346} This ban can be issued 12 hours before the proposed gathering. This puts in question the effectiveness of the legal remedy, because if an organisation is served with such a ban, they could only have 12 hours to appeal to the courts.

There is no provision in the Law on Assembly that gives the police authority to change the location of a public assembly. The relevance of this point will become apparent below, in the analysis of the 2009 parade attempt.

In December 2009, the Penal Code was changed to forbid violent behaviour at sporting events or public meetings. Article 387 clearly states that, “whoever spreads or otherwise makes publicly available texts, images or any other representation of ideas or theories advocated or incites hatred, discrimination or violence against any person or group of persons based on race, colour, religion, nationality, ethnic origin or other personal characteristics, shall be punished with imprisonment from three months to three years” and “whoever publicly threatens, a person or group of persons because of membership in a particular race, colour, religion, nationality, ethnic origin or for other personal characteristics, shall be punished with imprisonment from three months to three years.”\textsuperscript{347}

In general, according to this international and domestic legal framework, all persons should be protected from discrimination based on sexual orientation. Media should not transmit

\begin{footnotes}
\textsuperscript{345} For more details on the limitations of the law on Public Assembly, see Petrovic, \textit{supra} note 343 at 142-147.
\textsuperscript{346} Law on Public Assembly, \textit{supra} note 342 at Article 11.
\textsuperscript{347} See Penal Code, \textit{supra} note 335 at Article 387; See also Vuckovic, \textit{supra} note 316 at 11.
\end{footnotes}
hate speech, and freedom of assembly should be guaranteed equally to everyone. Also, people who make public threats should be imprisoned. And, last but not least, there is a guarantee of freedom of assembly. The authorities have an obligation to protect organisers of peaceful assembles like the Pride Parades from counter-demonstrations. What follows is a study of attempts of LGBT organisations in Serbia to hold one such peaceful assembly - the Belgrade Pride, from 2009 to 2011. In this study, I will demonstrate what happened with that legal framework on the ground, in the case of Belgrade Pride. This case study will demonstrate the strengths and limitations of international and domestic laws in protecting rights of LGBT people in Serbia.

5.3.2. Belgrade Pride 2009

- The announcement

On April 28, the Pride Parade Organising Committee (OC) announced a plan to organise a gay pride parade in Belgrade, at a press conference which was held at the Belgrade Media Center (Medija Centar Beograd).\textsuperscript{348} The exact date of the pride parade was not disclosed, but organisers assured that it would be sometime in the summer. This initiative had wide support from the start from many NGOs\textsuperscript{349} in Serbia.\textsuperscript{350} During the conference the organisers emphasised four things: that the Serbian police were ready this time; that this event was about human rights; that the international community was watching; and that necessary conditions existed now with


\textsuperscript{349} I use the NGOs in this section to refer to human rights non-governmental organisations.

\textsuperscript{350} According to the organisers, more than 48 NGOs signed a petition in support of this event. See “'Parada ponosa' u Beogradu”, \textit{B92} (28 April 2009), online: B92 <http://www.b92.net/info/vesti/index.php?yyy=2009&mm=04&dd=28&nav_category=12&nav_id=357862>; “Gej parada na leto u Beogradu”, \textit{B92} (28 April 2009), online: B92 <http://www.blic.rs/Vesti/Drustvo/90213/Gej-parada-na-leto-u-Beogradu>; I.T., “Borba za ravnopravnost, a ne provokacija”, \textit{Danas} (29 April 2009), online: Danas <http://www.danas.rs/danasrs/hronika/borba_zaravnopravnost_a_ne_provokacija.3.html?news_id=160030>. 

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the new Anti-Discrimination Law in force. The next day, on behalf of the right-wing group Obraz, which took part in attacks on the 2001 Pride Parade, Mladen Obradovic made a statement to the press that their duty is to “defend the right of Serbian people and their right to healthy family and healthy society.”

- Organisers and logistics

The Belgrade Pride organisation started as a joint effort of the LGBT organisations Labris and GSA. However, soon after the joint initial announcement, internal disagreements among the members of the Organisation Committee started. This soon became public on May 26, when the GSA announced that the Parade would be on August 23, and filed the application for that date at the police station. Meanwhile, the OC denounced that information and stated that “the date has not been agreed yet.” In a press release, the OC announced that GSA had been expelled from the organisation because they had endangered the safety of the participants by disclosing the preliminary date of the Parade. This internal argument continued in the media with mutual accusations. The OC made further accusations against the GSA’s then-president, Boris Milicevic, claiming that he put his “political ambitions” before the interests of the LGBT community. GSA, in their later press release, announced that they decided to withdraw from the OC and that they did not wish to escalate the conflict. As the Parade

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351 See the Media Centar Conference and accompanying Media clipping, supra note 348.
353 “Parada ponosa u Beogradu 23. avgusta?” Blic (26 May 2009), online: Blic <http://www.blic.rs/Vesti/Drustvo/94324/Parada-ponosa-u-Beogradu-23-avgusta>. According to the GSA annual report, the date of the Parade was generally set for August 23, because “gay icon Madonna would be in Belgrade for her concert the day before”, and that would mean that there would be a lot of international attention. See Boris Miličević at al, Annual report on Human Rights Status of GLBT persons in Serbia for 2009- “No retreat No Surrender” (Gay Straight Alliance, N.d) at 46 [GSA 2009 Report].
354 See Blic article, Ibid.
356 Ibid.
approached, other members of the OC left the organisation.\footnote{During the whole process of organising Pride event, more organisations left the OC. Gay and Lesbian Info Center (“GLIC”) said that their reason was that it was not time for the parade yet. Queeria left just 3 weeks before the Parade was scheduled to start, due to “the lack of cultural and artistic content”. See Labris 2009 Report, supra note 313.} This internal dispute revealed that there was not yet an agreement in the Serbian LGBT community about the means to achieve social change.

In June, the OC engaged Zoran Dragišić, a security expert from Faculty of Security Studies at the University of Belgrade, to conduct a study on important security aspects of this event, such as the location, date and other concerns.\footnote{Labris 2009 Report, supra note 313 at 6.} The OC tried to initiate a meeting with the police at that point, but were unable to because, according to police, the Belgrade Pride had not been officially requested.\footnote{Ibid.} In response, the OC filled an official application for Belgrade Pride on July 9.\footnote{Ibid at 5.} In the application, the date set for the Pride was October 20. The date was disclosed to the wider public later, and the slogan of the event was, “It is time for equality.”\footnote{Ibid at 5.} Three weeks before the event, the location and exact time were released – Plato in front of the Faculty of Philosophy in Belgrade.\footnote{This is a common name for the square opposite the Plato bookstore. It is considered as a traditional meeting point whenever there are progressive protests in Serbia.}

Belgrade Pride started getting support, but also faced violent opposition in the form of threats and, in many cases, a lack of reaction by the government officials. The support was coming not only from NGOs, who had supported this initiative from the start, but also from various public persons. Exit, one of the biggest music festivals in the region, offered support, and helped with marketing Belgrade Pride.\footnote{“Sve veca podrška Povorci ponosa”, B92 (12 September 2009), online: B92 <http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=09&dd=12&nav_category=12&nav_id=381031>.} Many public persons, such as actors, musicians,
and a famous film director, participated in short promotion videos for the Pride parade, which were broadcast for the first time on September 12, on the television station TV B92.

- **Opposition/threats**

In early May, the first concerns about violence were expressed in research conducted by an agency called Strategic Marketing. According to that research, 54.41% of the respondents believed that there would be violence at the pride parade. The biggest opposition came from the Orthodox Church, right-wing organisations like Obraz, SNP 1389 and Dveri, football fan groups, and certain politicians.

Serbian Orthodox Bishop Amfilohije, who was the acting head of the Serbian Orthodox Church at the time, was, on one hand, calling it a Parade of shame and a parade of “Sodom and Gomorrah”, and claiming that the parade would be executing public violence towards others of different opinion. On the other hand, he was saying that the Serbian Orthodox Church never “called out nor is calling today, for violence against anyone.”

The SNP 1389 asked news agencies and photographers to sell them photos that showed the faces of Pride participants for their project ‘Protect your child’, whose aim was to help “Parents in identifying sexually deviant people and protect their children.”

All of the members of the Organizing Committee received threatening text messages, as did Marko Karadžić, the Secretary of State in the Ministry for Human and Minority Rights.

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365 The head of the Serbian Orthodox Church, Patriarch Pavle, was in poor health and Amfilohije was elected to temporarily perform his duties.
No state officials condemned the threats to Mr. Karadzic. In fact, the only ones who reacted were non-governmental human rights organizations and his party, LSV. 

Suddenly, in late July, hundreds of graffiti appeared on the streets of Belgrade. The messages were “Stop the gay parade,” “We are waiting for you,” “Death to faggots,” “Blood will flow on the streets of Belgrade, but there will be no gay parade,” and “The Kosovo Serbs are without electricity and water, and in Belgrade stories about faggots run like water.” Some of them were signed by football fan groups of the two biggest clubs in Serbia, Red Star Belgrade and Partizan, and others were signed by Obraz and SNP. Those written on state institutions and buildings were quickly removed, while hundreds of others remained as the parade approached.

In a reaction to the graffiti, on July 30, Serbia’s Public Prosecution assured that they would do all in their power to prevent attacks on public order and participants of the parade. A group of human rights and other NGOs reacted to the graffiti, asking that the Serbian authorities obey the law and investigate and prosecute those who were behind it.

- State Officials: reactions/statements

On April 30, the Pride Parade was a brief topic in the National Assembly. The Prime Minister, Mirko Cvetkovic, was then asked by an opposition member whether or not he would

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368 GSA 2009 Report, supra note 353 at 31-32.
370 Labris 2009 Report, supra note 313 at 6, 15; GSA 2009 Report, supra note 353 at 41.
371 Labris 2009 Report, ibid at 15.
373 Ibid. GLIC further reacts and writes an open letter to FIFA, since many of those graffiti were signed with football fans of two Serbia’s biggest football teams Red Star and Partizan. And just a few days after that, on August 12th, the teams react, distancing themselves from those graffiti. See GLIC, New Release, “Open Letter to FIFA”, (9 August 2009), online: Gayecho <http://gayecho.com/glic/?p=51>; GLIC, Press Release, “Bravo za Partizan i Crvenu zvezdu” (12 August 2009), online: Gayecho <http://gayecho.com/glic/?p=62>.
participate in the event. He replied that he would not be attending the “manifestation”, and that, as far as he knew, none of the government ministers would attend it.  

The Organizing Committee reacted to the statement the day after, and sent an open letter to the Prime Minister, asking him to clarify his statement in the National Assembly. They further requested to know whether or not there had been a government meeting at which a decision not to attend the parade was adopted. In this open letter, the organisers also invited the Prime Minister and his Ministers to attend the pride parade. This was one of the early communications between state representatives and the Belgrade Pride organisers.

Many government officials made statements leading up to the day the Pride was supposed to occur. The most supportive of them was Marko Karadzic, the Secretary at the Ministry of Human Rights, who made numerous public appearances in order to express his support. Also supportive were the national human rights institutions, like the Republic Ombudsperson’s Office.

On the other side, the most negative and homophobic statements were made by Dragan Markovic, also known by the nickname “Palma,” who is the president of one of the political parties in the government coalition. In one of his many statements regarding the Belgrade Pride, he asked the government to “cancel the parade of shame until further, until the year 2150” and that “homosexuals should manifest their sexual orientation there where nobody can see them.”

Boris Tadic, the President of Serbia, did not speak out very much. In September, as the event was approaching, he made two statements. First, he said that the state would react to every


form of violence and provide all the necessary conditions for the pride parade to occur.377

Second, he stated that “no one should lecture Serbia today in relation to respect for human
rights,” because it has adopted “democratic laws on the protection of national minorities, and
anti-discrimination laws.”378 Svetozar Ciplic, the Minister of Human Rights, spoke less often
than Marko Karadzic, a Secretary of his ministry who was very supportive from the start. Ciplic
made a statement similar to that of President Tadic – that by adopting the Anti-Discrimination
Law, the Government of Serbia had made the most significant statement about respect for human
rights.379

Dragan Djilas,380 the Mayor of the Belgrade, was mostly worried about the violence and
destruction in the city that might accompany the pride parade:

I say what I believe—maybe I was raised patriarchal—but sexual orientation is a
personal thing, and I do not know why anyone would have to come out with it in
public, regardless of whether they are homosexual or heterosexual. I did not imperil
anyone, I am not prohibiting anything. I just said that such an event will cause a
reaction from those that destroy the city every several dozen days and I am
expressing concern for the participants.381

In the background of these public media statements and press releases, lies another story
about the interactions between the state institutions – the police officials, most of all, and the
organisers of the Pride. Most of this information became available later, as the members of OC

377 See “Tadic: Država će reagovati na svaki vid nasilja”, Blic (18 September 2009), online: Blic
<http://www.blic.rs/Vesti/Drustvo/111436/Tadic-Drzava-ce-reagovati-na-svaki-vid-nasilja>. This information was
earlier available on website of the President of the Republic of Serbia as a press release. However, after the new
President, Mr Nikolic came into power in 2012, all the information about Mr. Tadic’s activities and press releases
were deleted.
378 “Tadić: Srbija će obezbediti uslove za Povorku ponosa”, RTV Vojvodina (21 September 2009), online: RTV
Vojvodina <http://www.rtvsr.rs/lat/politika/tadic-srbija-ce-obezbediti-uslove-za-povorku-ponosa_148704.html>. See Gligorijevic, supra note 367; Marija Skrbic, “Parada ponosa biće pod zaštitom kordon policije”, Blic (17
379 Dragan Djilasic, a Mayor of Belgrade and a member of DS political party. He was renowned for one of his first
statements about the Pride event, when he said it was an issue that should remain “inside four walls”. See “Mayor
doesn’t ‘honestly’ support parade - B92 English”, online: B92 <http://www.b92.net/eng/news/politics-
article.php?yyyy=2009&mm=08&dd=08&nav_id=61034>.
380 Ibid.
381 Ibid.
filed a complaint to the Serbian Constitutional Court (the “Constitutional Complaint”), and when Labris published its annual report (the “Labris 2009 Report”). After the rejection of their meeting request to police because the event was not reported, the OC filed an official application to the police authorities. The requested meeting occurred one month later on August 11. Beside these delays from the police officials, other concerning issues can be seen in the Labris 2009 Report and the Constitutional Complaint.

- In almost all the encounters with police officials, organisers were read the same article from the Law on Assembly, sometimes multiple times during the same meeting. This gives impression that the police representatives were trying to persuade them, or even scare them into cancelling the Pride.

- Many of their written requests seeking information from the police never received replies.

- At meetings, police officials often emphasised that organisers would be responsible for any violence, since the police had no way to prevent people from infiltrating the event and attacking from the inside.

- During one meeting, the police officials played a video showing a car breaking through the circle of police officers, and mentioned some intimidating possible scenarios like protestors flying with a paraglider over the parade and throwing sharp objects. All of these were interpreted by the organisers as an attempt to scare them and make them cancel the Pride.

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382 The full text of the Constitutional complaint is available online at the Labris website. See “Ustavna zalba zbog zabrane Povorke ponosa”, online: Labris <http://www.labris.org.rs/saopstenja/2792--ustavna-zalba-zbog-zabrane-povorke-ponosa.html>. 
• At one meeting, police officials even laughed when the members of the OC asked them about securing departure of the participants from the venue. One police official replied by saying that then they should “run like the wind” (author’s translation of “kud koji mili moji”).

• **International Support (OSCE, CoE, EU, UN)**

The preparations for the Belgrade Pride continued and support came from the UN, EU, CoE[^383] and OSCE in September. First, on September 17, 2009 the Swedish ambassador issued a “Joint Embassy Statement” on behalf of Sweden, as President of the EU Council[^384]. One day later, the OSCE mission and UN in Serbia made a joint statement in support of the Belgrade Pride, and “welcomed” co-operation between civil society, Serbian authorities, and the Ministry of Interior in particular, in efforts to organise the 2009 Pride March and ensure the safety of those who wish to participate[^385]. On the same day, the government of Serbia itself issued a statement related to the event, to the effect that the state institutions need to secure the freedom of equality and diversity[^386].


• One week Before the Pride

On September 12, one week before the Pride, the nationalist group called “Dveri” organised a family walk. Many politicians from the opposition parties participated and Belgrade Zoo offered a 50 percent discount to all those who came to the zoo that day and showed any kind of material that was shared at the event.387

On September 16, four days before the event, Mladen Obradovic from Obraz made another of his threatening statements and it was reported by the media:

Everyone knows what will happen if they try and hold that parade of shame and all the responsibility for what happens lies on the organisers. If they think they can poke you in the eye and get away with it, then they are very mistaken, we are waiting for them.388

On the same day, when asked about these threats, the public prosecutor, Slobodan Radovanovic said there was no need for the prosecution to react to any threats since “they” (the Prosecution) can react if there are some consequences as a result.389

The violent atmosphere was heating up as the Pride approached. On September 17, football hooligans assaulted Brice Taton, a fan of the French football club Toulouse. It happened in Obilicev Venac, in central Belgrade, hours before the Partizan-Toulouse Europa Cup match. He sustained severe injuries and was in critical condition. The disturbing video and images of a young man beaten and shaking from the shock as he was taken by the ambulance were the main news that day, and for several days that followed. Even though Mr. Taton was most likely not

388 “Pretnje ultradesnice uoči Povorke - B92 Vesti”, B92 (16 September 2009), online: B92 <http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=09&dd=16&nav_category=12&nav_id=381665>; For more examples on threats of the right-wing organisations see also Labris 2009 Report, supra note 313.
389 Ibid.
gay, his attack was connected with the overall violent atmosphere that developed as Belgrade Pride approached.

Finally, just 24 hours before the event, the OC was invited to a meeting with Prime Minister Cvetkovic, who handed them an official decree to move the location of the parade to Usce, a park outside of the downtown city area. This decree contained no information on legal remedies.\textsuperscript{390} It was signed by the Head of the Serbian Police, Milorad Veljovic, and stated that the law enforcement bodies of the Republic of Serbia were not able to ensure the Constitutional right for a peaceful assembly, and ordered the organisers to move the event from the downtown of Belgrade.\textsuperscript{391} The proposed new area, besides being far away from downtown, was also known as an area where the Slobodan Milosevic regime tried to redirect all demonstrations against him.\textsuperscript{392} The state authorities claimed that it was not a ban, but that organisers themselves had decided to cancel the event.\textsuperscript{393}

- The Pride Parade day

After the ban, Ivica Dacic, the Minister of Interior, described the violent attacks being prepared:

The police even found stones hidden in manholes. However, it would not just have been members of extremist organizations congregating in the streets of Belgrade, but, according to information from the intelligence services, members of the public too, who are not members of Obraz or the 1389 Movement.\textsuperscript{394}

\begin{flushright}
\begin{footnotesize}
\textsuperscript{390} Dragana Vuckovic et al, Case No Ур-1918/2009, Official Gazette of the Republic of Serbia, No 8/2012, online: Constitutional Court of Serbia \<http://www.ustavni.sud.rs/page/predmet/sr-Cyril-CS/6016/?NOLAYOUT=1>; \textit{Supra} note 382.
\textsuperscript{391} \textit{Ibid} at para 3.
\textsuperscript{392} Dobrkovic, \textit{supra} note 296 at 25.
\textsuperscript{393} See Interview of Slavica Dukić Dejanović President of National Assembly by Mirjana R. Milenković (20 September 2009), online: Danas \<http://www.danas.rs/vesti/politika/ucestvovala_bih_u_povorci_ponosa_56.html?news_id=172280>.
\textsuperscript{394} “IM: Extremists targeted Swedish embassy”, \textit{B92} (22 September 2009), online: B92 \<http://www.b92.net/eng/news/politics-article.php?yyyy=2009\&mm=09\&dd=22\&nav_id=61892>.
\end{footnotesize}
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Overall he was pleased with the final outcome as he would have been much more responsible “if a single drop of blood had been shed. I could have said ‘have the meeting’ and then had a bloodbath.” 395

On October 20 at the place where the Pride was supposed to occur, police units secured the area. Some of the main streets of the downtown area were patrolled by increased numbers of police officers as well. On that day, police arrested over 30 members of the right-wing organisations Obraz and SNP 1389.396 Sometime around noon, an Australian tourist was attacked in downtown Belgrade, and police suspected members of these two organisations were behind the attack.397

- After the ban

The severely injured French football fan, Brice Talon, died in September, in Belgrade hospital. After his death, reactions condemning violence, violent groups, and hooligans came pouring in from the state officials. There was a big reaction from the public, as well, as hundreds of thousands gathered at the Republic square in Belgrade to express their condolences. A walk against violence was organised by the youth of political parties, and another gathering of a group of NGOs against violence happened the next day.

After the planned parade date, Republic prosecutor Slobodan Radovanovic announced that he would ask the Constitutional Court to ban Obraz and SNP 1389.398 Five members of the OC filed a complaint with the Constitutional Court, with the request that the Court issue a decision, stating whether or not the state had banned the properly registered event. They also

395 Ibid.
filed a complaint with the ECtHR. The OSCE Mission, European Commission Delegation, and Council of Europe's Office all expressed their regret. In Serbia’s EU Progress Report, it was stated that the freedom of assembly was protected by Serbia’s legislation, but nevertheless the pride parade had to be cancelled. This was a sign for them that the international community was watching and that they consider this an important issue.

Most of the Pride organisers, in fear for their personal security, had to leave the city for a while. In December 2009, the Gay and Lesbian Info Center (GLIC) successfully organised the first International queer film festival, “Merlinka.” Also in December, Serbia officially submitted its application to become a member of the EU, and its citizens were able to travel freely in the Schengen area, as the visa-free regime came into force.

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400 Serbia 2009 Progress Report, supra note 369 at 15, 17.


402 According to the GSA Report 2009 organising this event was filled with many difficulties:

“First, the festival was scheduled for the period September 11-13, 2009. But the festival was postponed because of the fear that neo-Nazi and extremist group would attack the guests of the festival, since at that time, one week before the date the Pride parade was scheduled, there was an atmosphere of hatred and violence against GLBT population.[...]The second time, the festival was scheduled for the period November 16-18. But, the leader of the Serbian Orthodox Church, patriarch Pavle passed away on November 15. Due to three days or mourning, the organizers of the festival decided to postpone this event for a month. They decided to organize it in the period December 18-23, but the festival had a two-day break, on December 19 and 20, in order to prevent the extremists from attacking the guests of the festival, since many orthodox believers celebrate St.Nicholas those days.” See GSA 2009 Report, supra note 353.


5.3.3. Belgrade Pride 2010

- The announcement

Around the same time of year, as in 2009, information about organising Belgrade Pride 2010 started appearing in the media. In April 2010, at a media conference a Labris activist commented that the state needed to be the one to secure necessary conditions for it to occur this year. However, the announcement about the 2010 Pride on June 1, in some ways started with a statement from the Minister for Human and Minority Rights, Svetozar Ciplic. Mr Ciplic said that, “if the LGBT community should express a wish to organise the Pride Parade, the Ministry for Human and Minority Rights, as well as other competent ministries, shall provide their support” and that “there has been a great shift and a step forward against the conditions and atmosphere that were prevalent last year.”

Following on this supportive Minister’s statement, GSA announced at a press conference that they had started collecting signatures of support. The two other speakers at the press conference were Boban Stojanovic, from the Queeria Center, and the president of the Amsterdam Pride parade, Frank van Dalen. The emphasis was on the support from the presidents of most of the parties in Serbia that was given to the organisers during the consultations in previous months, and the support of President Boris Tadic.

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408 See the video and the press clipping from the press conference at Media Centar *ibid.*
- **Organisers and logistic details**

  The 2010 Organising Committee consisted of GSA, the Queeria Centre, and a Novi Sad support group for gay men. Signatures of support were not collected openly on the streets, but rather, at events organised by the OC and in “friendly” cafes. During the preparation period, the OC met with many government officials, and with almost all parliamentary parties in Serbia.

  The OC held two more press conferences after the initial one announcing the 2010 parade. In the last week of September, they presented security measures as the event was marked as high risk. The second media conference was in October, just a few days before the event. The topic of this final press conference was tolerance, and the importance of the Pride parades for the LGBT community. Both of these press conferences were attended by the Minister of Human Rights, who was also one of the speakers. As in the previous year, the Exit music festival was also supportive.

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409 According to the Labris 2010 report, all the LGBT organizations met shortly after the cancellation of the Pride 2009, and decided to make a LGBT platform. This agreement, would guarantee that the LGBT organizations would not make “attacks” against each other in the media. The only two who didn’t agree with this platform were GSA and Queeria Center. Labris criticised the lack of women in 2010 Organisational board in their report. Disregarding the conflict and mutual accusation between the main LGBT organisations, this gender difference is more than noticeable. See Marija Savic, *The Annual Report on the Position of LGBTTIQ population in Serbia for 2010* (Belgrade: Labris, 2011) at 1, 2.


411 There were only two parties that refused to meet the Belgrade Pride organizers –Democratic Party of Serbia (DSS) and New Serbia. As for the government institutions, only the Ministry of Education and Mayor of Belgrade were unable to meet with, them despite many calls (Ibid at 59-60).


• **Opposition/threats**

The biggest threats in 2010 again came from the Obraz and SNP 1389. As expected, the atmosphere heated up and the media coverage intensified as the parade approached.\(^{414}\) The Serbian Orthodox Church Bishop Amfilohije called on parade participants to stop their political propaganda since it “provokes others to act violently.”\(^{415}\)

Also as in 2009, there was an attack on foreign tourists during the lead up to the parade, which was followed extensively in the media. On August 12, two German tourists were attacked with a knife in Belgrade at Ada Ciganlija, a local lake.\(^{416}\) The attack occurred because “they,” the victims, looked gay, according to the attacker’s statement to the police.

• **State official’s reactions/statements**

The President met with the OC on June 30, and issued a statement saying that the “Pride parade is a civilisational step forward and shows that Serbia is becoming a safe society for all of its citizens, no matter their differences and sexual orientation.”\(^{417}\) Ivica Dacic, Minister of the Interior, seemed supportive as well. In July, during the Exit festival weekend, he attended a panel discussion where he stated that “as a politician who advocates European values and democracy, I support the ‘Pride Parade,’ and as the Minister of the Interior, it is my duty to ensure safety of its participants.”\(^{418}\) However, reflecting on the last year’s Pride he said that:

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\(^{414}\) For more details on the frequency of media articles during this period see Katarina Loncarevic & Jelena Visnjic, *Politike reprezentacije LGBTIQ populacije u medijima Srbije 2010* (Belgrade: Labris, 2011) [Labris 2010 Media Report].


Our position is not easy because we have to on one side, allow public assemblies as a form of human freedom, and on the other we have to secure the public peace and order. Last year the mentioned march in Belgrade did not occur, because we considered it to be too high of a risk. Police are not to blame for the parade not occurring there and then, but is meritorious for the many lives that were being saved.\footnote{Ibid.}

There were also more supportive messages from certain government officials sent through the media. Even the Members of the Serbian Committee on Defence and Security, one of the Serbian National Assembly’s committees, announced their support for the Pride Parade.\footnote{See Bojana Barlovac, “Preparations Ongoing for Belgrade Pride Parade”, Balkan Insight (22 July 2010), online: Balkan Insight <http://www.balkaninsight.com/en/article/preparations-ongoing-for-belgrade-pride-parade>.} The President of Serbia, Boris Tadic, issued another supportive statement before the parade as well.\footnote{“Tadic: Peti oktobar – trenutak uspostavljanja demokratije”, Blic (5 October 2010), online: Blic <http://www.blic.rs/Vesti/Politika/210340/Tadic-Peti-oktobar--trenutak-uspostavljanja-demokratije>.}

Dragan Markovic, one of the government coalition partners continued his discriminatory statements and opposed the parade in 2010: “If faggots are going to help me get faster in the European Union, then I better leave politics and go guard sheep. A man has to be pragmatic”.\footnote{“Palma: Ako gejevi treba da nas uvedu u EU idem u čobane”, Blic (9 September 2010), online: Blic <http://www.blic.rs/Vesti/Drustvo/206409/Palma-Ako-gejevi-treba-da-nas-vedu-u-EU-iden-u-cobane>.}

- **International Support (OSCE, CoE, EU, UN)**

As in 2009, there was pressure and support from the international organisations. The EU's ambassador to Serbia, Vincent Degert, said he would personally attend the Belgrade Pride, as it is not only a “question of a system of values and fight against discrimination,” but also an important event for Serbia to show that there is no discrimination based on sexual orientation.\footnote{“Dezer: Odrzavanje Parade ponosa je vazno za Srbiju”, Politika (5 October 2010), online: Politika <http://www.politika.rs/rubrike/Politika/Dezer-Odrzavanje-Parade-ponosa-je-vazno-za-Srbiju.lt.html>;} Andrew Rettman, “EU ambassador to attend gay pride in Serbia”, EU observer (6 October 2010), online: EU observer <http://euobserver.com/lgbti/30979>.
relevant government institutions. The OSCE Mission in Serbia announced its support in a press release, and its representative, Daiana Serafina Falloni, said that "the maturity of Serbian democracy will be among other things judged by the degree to which the principles of non-discrimination, equal status and treatment by the law are enjoyed by all."

- **One week before the Pride**

Three days before the Belgrade Pride, SNP 1389 again offered to buy pictures of the participants from newspaper agencies, in order to use them on their upcoming website called “protect your child.” A family walk, similar to the one in 2009, was again organised by Dveri and its representative, Vladan Glišić. He asked the government to cancel the Parade, as “that message is written on the hundreds of walls in Belgrade.”

Highlighting the link between nationalism and homophobia, at the end of this protest, the participants sang songs about Kosovo. The night before the Parade, the premises of Women in Black, a feminist and anti-militarist peace organization were attacked. The two attackers were reported to be looking for the “faggots” among their activists. One woman sustained injuries.

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429 *Ibid*. Participants of family walk were holding a banner in front saying, “we are protecting the family” and had baby strollers in front of the procession. Some of the participants were using fascists salute (*Ibid*).

• **The Pride Parade day: October 10, 2010**

On the day of the parade, most of downtown Belgrade was blocked by rings of police forces. The first-ever Belgrade Pride was held in Manjez Park, and many foreign representatives were present. Vinsent Degert, Minister Ciplic, and some LGBT activists gave speeches. Following the speeches, a group of people gathered at the Manjez Park and walked about one block to the venue, the Student Cultural Centre. Shortly after arriving, participants were evacuated in police vans used to transport criminals.

Outside of the police rings, riots led by right-wing organisations and football hooligans were raging. According to the Minister of Interior, 6000 hooligans confronted 5600 officers. The results were 173 injured police officers, 37 injured civilians, 77 destroyed vehicles (42 of which were police cars), and 259 persons arrested, with 132 held in police custody. The protestors also managed to damage the mobile digital mammogram at the republic square, and attack the headquarters of some political parties, as well as the National TV station headquarters.431

In the aftermath, only one Pride participant, Kurt Russel, a Swiss citizen, was attacked and injured, in a pub, after the event.432 He sustained a concussion and other injuries, and suffered from amnesia. A group of participants was also attacked by a mob of violent protesters while being transported in a police van from the venue. The vehicle’s structure held and they managed to avoid lynching, but they had to be cut out of the damaged vehicle by the Jaws of Life, after arriving safely at the police station.

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• After the parade

In October 2010, the Council of the EU forwarded Serbia's application for EU membership to the European Commission.\(^{433}\) In the 2010 Progress Report for Serbia, the EU Commission called the Pride Parade a “step forward” in promoting human rights.\(^ {434}\) The Secretary General of the Council of Europe, Thorbjorn Jagland, expressed concern over violent incidents in Belgrade during the Pride Parade and Kacin said it may influence Serbia’s EU ambitions.\(^ {435}\) The European Parliament adopted a Resolution which “welcomed the fact that the Gay Pride parade in Belgrade took place on 10 October 2010; sees the event as a step of seminal importance towards establishment of an open, tolerant and diverse society and as the government's commitment to uphold EU standards of tolerance and to protect vulnerable minorities in society; expresses satisfaction with the adequate security measures taken for the protection of the parade's participants”\(^ {436}\)

The leaders of Obraz and SNP 1389 were arrested.


\(^{434}\) See Serbia 2010 Progress Report, supra note 271. Even though this report reflects on some of the events from the last year, banning of 2009 Belgrade Pride is not mentioned. Only of the death of Brice Taton is considered in this text.


5.3.4. Belgrade Pride 2011

- The announcement

In March 2011, the government was reconstructed as a consequence of the economic crisis and the Ministry for Human Rights was subsumed by the Ministry of State Administration and Local Governance.

In the same month, Nevena Petrusic, the Equality Commissioner, issued the first decision on a complaint brought under the Anti-Discrimination Law. The complaint was against Bishop Amfilohije, for hate speech against sexual minorities during the 2010 Parade. Petrusic’s decision recommended that Bishop Amfilohije publicly apologise to the LGBT community. The Bishop had 30 days to comply, after which the Commissioner could opt to initiate a court proceeding against him. However, shortly after the decision, Petrusic stated that she would not take this initiative. She gave no reason for this decision. An apology was not forthcoming.

The first talks about organising the 2011 Pride were held in March, when a group of activists from LGBT and human rights NGOs met privately. Following this initial meeting, some activists grouped together and constituted the 2011 Organisational Committee. The OC met with government and international officials, including representatives of some of the political parties in the National Assembly, independent government institutions like the

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437 Nevena Petrusic was elected by the National Assembly in May, 2010. Similar to other NHRIs, the election process was marked by delays and irregularities. See Labris 2010 Report, supra note 409 at 8.
439 No apology was made by this high Orthodox Church official at the time of writing this thesis, and there were no other repercussions for him.
440 Again, there were reports of disagreements within the LGBT movement. According to the GSA 2011 Report, activist from Queeria organisation registered on their behalf the organisation, Belgrade Pride parade in March, without the knowledge of other LGBT organisations. See Gay Straight Alliance, “Freedom is not given, it’s taken” – Annual Report on the status of human rights of LGBT people in Serbia for 2011 (Belgrade: GSA, 2012) [GSA 2011 Report].
Ombudspersons Office and Commissioner for Equality, and representatives of the OSCE and the Council of Europe. The information about the Belgrade Pride event was announced gradually to the public via press conferences. The OC held three press conferences at the Media Centre. The organisers announced the date in late August, and talked in general about events that would be part of the upcoming Belgrade Pride.\footnote{Parada ponosa 2011 u Beogradu}, (Press Conference), (26 August 2011), online: Media Centar <http://www.mc.rs/parada-ponosa-2011-u-beogradu.4.html?eventId=8116>. The date set for Belgrade Pride 2011 was around the same time as the one in 2010 – October 2.

- **Organisers/ Time, Date and Location of the Pride Parade**

A few days later a place and time were announced: the same place, the same walk and at the same time as 2010 – 11 am at Manjez Park.\footnote{Mesto i vreme odrzavanja Parade ponosa}, (Press Conference), (26 September 2011), online: Media Centar <http://www.mc.rs/mesto-i-vreme-odrzavanja-parade-ponosa.4.html?eventId=8154>. Two days before the scheduled event, another conference was held to announce safety instructions to participants and address security concerns.\footnote{Bezbedonosni detalji o dolasku ucesnika i ucesnica na Paradu ponosa i analiza aktuelne situacije u vezi sa organizovanjem Parade ponosa 2011", (Press Conference), (30 September 2011), online: Media Centar <http://www.mc.rs/bezbedonosni-detalji-o-dolasku-ucesnika-i-ucesnica-na-paradu-ponosa-i-analiza-aktuelne-situacije-u-vezi-sa-organizovanjem-parade-ponosa-2011.4.html?eventId=8162>.}

- **Opposition/threats**

Stickers threatening violence against the Parade showed up in Belgrade on some buildings and in phone booths.\footnote{Pretnje učesnicima gej parade - država da hitno reaguje", Blic (7 September 2011), online: Blic <http://www.blic.rs/Vesti/Drustvo/275749/Pretnje-ucesnicima-gej-parade--drzava-da-hitno-reaguje>.} The newly elected Orthodox Church Patriarch asked for a ban of the “parade of shame.” He emphasised how Serbian people in Kosovo were trying to “defend the land with their bare hands,”\footnote{Irinej: Zabraniti Paradu srama", Blic (30 September 2011), online: Blic <http://www.blic.rs/Vesti/Drustvo/280239/Irinej-Zabraniti-Paradu-srama>.} in a merging of homophobia, nationalism, and post-conflict rhetoric. Members of various police unions described how certain people were planning “to set
the city on fire” by using car tires they bought. This information was never disputed by the Minister of Interior or other police officials.

- State officials reactions/statements

Like in 2010, some of the parties in the National Assembly refused to meet with the organisers. However, this time the President acted differently – he was nowhere to be found. Mr Tadic never met with the organisers, even though invitations were sent to his office multiple times. He made one general statement in June, saying that supporting Pride means supporting an event where “one minority community” is trying to “legitimise their human and civil rights which are guaranteed by the Constitution.” The Government of Serbia also made no clear statements in support of the Pride. However, the Ombudsperson’s Office was again willing to express support to the OC.

The Mayor of Belgrade considered that Serbia has bigger problems then having a Pride Parade. The Minister of Interior issued various statements, mostly about risk and security. Ivica Dacic, Minister of Interior, focused on the “security risks” of the event and asked for his

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446 “Policija: Akcija Beograd u plamenu tokom Parade ponosa”, Vecernje Novosti (27 September 2011), online: Vecernje Novosti <http://www.novosti.rs/vesti/naslovna/aktuelno.69.html:346808-Policija-Akcija-Beograd-u-plamenu-tokom-Parade-ponosa>; There were even news reports on how anti pride protesters will use the swarm of bees. For online version of this article see “Rojevima pčela na gejeve i policiju”, Alo! (07 October 2011), online: ALO <http://www.alo.rs/vesti/42356/Rojevima_pcela_na_gejeve_i_policiju>; See also the copy of the print article from this newspaper: Enis Sadiku, “Rojevima pčela na gejeve i policiju”, Alo! (07 October 2011), online: YIHR <http://rs.yihr.org/rs/article/560/>.
448 He did meet with the organizers of the 2010 Pride parade.
colleagues from the government to state their positions. Yet, despite stating that the event had great security risks, he asserted that police would not ban the Parade.

Meanwhile, the Independent Police Union threatened to not participate in securing Belgrade Pride if the state did not provide security for them. They even issued a joint press release with the right-wing group Dveri, and asked the organisers to give up on organising Belgrade Pride.

- **International Support (OSCE, CoE, EU, UN)**

As the Belgrade Pride date approached, international institutions made supportive statements, as they had in previous years, in order to put pressure on the Serbian Government. Mr. Dacic, in one interview, even said explicitly that there were pressures from the EU about the Pride and it was the topic of every conversation. The Norwegian Embassy, as well as other embassies, issued statements of support. Members of the European Parliament also sent letters to the government of Serbia expressing their support for the event. From the Council of Europe, Human Rights Commissioner, Thomas Hammarberg, sent a message of support.

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457 Supra note 454.
• **One week Before the Pride**

On August 29, the Minister of Interior said that he would like international organisations that supported the Parade to help with securing the event by providing protective gear to the Serbian police.\(^{461}\) Obraz announced a “prayer walk” on the same day as the Pride, and Dveri announced their family walk.\(^{462}\)

The safety information for the participants’ arrival to the Parade was released on the August 30 at a press conference.\(^{463}\) This was the same type of information as in previous years, such as to wear no visual markings, arrive early, and arrive in small groups. “Tensions are growing”, and members of the OC will see what will actually happen in 48 hours, Boban Stojanovic, one of the organisers, explained at the press conference. One thing was clearly emphasised, which was that the organisers would not cancel the event.

Unfortunately, however, this year the familiar scenario ended as it did in 2009 – with a ban:

The public assembly, organised by the Association “Pride parade Belgrade” that is due to occur on the 2\(^{nd}\) of October 2011, starting at 11am in “Manjez” park, is banned. In the application process it was determined that conditions from the Article 11 para 1. of the “Law on public gatherings of citizens in republic of Serbia” were met, as the meeting may lead to obstruction of traffic, endangering health, morals or safety of persons and property.\(^{464}\)

Once again, just before the Parade was due to take place, it was banned due to security risks. On September 30, 48 hours before Pride, the Ministry of Interior banned all public gatherings,

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\(^{463}\) See *supra* note 443.

including Pride and the 2011 family walk.\textsuperscript{465} Mr. Tadic expressed his support for this decision immediately and the Police Union of Serbia said it was a right thing to do.\textsuperscript{466}

- **The Pride Parade day**

On the day the Parade was supposed to occur, Dragan Djilas, the Mayor of Belgrade, said that the state is not ready for Pride.\textsuperscript{467} The OC held a press conference in the downtown Media Center entitled “Pride between 4 walls.” After the conference, they held a small flash mob demonstration, stopped traffic for a few minutes in order to spread their flags, and threw coloured chalk on the streets, which was dispersed by the cars passing by.

- **After the Ban**

This outcome seems to have surprised those in international institutions. They quickly requested explanations from the Serbian government. The European Parliament Rapporteur for Serbia, Jelko Kacin, said that the ban of Belgrade Pride could reflect on Serbia’s EU ambitions.\textsuperscript{468} In a letter to Serbian President Boris Tadic, the Secretary General of the Council of Europe, Thorbjørn Jagland, requested clarification on what measures the Serbian authorities were planning to undertake to guarantee the freedom of assembly and association for all groups of society.\textsuperscript{469} The Parliamentary Assembly of the CoE published “The banning of the Belgrade Pride march Written Declaration”, in which it called it a “grave setback” for human rights in


Serbia. Not long after the ban, the OSCE had a meeting with the President of Police Union of Serbia and other police officials to discuss the Belgrade Pride ban.

Early national assembly and presidential elections were announced for May, 2012. In December, 2011, the European Council postponed the decision on granting Serbia candidate status until March. Then, in March, Serbia got a green light to become a candidate country. The next phase in the EU integration process is negotiation, but a date to start negotiations is not yet set.

5.4. A note on the media

As emphasised earlier, the media played a significant role as a tool for Milosevic’s propaganda. The media landscape in Serbia is thus shaped by two major factors – a decade of devastation in the 1990s, and reforms after 2000, which, according to Professor Snezana Milisavljevic, are very slow and insufficient.

What is the situation with the media in Serbia today? Looking at the recent 2011 documents from the EU, there are some points of serious concern. According to the 2011 European Parliament resolution on the European integration process of Serbia, there have been concerning attempts to control and interfere in the media sector. Furthermore, this resolution

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474 Supra note 436.
notes the “concentration of ownership and lack of transparency in the media sector.” The Serbia Anti-Corruption Council dealt with these concerns further, and issued an alarming report on pressures on, and control of media in Serbia. In this report, the Anti-Corruption Council emphasised three problems:

1. The lack of transparency in media ownership;
2. The economic influence of state institutions on the work of the media through various types of budget payments; and
3. The problem of RTS, which, instead of being a public service, has the role of serving political parties and ruling elites, the consequence of which, is that media are closed due to numerous problems encountered in Serbia, including the problem of corruption.

These two reports demonstrate that media in Serbia are not yet free from political influence and corruption. The period analysed in my case study, from 2009 to 2011, was marked with increased media coverage of the LGBT population. Media played a significant role with their reporting on the Belgrade Pride parades, and contributed to creating an atmosphere of hatred against LGBT people and fear from violence at the possible Pride events.

Two media monitoring reports were published by Labris, following media reporting on LGBT issues. A 2010 report by Katarina Loncarevic and Jelena Visnjic entitled, “Politics of representation of LGBTTIQ population in the Serbian media,” concluded that TV and print media still publish hate speech directed against the LGBT people, despite the Law on Broadcasting. Even the media like Blic and Danas, that were supposed to be more liberal, blended with this negative media picture. They were even among those media that most often

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475 Ibid.
477 See Labris 2010 Media Report, supra note 414. It is also interesting to note from this report the practice of unsigned articles. Many of the texts related to LGBT people (63,7%) are unsigned, published without the journalist signature.
used sexist terminology when reporting about Belgrade Pride and LGBT issues.\textsuperscript{478} B92, the symbol of resistance against Milosevic and known for its objective reporting, was now not that much different from the other mainstream media.

However, most concerning is the content of those texts. According to their report, 85.7\% of the texts are published from a “neutral” perspective.\textsuperscript{479} This is problematic because it gives equal media space to those who were trying to organise the Pride, and to the homophobic speeches of those who opposed and threatened it. By reporting that way, the media are presenting the Pride parade and discrimination based on sexual orientation as something disputed.

Impartiality is a feature of modern journalism.\textsuperscript{480} According to Ericson, Baranek and Chan, when media seeks to be neutral they gain legitimacy to influence public opinion.\textsuperscript{481} The journalists do this by citing sources with opposite viewpoints - they simply obtain a statement from one source and counter claim from another.\textsuperscript{482} By neutralising and equalising those who want to exercise freedom of assembly and those who threaten violence, the media contribute to the overall atmosphere of fear, and help spread hatred. In the case of Belgrade Pride, media have influenced public opinion, which was already negative towards LGBT people, by making Pride a moral issue, and not a struggle by one vulnerable minority in Serbian society for equal rights. By portraying pride in this moral frame – by writing from the neutral perspective – the media have showed bias.

\textsuperscript{478} Ibid at 26.
\textsuperscript{479} Ibid at 25.
\textsuperscript{481} Ibid.
\textsuperscript{482} Ibid.
Finally, there is the notion of the internal dispute within the LGBT community about the Pride events. There was a certain eagerness on the part of the media, politicians and other actors who opposed the Pride Parade, to use this disagreement to support their own arguments. This internal disagreement was used to demonstrate that Pride is something controversial, not only in Serbian society, but also within the LGBT community, because “not all the lesbians and gays want this” and “they are ok the way they are living now.”

In 2011, Jelena Visnjic conducted a similar media study, but focused only on print media. Her report, entitled “Serbian media reporting on LGBT population during 2011,” covered the period from January 1, 2011 until the end of that year. This report shows that the media are still reporting from a “neutral” standpoint. More than half of the texts, 51.2%, presented homophobic attitudes on equal ground to those who promoted LGBT rights. Both reports show the increase in the number of texts as the Parades approached.

Despite the problems in media reporting, in this Pride Parade’s case study, I have used some of the media texts as sources of information about events, and various statements made by politicians. The strengths and weaknesses of this method were discussed in Chapter 2. Media reporting around the Pride Parades have contributed to the overall atmosphere of violence and fear. In Appendix A, I list media headlines from one media source. These headlines show how one of the media sources portrayed the story of Belgrade Pride parades. These headlines show how neutral reporting of media has helped create atmosphere of fear.

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483 For examples of this conflict, see section Belgrade Pride 2009. For examples on media’s portrayal of internecine conflicts within the feminist movement see Dorothy E. Chunn, “‘Take it Easy Girls’: Feminism, Equality and Social Change in the Media” in Dorothy E. Chunn, Susan B. Boyd & Hester Lessard, eds, Reaction and Resistance: Feminism, Law, and Social Change (Vancouver: UBC Press, 2007) at 46-49.

484 Unlike the media texts in 2010, in 2011, most of the articles related to LGBT issues (89, 1%) were signed by the author. See Jelena Visnjic, LGBT populacija u štampanim medijima u 2011, (Belgrade: Labris, 2012) at 12.

485 Ibid at 11.

486 See more in Appendix I below.
5.5. Conclusion

Out of the three attempts to organise the pride parade in Belgrade, only one succeeded, in 2010. Why is it that the authorities only made the effort to ensure the success of the Pride Parade in 2010? Most of the answers can be found by following the events in 2009.

Even though Serbia adopted the new Anti-Discrimination Law in 2009, a high level of homophobia existed not just in society, but among the political elite. The right-wing groups who had prevented the first pride attempt in 2001, who remained unpunished, were again threatening and calling for violence. Moreover, certain members of the government were firmly opposed to the parade. There was no official reaction to all the threats, and acts of discrimination remained unpunished, even after the day the pride parade was supposed to occur.

The central figure in 2009 was the Minister of Interior, Ivica Dacic, who issued confusing statements and, ultimately, upon whose authority a document was issued, requesting organisers to move the event to a less visible location. The President and the Minister of Human Rights appeared once or twice to give general statements about respect for human rights. Meanwhile, the Mayor of Belgrade expressed his concern for the potential destruction that organisers could cause to his city. The lack of reaction from the government is further concerning in this case, given that even a Secretary in the Ministry of Human Rights was exposed to threats after providing his support to the Belgrade Pride.

Nothing substantial was done between when the parade was announced and the pride parade date. There were no preventive arrests to stop those allegedly preparing violent attacks. In addition, the media continued portraying the issue in an “objective” manner, by giving equal media space to those who were trying to organise the Pride, and those who opposed and threatened it. Furthermore, the focus of the reporting from the beginning was on the violence
and how much violence this event could provoke. As a result, the discourse around the parades
came to be about violence, rather than homophobia and human rights.

The only firm reaction came after the murder of Brice Taton, as people rebelled against
violence in general. Yet they did not rebel against homophobia *per se*. They never rebelled when
those same groups threatened LGBT people in Serbia, especially the organisers of the Belgrade
Pride. Mr. Taton was apparently not gay, and the attack against him was not directly motivated
by homophobia. However, he was perceived in a similar way. He was speaking a foreign
language, cheering for the other team, a “true” enemy of those “true” Serbian men. He was there,
in Belgrade, just a few days before the Pride, when a group of the same men were getting ready
to attack other perceived outsiders – the participants of the Belgrade Pride.

The most aggressively homophobic organisations were also those that were notorious for
their previous violent acts, and who promoted Serbhood and nationalism. They became less
welcome in the mainstream, as a result of Mr. Taton’s murder. Only then, did the Prosecution
step up to request that these organisations be banned in a newly approved fight against the
violence.

There was then silence, until the next Pride was announced. In 2010, suddenly, the
Minister of Human Rights announced it would be good for Serbia to organise such an event. This
comes as no surprise, since many international institutions had expressed their concern after the
Belgrade Pride was cancelled the year before. It was in 2010, that Serbia was expected to achieve
another step in the process of EU accession. Serbia was waiting for a positive sign from the
European Council, whose approval was needed to forward Serbia’s application for EU
membership to the European Commission.487

487 See “Serbia & the EU”, online: The Delegation of the European Union to Serbia
The Minister of Human Rights was not the only stakeholder acting differently in 2010. Ivica Dacic, the Minister of Interior, appeared in a conference organised by the Exit music festival, stating firmly that Police will protect pride parade participants. This time, even the President acted, by meeting with the participants.

However, again in 2010, no preventative steps were taken by the Police or the Prosecution. There were no investigations into the work of certain organisations that were known to be planning violence, nor criminal charges in response to threats. In October, 2010, thousands of police officers stood between those who had announced that they would try to prevent the parade. After the violence, many were arrested, but charged only with preventing police officers from doing their duty, or for attacks on the Police.

After this kind of parade, where the state’s reaction to widespread homophobia was to put police officers on the street on the day of the parade and let them handle the beating, another one was about to be organised in 2011. However, from the start of the year, most of the political elite were concerned with the future parliamentary, and possible presidential elections. In a state where research shows that the rights of sexual minorities are not a “popular” subject, it is likely that the upcoming elections played an important role in deciding whether or not to allow the Pride parade. Even though allowing a Pride event is good for Serbia in the eyes of the international community, this was one of those human rights that were considered unattractive by some politicians.

As stories about fear of the attacks and violence began to appear in the media 2011, the Parade seemed to be going the same way as in 2009. The Ministry of Interior, in charge of

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488 Another difference in this case were the different organisers, but I do not consider this as a relevant factor that could influence the enjoyment of right of assembly of one minority group – the LGBT people. The conflict between the LGBT organisations in Serbia is surely something that existed throughout all three Pride parades. This has a significant impact for the LGBT community in Serbia. However, this impact is outside the scope of my research.
policing, did nothing to denounce the information coming from the media about the threats. Moreover, there were no investigations to apprehend those who were preparing the reported attacks. The President did not meet with the organisers, to at least show some support, and the Ministry of Human Rights ceased to exist after budget cuts. The events in 2011 were both concerning and at moments comic. While the Belgrade Pride organisers were asking police to secure the event, the police were themselves asking to be protected. In the end, Serbian authorities decided to ban not just the Pride, but also all other counter-protest. After all, the media have treated the Pride organisers and the right-wing extremists on equal ground, and this was presented by the Government as a “fair” thing to do in the end.

In the beginning of this analysis, I laid out the laws that were in force, which could have been used to protect LGBT people in the situations that occurred from 2009-2011. However, in many cases the laws were not applied, or they were applied too late. For example, police arrested members of Obraz and SNP 1389 after the protests at which police officers were injured, instead of when they were publicly expressing their plans to commit the crimes.

In 2009, the state did nothing to prevent the right-wing extremists from threatening violence and spreading hate speech. The state, again, failed to be proactive in 2010, doing nothing to prevent the violence, but instead, reacted by putting police officers on the streets to protect participants from violence. In 2011, the state, again, neither prevented nor reacted. Each year, the organisers had to be careful not to overly provoke right-wing extremists. The political elite had a huge responsibility to change this hateful climate and they never did.

The 2010 Pride Parade in took place not because there was a social or political change in Serbia with respect to sexual minorities and their right to freedom of assembly. To the contrary, this case study shows that the ruling political elite was only putting on a play for the EU in 2010.
The next year, after the EU reacted positively, the cost of that sort of politics was too high, as the general elections approached, and none of the leading parties wanted to be seen as supporting something that was an “unpopular” issue among the citizens of Serbia.

In the end, the ban did not seem to influence Serbia’s EU candidacy, as Serbia officially became a candidate country in March, 2012. One reason for this positive incentive offered to Serbia by the EU, is that the new elections were approaching and again, the EU needed to give a push to the democratic forces in the country.

5.6. Epilogue

I started doing my research on Belgrade Pride events at the end of 2010. While writing the final chapters of this thesis, new events occurred in Serbia that I was unable to include in my case study, due to the timing. I will briefly address them here.

There is still no decision from the ECtHR on the bans of the Belgrade Pride parades in 2009 and 2011. On a local level, several criminal proceedings have started, including those against Mladen Obradovic and Misa Vacic, the leaders of the two main right-wing organisations, as well as some other participants in the violent protests in 2010. The process against Misa Vacic from the SNP 1389 is still being dragged through the Serbian courts, after numerous procedural delays. Meanwhile, Mladen Obradovic, the leader of Obraz, has been convicted twice. He was sentenced to two years imprisonment for organising the violence against the Pride participants and police in 2010. After that conviction, he was sentenced to 10 months in another process related to the Pride in 2009. He successfully appealed the judgement related to 2009 Pride in 2012. The Court of Appeal cancelled the original judgment because the police were

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490 “Sudjenje Misi Vacicu ponovo odlozeno”, (14 March 2013), online: YIHR <http://rs.yihr.org/rs/article/1035/>.
unable to find threatening flyers in his computer, and ordered a new trial in the Court of First Instance.\textsuperscript{491} In January, 2013, the judgement against Obradovic for the 2010 Pride was cancelled, as well, due to procedural errors, and the Court of Appealed ordered a new first degree trial.\textsuperscript{492}

In November, 2011, the Court of First Instance brought a decision against Dragan Markovic Palma, the Mayor of Jagodina municipality and member of the government coalition. The Court found that he had committed a severe form of discrimination on the basis of sexual orientation, contravening articles 11, 12, 13 and 21 of the Anti-Discrimination Law.\textsuperscript{493} However, in 2012, the decision was overturned by the Court of Appeal, because of a procedural error. According to that Court, there was a mistake in delivering a court summons to his home: a member of his family accepted the summons, rather than Mr. Markovic himself. Despite the fact that the Court of First Instance determined the summons was delivered properly, this issue was now considered by the Court of Appeal as something against the law, and important enough to overturn the whole judgement, returning the case for a new trial at the Court of First Instance.\textsuperscript{494}

In November 2011, there was an interesting phenomenon created by a movie called “The Parade.” This movie, billed as a comedy, was directed by Srdjan Dragojevic, a popular Serbian director, and it follows the story of a group of gay activists trying to organize a pride parade in Belgrade. It mocked the right-wing, the police, the state, and some of the nationalism of the conflicts of the 1990s, while sympathising with the efforts of the Pride organisers. In addition to


Serbia, the movie was shown in Bosnia, Croatia, Macedonia, Montenegro and Slovenia. It was a big box office hit seen by more than 500,000.\textsuperscript{495} It remains to be seen whether this box office success has induced any self-reflection or change in the general public’s views on LGBT issues.

In December 2011, the Constitutional Court of Serbia ruled that the ban on Belgrade Pride in 2009 was unconstitutional, since the Law on Assembly did not give police the authority to change the location of the event.\textsuperscript{496} However, in this decision, the Court barely gave any consideration to the allegations of discrimination. With convoluted reasoning, the Court decided that since the Pride Parade had never occurred, it could not “reliably conclude that the competent state authorities failed to prevent discrimination against participants of the gathering committed by the third persons.”\textsuperscript{497}

The Constitutional Court made another significant decision when it finally banned the right-wing organisation Obraz in June, 2012.\textsuperscript{498} However, in November 2012, it rejected the Prosecution’s request to ban two other two right-wing organisations, SNP 1389 and Nasi.\textsuperscript{499}

As for the movement Dveri, in the meantime, it has reorganised into a political party. In the May, 2012 elections, it won enough votes to participate in certain local authorities, including in the Autonomous Province of Vojvodina, the capital of which is Novi Sad, the second largest city in the country.\textsuperscript{500} They were just shy of receiving enough votes to get into the National Assembly.

\textsuperscript{495} For more about the movie plot see Erik Kirschbaum, “Serb comedy has Balkans united in laughter”, \textit{Reuters} (13 February 2012), online: Reuters <http://www.reuters.com/article/2012/02/13/us-berlinale-balkans-gay-idUSTRE81C1AP20120213>.
\textsuperscript{496} See \textit{Dragana Vuckovic et al, supra} note 390.
\textsuperscript{497} \textit{Ibid}.
\textsuperscript{499} “Motion to ban three organizations dismissed”, \textit{Tanjug} (15 November 2012), online: Tanjug <http://www.tanjug.rs/news/66451/motion-to-ban-three-organizations-dismissed.htm>.
The political scene in Serbia changed somewhat after the 2012 elections. The Socialist Party, Progressive Party and Democratic Party won most of the votes; however, none of them had enough to form a government. This time, the Socialist Party formed a coalition with the Progressive Party, and Ivica Dacic, who was the Minister of Interior during the Prides, is now also the Prime Minister. The newly elected president is nationalist Tomislav Nikolic, who, during the first few weeks of his presidency, created a commotion by denying the genocide in Srebrenica.

Unfortunately, the most recent research in 2012, conducted by the Lawyers’ Committee for Human Rights (YUCOM), has worrying results. Almost 80% of high school youth approves of some sort of discrimination against LGBT persons. The least-wanted friends among the Serbian high school youth are the LGBT youth, Albanians, and Muslims. Every tenth young man believes it is acceptable to hit a woman if she refuses to have sex with him.

Finally, in 2012 another Belgrade Pride Parade was banned for the same “security” reasons as the one in 2011, and it looks like there will be another complaint filed to Serbia’s Constitutional Court as a result. The Parade itself was a part of a Belgrade Pride Week. All the indoor events that were part of the Belgrade Pride Week were allowed to proceed. After the ban, organisers held a press conference and another little “parade between four walls” at the

501 Even though Mr. Dacic is a Prime Minister since the 2012 elections, he kept his seat as the Minister of Police as well.
504 According to this research, the Roma population were discriminated against the most. LGBT persons and persons with disabilities are following on the second and third place, depending on the school. Ibid.
505 Radoman, supra note 306 at 25.
staircase of the Media Center. This time, they were not allowed to leave the Media Center premises and appear on the streets like they did in 2011. Instead, the organisers and some EU representative sat down on pink Styrofoam chairs and announced the date for the following year’s parade – September 28, 2013. Not long after the ban, on October 2012, Mr. Markovic, married two of the giraffes in Jagodina municipality zoo and sent a message to Belgrade Pride organisers and their supporters. He said “it is a male and a female that should enter a marriage, and not two males.” The symbolic wedding ceremony was attended by the councillors of Jagodina Assembly.

508 The reason for using Stryrofoam could be because the current President of Serbia, Tomislav Nikolic, was known for making various statements about doing Stryrofoam protests. Mr. Nikolic was asking for early elections in 2011, and threatened the Government that he and his party will bring Stryrofoam and protest on the streets. See “Opposition leader: Protests ‘across Serbia’” - B92 (28 February 2011), online: B92 <http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=02&dd=28&nav_id=72968>.
Chapter 6: Conclusion

6.1. Introduction

From international law and international organisations, both global and regional, to the specific case study of the dynamics surrounding efforts to mount Pride parades in Serbia, this thesis has shown the complexities involved in making human rights a reality for LGBT people. Serbia, as a transitional country, has started progressively adopting all the major human rights instruments, yet these instruments and international pressures have failed to protect the rights of LGBT people in Serbia. While the story of Belgrade Pride reveals some potential for positive change, it also demonstrates the general situation of LGBT persons in Serbia, who still live in a highly homophobic environment. Overall, human rights proponents have had very limited success when it comes to the rights of LGBT people in Serbia.

The focus of my research in this thesis has been whether or not international human rights law can induce change on its own. My findings suggest that international human rights law, and laws in general, do not have enough power to induce substantial changes on the ground. When it comes to respect for human rights and discrimination based on sexual orientation, this tool needs to be used in combination with other means. These other means must be targeted at the wider population and focus on promoting change in the society from the ground up. I will review some possible tools at the end of this chapter.

This limitation of the impact of international law is particularly important when it comes to transitional countries, where institutions and society are still influenced by the legacy of the past. When human rights laws are copied and pasted into a very weak and corrupt system, the positive outcomes envisioned will often fail to materialise, as I have demonstrated in the case of Serbia. Furthermore, in a very homophobic society, the support of ordinary citizens for positive
change and respect for the human rights of LGBT people is very weak. Thus, the role of the political elites that are leading the country becomes of central importance. Bringing about change is not as simple as adopting new laws and applying some political pressure.

In my case study, I considered in more detail one right as a positive outcome – the freedom of assembly. However, this right is just one step in the LGBT movement’s struggle for equality. Even when Pride parades occur, there are many other aspects of peoples’ everyday lives that need to improve. Even if there is a Pride parade in the next attempt in 2013, which would be a very important development, much more must be done in order to improve the everyday lives of LGBT people on the ground in Serbia.

There is a need for further research into other methods that could be more successful in creating wider change in society and that can complement the legal changes. In the last part of this chapter, I will make recommendations for each of the stakeholders analysed above (the UN, European regional organisations, and Serbia) aimed at improving the lives of LGBT people in Serbia, as a transitional country, and that are possibly broadly applicable to other post-conflict societies in the Balkans. I will also briefly discuss the possible role of human rights education in achieving social change.

6.2. International human rights paradigm

In this concluding section I analyse how all the stakeholders interact and determine the role of international human rights law in improving the lives of LGBT people in Serbia. In my thesis, I have focused my research on laws on discrimination based on sexual orientation, and questioned how they contribute to making social change. I have analysed the main actors of international law – international organisations and the state (see Figure 1). Each of those
organisations and their discourses on sexual orientation have been analysed in previous chapters (see Chapters 3, 4, and 5).

The research shows that the biggest international organisation and human rights institution, the UN, has recently become more concerned with discrimination based on sexual orientation. The new Resolution on sexual orientation and gender identity and the Human Rights Commissioner’s study are historic moments for strengthening the position of those who advocate for the rights of sexual minorities. However, progress is slow and often encounters opposition. Stereotypes and prejudice exist even among the members of the Human Rights Council, which is supposed to be composed of members that are human rights experts. The rhetoric at the UN, and the Human Rights Council in particular, gives the impression that the status of sexual orientation as a ground for discrimination is still in dispute. It sends a weak message to states such as Serbia. After all, if it is something that is disputed, then maybe Serbia should not rush to make human rights a reality for LGBT people living in the country. This kind of attitude was exposed during the Pride 2011 when the Serbian Prime Minister, Ivica Dacic, was inviting those “Europeans” to come and protect the parade. It is a simple logic—if the international community does not treat sexual orientation the same as other grounds of discrimination, then why should we as a state?

As a political organisation, the UN will often have to deal with those kinds of obstacles. I see two areas for improvement in the current work of this organisation. The practice of the Human Rights Treaty Bodies can be improved if sexual orientation and gender identity are explicitly included in all future documents as grounds of discrimination. The second point of improvement that I see is in the work of the Human Rights Council. The most recent elections

510 Supra note 33.
511 See Gigovic & Markovic Subota, supra note 461.
for membership in this human rights body have been overshadowed by criticism about the expertise of its members.\textsuperscript{512} While this election process is a political issue, the work of the Human Rights Council would be improved if procedural rules and regulations setting out all the necessary qualifications for the future members were adopted.

At the European level, many organisations seek to improve human rights in their member states, but only the European Union, with its promise of membership, has substantial bargaining power (Figure 2). Unfortunately, in the case of Serbia and the Belgrade Pride, EU human rights conditionality was only successful in forcing authorities to allow the Pride in 2010, and failed in all other years. Previously, this outside pressure also contributed to adopting the important new anti-discrimination law. However, as noted earlier, and like many others, this law is not as powerful as it should be when incorporated into highly corrupt state mechanisms.

Overall, I conclude that outside pressure, focused mostly on legal reforms, failed due to the following. First, there is a high degree of homophobia in Serbian society that human rights laws alone could not change. The national human rights institutions that are created to enforce these laws have weak legal remedies, and often encounter obstacles in execution.

Second, widespread corruption still exists in all areas of Serbian life, including the judiciary. The judiciary is often unable to process cases within a reasonable time and, when they do, the perpetrators of crimes against LGBT people are either given minimum sentences, or, as the epilogue above shows, the higher courts cancel the decisions of the lower courts and return the cases back for new, long trials. The prosecution and police are no more helpful. Not once

have they acted preventatively in the cases where members of the OC or pride participants were being threatened by right-wing extremists.

Most important were the political elites, because they had the most influence on whether or not Belgrade Pride would occur. On one side of the equation, they were calculating how many positive points they would get from the EU if a Pride parade went ahead. The political elites have learned what to say, which laws to adopt, and the minimum standard to apply, in order to demonstrate their commitment to European values. On the other side of the equation, was the question of how popular it would be for the political elites within Serbia to allow LGBT people to march openly on the streets of the state capital. Furthermore, in the case of Belgrade Pride, some members of the government have also directly demonstrated homophobia and prejudice – speaking publicly and proudly about it.

Last, but not least, Serbia is still haunted by the legacy of past conflicts, which affects all aspects of the society. In the Serbia case study, I demonstrated how this legacy permeates education, all the state institutions, and the political elites. Belgrade Pride and the rights of LGBT people are equally affected. Nationalism is, unfortunately, a fertile ground for homophobia, whether it is chanting about Kosovo, or saluting the generals accused of genocide in Srebrenica. Those same right-wing groups, organisations and political parties have substantial support for their actions when defending “traditional Serbian values” and “traditional family.” Sexual orientation is seen in Serbian society as something disputed, something that comes from the West, and is foreign. As long as those views prevail, it will be hard to achieve progress in protecting citizens of Serbia from discrimination based on sexual orientation (see Figure 2 for the list of relations and interconnections in the case of Belgrade Pride).
This means that in countries like Serbia, in order to improve the rule of law and democracy, legal change must be accompanied by other changes aimed at, for example, ensuring that there are effective legal remedies. This is something that could be done by local human rights NGOs, with pressure from the people on the ground, combined with international pressure. However, obstacles such as corrupted institutions, like the judiciary and executive branch of the government, are bound to thwart these remedies. Thus, this strictly legal input will often fail.
A certain amount of change needs to come from the ground up and society as a whole. Thus, another way to improve outcomes is to invest in some means for social change outside laws, such as educational policies and programs. For example, this could be done by supporting and lobbying for a nationwide program of human rights education in Serbian high schools. Human rights education will be discussed in more detail below.

In summary, international organisations need to look at the bigger picture and move outside the conventional methods of laws and legal change to affect social change.

6.3. Tools for social change

The right to hold Pride parades, as an expression of freedom of assembly, and as a part of the LGBT movement’s struggle for equality, is just one of the rights that need protection. As mentioned earlier, the Pride parades are an important, historical aspect of the LGBT movement’s fight for equality in many countries. Similarly, they are an important aspect of the struggle for LGBT rights in Serbia, despite many of them being unsuccessful. Raising awareness about sexual minorities in Serbia is one of the most important aspects of the Belgrade Pride.

However, most aspects of the everyday lives of LGBT people in Serbia are not touched by the parades or the laws. They are often subject to violent attacks because of their sexual orientation. A startling 80% of the youth in Serbian schools approve some sort of discrimination against LGBT persons.\textsuperscript{513} In that kind of environment, it is safest to present oneself as heterosexual. Workplaces, public spaces, and families can also be challenging places for LGBT persons, where they need adequate protection.

In this final part, I will briefly address some methods from outside the law that could be used more effectively to challenge homophobia and prejudice in Serbian society. In order for the

\textsuperscript{513} Glavonjic, supra note 503.
everyday lives of LGBT people to improve, the change must come not just from the top, from the international community, but also from the bottom, through Serbian society as a whole.

At the beginning of this thesis, I asked whether the international human rights paradigm has failed LGBT persons. The answer is, as this research has shown, that the international human rights paradigm has indeed fail this vulnerable group, particularly in post-conflict societies. Why? Because this paradigm depends on a poor formula. First, it relies on legal reforms – on adopting new human rights laws and creating national human rights institutions. Second, it relies on conditionality and political pressure from the outside, and activism from the inside, which are insufficient.

That said, using laws for reform has a positive side. LGBT rights would not have been so globally recognisable if there was no work done through international organisations. Laws also give a good basis from which LGBT organisations and other groups struggling for their rights and equality can demand action and positive change from their State. Serbian LGBT people are better off in a Serbia with anti-discrimination laws in place than without. But, if the law cannot directly improve the rights of LGBT people in transitional countries, what can?

The use of non-legal tools that I propose could be used in the case of Serbia and other countries in the Balkans. These tools can function in two ways. First, they can be used alongside the laws to make them more effective. Second, they can have a broader impact than the laws and induce wider social change on the ground.
6.3.1. Creating a regional network for advocacy

My first proposal is to create a regional network for LGBT human rights advocacy. I will briefly explain the pros and cons of this kind of network after elaborating why I see a good opportunity in the regional approach.

My research has shown that the previous conflict still has a huge impact in Serbia. It affects Serbia’s institutions, state policies, and other aspects of life. A similar situation can be found in other countries in the Balkans that have been affected by the conflicts of the 1990s. For example, Bosnia and Herzegovina and Kosovo are societies that are still greatly divided by the conflict. BiH is under constant international supervision, and has various hybrid institutions that include members from the international community, in compliance with the Dayton peace agreement. In July, 2009, BiH adopted an anti-discrimination law. It includes discrimination based on sexual orientation, due to pressure from the EU. Despite this, holding a Pride event is still not a realistic option for Bosnian LGBT people. In 2008, a group of people with machetes managed to violently prevent the Sarajevo Queer Festival.

Another example is Kosovo. Most recently freed from a conflict, Kosovo has even more international supervision than Bosnia and Herzegovina, has excellent anti-discrimination laws, and has new human rights instruments supported by (and even some drafted by) the international community. Kosovo has a constitutional ban on discrimination on the basis of sexual orientation, and its constitutional definition of marriage does not limit marriage to the union of a man and woman. In 2004, the Kosovo Assembly adopted an anti-discrimination law which bans discrimination in many fields. Legally speaking, Kosovo has the best conditions for the sexual minorities in the region – even better than some European Union member states. Nevertheless,

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514 At the moment there are two international missions in Kosovo: the UN Mission in Kosovo (UMNIK) and EU Mission in Kosovo (EULEX).
the LGBT population there remains invisible and outside of any political and human rights discourse.\footnote{515}

A similar problematic situation can be found in the Former Yugoslav Republic of Macedonia\footnote{516} (Macedonia). The LGBT movement there recently started organising, and has encountered many difficulties.\footnote{517} Macedonia is preparing for its first Pride in 2013.\footnote{518} Recent reports of rising violence, however, raise concern about the dire situation of LGBT people in this country. Out of all the countries in the Balkans, Macedonia is ranked at the bottom when it comes to rights and protection of LGBT people. In the annual report, “Rainbow Europe Index 2011,” published by the International Lesbian, Gay, Bisexual, Trans and Intersex Association, ILGA–Europe, it scored -2, meaning it has gross violations of human rights and discrimination against LGBT people.\footnote{519}

LGBT organisations have already been cooperating in the region. For example, LGBT activists from Serbia have visited some of the Pride parades in Slovenia and Croatia, where these events have been happening for some time. They have also held demonstrations in support of, and in solidarity with, the LGBT people in neighbouring countries.\footnote{520} There was also a series of

\footnote{515} For more information on everyday lives of LGBT people in Kosovo see, Marija Savic, Invisible LGBT Report on the position of LGBT community in Kosovo (Belgrade: Heartefact Fund, 2013).

\footnote{516} Macedonia is still in dispute with Greece over the state’s name. Greece’s Northern Province is also called Macedonia, and it claims that Macedonia’s name implies territorial claims to parts of Greek territory. For this reason, in international circles, Macedonia is still written with a prefix of “former Yugoslav Republic.” Negotiations about this name dispute are ongoing (see Sinisa Jakov Marusic, “UN Mediator Presents New Macedonia ‘Name’ Proposals”, \textit{Balkan Insight} (21 November 2012), online: Balkan Insight <http://www.balkaninsight.com/en/article/nimetz-offers-fresh-macedonia-name-suggestions>). I use Macedonia in this paper only as an abbreviation to refer to the Former Yugoslav Republic of Macedonia, and not to a Greek territory with the same name.


\footnote{519} “Rainbow Europe Map and Index (updated in January 2012)”, online: ILGA Europe <http://www.ilga-europe.org/home/publications/reports_and_other_materials/rainbow_map_and_index_2011_2012>.

\footnote{520} For example, in Zagreb, in Belgrade, protests have been organised in front of the Macedonian Embassy as a
expert conferences entitled “Justice in the Balkans”, where academics, activists and human rights defenders from the region discussed the human rights situation of LGBT people in the Balkans. 521 I see a need and an opportunity for more formal regional organisation and cooperation.

This regional network could bring greater visibility and raise awareness about the LGBT issues in the region. It could also serve as a platform to more efficiently exchange best practices and experience, specifically the ones which involve working with state institutions. So far, efforts of regional cooperation between the LGBT organisations have been dependent on the individual cooperation of a few organisations, or on individual projects, like seminars, festivals or similar events. By creating a joint network, this type of cooperation could serve as a good platform to create better dialog between the LGBT and human rights activists in the region. Finally, a regional network could be used as a tool for advocacy, and to generate regional pressure on states to better implement. This tool can work in conjunction with the laws, as they try to approach similar problems thorough joint work and cooperation.

6.3.2. Education for social change

discriminatory manner.\textsuperscript{522} I have a few proposals for future research and strategies in the areas of education and policy.

One of the necessary changes is those textbooks. However, the problem with textbooks is only one of many things that need to be addressed in Serbian education. I share the concerns of Prof. Stojanovic when it comes to the lack of critical thinking in Serbian primary and high school curricula. It is part of a bigger, general problem with the educational system. This is something that is outside the scope of my research, but must be kept in mind when considering education reforms that could help LGBT people.

My second proposed tool for social change in the education area is human rights education in schools and universities in Serbia. For example, introducing human rights education in high schools could be a good way to raise awareness of the broader problems of discrimination, stereotypes, and prejudice that exist among the youth in Serbia. It would be preferable if these workshops were part of an official education program in Serbia. That is why the Ministry of Education should be a stakeholder and organiser of this additional curriculum, in cooperation with human rights NGOs. The biggest question regarding this is how to actually get government officials onside. For example, how do you get the human rights education in Serbian high schools through official circles? Maybe a good start is for the government to organise a survey for high school teachers, staff, and students. It would be interesting to research how such long-term advocacy and policy change is made possible.

One example of how to include issues of homophobia and discrimination against LGBT people in high school curriculum is from Canada. Social Justice 12 is a high school elective course in British Columbia, teaching diversity and tolerance for LGBT people and other minority

\textsuperscript{522} See supra note 328.
This course is a result of LGBT activists’ struggles at the BC Human Rights Tribunal to include gay realities into the classrooms. However, this course did encounter difficulties. In 2008, the Abbotsford school district decided not to offer the course, even though 90 students already signed up for it. It was cancelled after a review, due to concerns expressed by some parents. In 2009, the Abbotsford school board continued creating obstacles, by requiring Grade 12 students to seek parental consent to take a gay-friendly elective course. After many protests, the course was allowed, but this example shows that including a topic like homophobia in classrooms is not easy to achieve, and will often encounter obstacles and discrimination.

Another example is human rights education in Japan. Jennifer Chan, a professor at the Faculty of Education of UBC, in her book *Gender and Human Rights Politics in Japan: Global Norms and Domestic Networks*, describes how Japan has gone through a transformation period when it comes to education, including that related to human rights. According to Professor Chan, the process of redefining human rights education in Japan shows development from a traditional fragmented approach in which, for example, women’s rights were discussed within women’s studies, to a new concept of human rights education. The result was the first Human Rights Education Law in 2000, which mandated development of human rights education plans at national and local levels. It is also interesting to see that parallel to this the concept of

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524 Ibid.
525 Ibid.
528 Ibid at 68-95.
education was changing in Japan’s classrooms. Lectures were a dominant form of educational activity in Japan, however after the 1990s it transferred into a participatory type of education.\textsuperscript{529}

In another study on the new social movements in Japan, Jennifer Chan notes the important role of academia and university. The university is not just a place where important ideas are debated, but also where academic research plays a crucial role “in holding neoliberalism, militarism and nationalism at bay as only one set of truth claims.”\textsuperscript{530} Another opportunity for future research on improving lives of LGBT people in Serbia is looking at the university level. It would be useful to offer scholarships for doing research in the area of LGBT rights and social change. Another interesting possibility would be forming LGBT organisations at faculties and schools.

These methods are just some possibilities. There is a need for further research in order to define the tools in more detail, to apply them in practice, and to evaluate their effectiveness. Whatever is done in the future should be based on long-term planning and strategy that will address all aspects of discrimination against LGBT people. There is a need to challenge homophobia and prejudice in society as a whole. Human rights education can help create that necessary pressure on a government from inside the state. In order for the legal strategies to work in practice, there needs to be that initial level of understanding and acceptance in the society. Without educational initiatives that can create the necessary passive leverage, pressure from inside the state, legal methods will not be able to create substantial change for LGBT people. LGBT activists, NGOs and international stakeholders that are trying to create change in Serbia will have to simultaneously use the legal tools and rights discourse, and demand curricular reform in education.

\textsuperscript{529} Ibid at 83.
\textsuperscript{530} Jennifer Chan, \textit{Another Japan Is Possible: New Social Movements and Global Citizenship Education} (Stanford University Press, 2008) at 347.
Last, but not least, the big obstacle in post-conflict societies will be dealing with the past. If the past is forgotten, the society will not be able to move on. If all the crimes are not resolved, there will be long-term difficulty in transforming society. I hope for the future that the efforts do not stop at the international and domestic trials. Other mechanisms of transitional justice, for example a truth commission, are necessary. The past cannot be swept under the carpet, as it will keep coming out. In my Serbian case study I have highlighted several instances of where homophobia and nationalism merge. The post-conflict rhetoric of right-wing groups and Serbian Orthodox Church officials is, unfortunately, too often embraced by the state and the society, which does not wish to accept responsibility for the past atrocities.

In 2008, I participated in an international seminar in Berlin entitled “Queer Easter.” In one of the workshops we had an exercise where we first wrote what we thought were the biggest challenges to making LGBT human rights a reality in our countries and in the world. We were divided in teams and had to hang those problems on a rope that stretched across the room. In the second part of this activity, we had only a few seconds to work in teams and write solutions to those problems one-by-one. The answer written for almost every problem was education. It was interesting how all of us from different parts of world, in those few improvised minutes, saw education as one of the main solutions. Well, let us see how education can make a change. I believe that education, in conjunction with legal strategies, is worth years of hard work. Together, these educational and legal initiatives might generate meaningful change.

531 See Hayner, supra note 240; see also Jennifer J Llewellyn & Robert Howse, “Institutions for Restorative Justice: The South African Truth and Reconciliation Commission” (1999) 49:3 The University of Toronto Law Journal 355; Martha Minow also wrote about the truth commissions focusing on the South African Truth and Reconciliation Commission. She notes that even though it was insufficient to create national reconciliation, it contributed to correcting national narrative and memory. See Minow, supra note 52 at 26.
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Even though Romania and Bulgaria joined later they constitute the part of the part of fifth
enlargement

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Appendix

Appendix A: Newspaper headlines

The media headlines about the Pride parades from 2009, 2010 and 2011 are presented in the three tables below. This research was done by using only one media source - the Blic online newspaper and its media archive from the official Blic website. It shows how one of the Serbian media portrayed the Belgrade Pride events. Blic is one of the popular daily newspapers in Serbia that has, like many others, made the conversion to electronic format, in addition to print publishing. I used the same keyword search for each of the three different years. The keywords I used were: “gej parada” (gay parade), “parada ponosa” (pride parade) and “povorka ponosa” (pride procession). I decided to exclude blogs and readers’ comments, because their creators are usually individuals, and not the official media. I also excluded the articles where the Pride parade was just casually mentioned, and was of no relevance to the topic of the article. The original headlines were in Serbian, however I have translated them to English for the purpose of this research.

There are three tables, one for each of the relevant years described in my case study in Chapter 5. These headlines show how media coverage has substantially grown after the Belgrade Pride in 2009.
<table>
<thead>
<tr>
<th>Month</th>
<th>Day</th>
<th>Headline</th>
</tr>
</thead>
<tbody>
<tr>
<td>April</td>
<td>28</td>
<td>Gay Parade in summer in Belgrade 2009</td>
</tr>
<tr>
<td>May</td>
<td>01</td>
<td>Prime Minister and other Ministers invited to the Pride parade 2009</td>
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<td></td>
<td>13</td>
<td>One quarter of people in Serbia supports violence towards homosexuals</td>
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<tr>
<td></td>
<td>17</td>
<td>Serbia is not ready for the gay parade yet</td>
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<td></td>
<td>18</td>
<td>GLIC is asking for the parade to be postponed</td>
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<tr>
<td></td>
<td>26</td>
<td>Pride parade in Belgrade on 23rd August?</td>
</tr>
<tr>
<td>June</td>
<td>12</td>
<td>Pride Parade without Gay-Straight Alliance</td>
</tr>
<tr>
<td>July</td>
<td>21</td>
<td>Gay parade 20. September in Belgrade</td>
</tr>
<tr>
<td></td>
<td>22</td>
<td>Initiative to move the “Pride parade” to Usce</td>
</tr>
<tr>
<td>August</td>
<td></td>
<td>Pride Parade Organisers: Guests are coming from all over the world</td>
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<tr>
<td></td>
<td>02</td>
<td>Pride Parade will start from the Plato of the Faculty of Philosophy</td>
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<td></td>
<td>05</td>
<td>Ciplic: We expect that gay parade goes smoothly</td>
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<td></td>
<td>14</td>
<td>Public Parsons give their support to the “Pride parade”</td>
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<tr>
<td></td>
<td>16</td>
<td>Assembly on Sunday marked as high risk to security</td>
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<tr>
<td></td>
<td>17</td>
<td>Pride parade” will be protected by police cordon</td>
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<tr>
<td></td>
<td>17</td>
<td>The Government of Serbia and the EU supported the “Pride Parade”</td>
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<tr>
<td></td>
<td>18</td>
<td>There wasn’t such a risky gathering in Serbia recently</td>
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<td></td>
<td>19</td>
<td>The state won’t allow chaos</td>
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<tr>
<td></td>
<td>19</td>
<td>News about cancelling the “Pride parade” reaches the world</td>
</tr>
<tr>
<td></td>
<td>20</td>
<td>Activists of the movement 1389 split up, Ministry of Interior bans all public gatherings in downtown area</td>
</tr>
<tr>
<td></td>
<td>21</td>
<td>Authorities defeated by the hooligans</td>
</tr>
<tr>
<td></td>
<td>21</td>
<td>Tadic: We didn’t back down because of the thugs</td>
</tr>
<tr>
<td></td>
<td>21</td>
<td>Pride parade – Capitulation of state before the violence</td>
</tr>
<tr>
<td></td>
<td>26</td>
<td>Protest of support for the “Pride parade” in Vienna</td>
</tr>
<tr>
<td>October</td>
<td></td>
<td>HRW invited Tadic to fight against discrimination</td>
</tr>
</tbody>
</table>

Table 2 Pride 2009 headlines
Table 3 Pride 2010 headlines

<table>
<thead>
<tr>
<th>Month</th>
<th>Day</th>
<th>Headline</th>
</tr>
</thead>
<tbody>
<tr>
<td>April</td>
<td>04</td>
<td>Labris: Pride procession maybe this year</td>
</tr>
<tr>
<td>June</td>
<td>01</td>
<td>Ciplic: We will stand behind the wish to hold the Pride parade</td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>False bomb report stopped the event for the Pride parade</td>
</tr>
<tr>
<td>July</td>
<td>16</td>
<td>Collection of signatures in support of the Pride parade has started</td>
</tr>
<tr>
<td></td>
<td>22</td>
<td>“Pride parade” a test for the state</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Month</th>
<th>Day</th>
<th>Headline</th>
</tr>
</thead>
<tbody>
<tr>
<td>August</td>
<td>06</td>
<td>Pride parade in Belgrade probably on the 10th of October</td>
</tr>
<tr>
<td></td>
<td>07</td>
<td>Karadzi: Pride parade one step towards respecting all the conventions</td>
</tr>
<tr>
<td></td>
<td>08</td>
<td>“Pride parade” 10th October in Belgrade</td>
</tr>
<tr>
<td></td>
<td>09</td>
<td>Labris calls institutions to punish those who act violent</td>
</tr>
<tr>
<td></td>
<td>09</td>
<td>Palma: If the gays are supposed to get us in the EU I will go and become a shepherd</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>Dacic: Police won’t tolerate attacks on anybody</td>
</tr>
<tr>
<td>September</td>
<td>11</td>
<td>“Nasi 1389” asking the Patriarch to expel Tadic, Dacic and Cvetkovic</td>
</tr>
<tr>
<td></td>
<td>13</td>
<td>Petrusic: Withhold from the condemnations of the Pride parade</td>
</tr>
<tr>
<td></td>
<td>22</td>
<td>Petrusic: Pride parade is a chance for Serbia to show tolerance</td>
</tr>
<tr>
<td></td>
<td>27</td>
<td>Ciplic: There is no doubt whether or not the “Pride parade” will be held</td>
</tr>
<tr>
<td></td>
<td>29</td>
<td>Karadzic: Pride parade is a step forward</td>
</tr>
<tr>
<td></td>
<td>30</td>
<td>Police will ensure the safety of the “Pride parade” participants</td>
</tr>
<tr>
<td>October</td>
<td>01</td>
<td>Police will protect the “Pride Parade”</td>
</tr>
<tr>
<td></td>
<td>01</td>
<td>Safety instructions for the participants of the “Pride parade”</td>
</tr>
<tr>
<td></td>
<td>05</td>
<td>Degert: Holding a Pride Parade is important for Serbia</td>
</tr>
<tr>
<td></td>
<td>06</td>
<td>Markovic: We are not calling for violence but we are against the parade</td>
</tr>
<tr>
<td></td>
<td>07</td>
<td>Dacic opposes violence towards Parade participants</td>
</tr>
<tr>
<td></td>
<td>07</td>
<td>Ciplic calls the citizens to join the Pride parade</td>
</tr>
<tr>
<td></td>
<td>07</td>
<td>Amfilohije appeals to the Pride parade organisers to stop their violent propaganda</td>
</tr>
<tr>
<td></td>
<td>08</td>
<td>More than one thousand people expected at the “Pride parade”</td>
</tr>
<tr>
<td></td>
<td>08</td>
<td>Police will record the family walk and the pride parade</td>
</tr>
<tr>
<td></td>
<td>08</td>
<td>Members of parliament divided around the support for the Pride parade</td>
</tr>
<tr>
<td></td>
<td>08</td>
<td>Changes in traffic because of the Pride parade</td>
</tr>
<tr>
<td></td>
<td>09</td>
<td>At the “Family walk” more the 2.500 thousand</td>
</tr>
<tr>
<td></td>
<td>09</td>
<td>Dacic: The biggest possible security measures for the Pride parade</td>
</tr>
<tr>
<td></td>
<td>09</td>
<td>Many thousands of citizens at the walk against the Pride parade</td>
</tr>
<tr>
<td></td>
<td>09</td>
<td>Pride parade closes the streets</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>A day that Belgrade waited for 9 years</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>Western media: “Pride parade” a test for Serbia</td>
</tr>
<tr>
<td>Month</td>
<td>Day</td>
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<tr>
<td></td>
<td>10</td>
<td>Vordsvort: Support for the Pride parade</td>
</tr>
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<td></td>
<td>10</td>
<td>Djilas: The parade won’t bring anything good for the organisars</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>Dacic: around 6000 hooligans attacked police officers, 190 arrested</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>The walk lasted 20 minutes.</td>
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<tr>
<td></td>
<td>10</td>
<td>Reactions: The Government condemned vandalism</td>
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<td></td>
<td>10</td>
<td>Hooligan riots after the Pride parade: chronology of events</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>The walk lasted 20 minutes.</td>
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<tr>
<td></td>
<td>10</td>
<td>The walk lasted 20 minutes.</td>
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<td></td>
<td>11</td>
<td>Hooligan riots after the Pride parade: chronology of events</td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>Pride parade over, hooligans looted the city, leader of “Obraz” arrested</td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>LDP wants an extraordinary session, DS sees political background in the violence, SRS, SNS, and DSS are accusing the government</td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>Police union dissatisfied with the security evaluation</td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>International gay and lesbian community: The real stars of the parade police officers</td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>Buzek: Those who used violence in Belgrade were breaking values of the EU</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>Opposition: Who is responsible for violence on the streets of Belgrade?</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>In custody 66 out of 71 suspects in the riots</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>Organisers: The Pride parade was successful</td>
</tr>
<tr>
<td></td>
<td>13</td>
<td>Dacic: Serbia will cope with extremists</td>
</tr>
<tr>
<td></td>
<td>13</td>
<td>NGOs: The government should voice its opinion regarding a statement made by the politicians about the Pride parade</td>
</tr>
<tr>
<td></td>
<td>13</td>
<td>Homen: The goal of the extremist groups is for Serbia not change</td>
</tr>
<tr>
<td></td>
<td>13</td>
<td>Security situation in Serbia is stable</td>
</tr>
<tr>
<td></td>
<td>14</td>
<td>Croatian journalist about the Pride parade: So “cool” police officers!</td>
</tr>
<tr>
<td></td>
<td>14</td>
<td>The investigation on the riots during the Pride parade is still ongoing</td>
</tr>
<tr>
<td></td>
<td>25</td>
<td>Worlik, Mas and Degert: A significant step for Serbia</td>
</tr>
<tr>
<td></td>
<td>26</td>
<td>Labris: The state did not say that homophobia is unacceptable</td>
</tr>
<tr>
<td></td>
<td>28</td>
<td>You don’t solve the problem of security in one day</td>
</tr>
</tbody>
</table>
### Table 4 Pride 2011 headlines

<table>
<thead>
<tr>
<th>Month</th>
<th>Day</th>
<th>Headline</th>
</tr>
</thead>
<tbody>
<tr>
<td>April</td>
<td>08</td>
<td>Best media photography is the one from the Pride parade</td>
</tr>
<tr>
<td></td>
<td>08</td>
<td>State Department: Pride parade—a step forward for Serbia</td>
</tr>
<tr>
<td>May</td>
<td>18</td>
<td>Safe house for gay persons</td>
</tr>
<tr>
<td></td>
<td>23</td>
<td>Mladen Obradovic trial for the gay parade 2009 postponed</td>
</tr>
<tr>
<td>June</td>
<td>22</td>
<td>Tadic supports the Pride parade</td>
</tr>
<tr>
<td></td>
<td>28</td>
<td>Mary Warlick writes for Blic: There is still great risk for violence against gay persons in Serbia.</td>
</tr>
<tr>
<td>July</td>
<td>05</td>
<td>Gay persons equalised with pedophiles and necrophiles</td>
</tr>
<tr>
<td>August</td>
<td>14</td>
<td>MUP (Ministry of Interior) schedules the Pride parade</td>
</tr>
<tr>
<td></td>
<td>15</td>
<td>Dacić: Pride parade carries security risks</td>
</tr>
<tr>
<td></td>
<td>16</td>
<td>Organisers of the gay parade expect that the police protect them this year as well</td>
</tr>
<tr>
<td></td>
<td>16</td>
<td>Agreement with the police about the date and location</td>
</tr>
<tr>
<td></td>
<td>17</td>
<td>Dacic calls political parties to voice themselves over the Pride parade</td>
</tr>
<tr>
<td></td>
<td>17</td>
<td>Gay parade is not good for politicians in campaign</td>
</tr>
<tr>
<td></td>
<td>17</td>
<td>Leader of the JS is inciting hate towards LGBT population</td>
</tr>
<tr>
<td></td>
<td>18</td>
<td>Djilas: Serbia has bigger problems than the Pride parade</td>
</tr>
<tr>
<td></td>
<td>19</td>
<td>Dacic: possible serious incidents at the “Pride parade”</td>
</tr>
<tr>
<td></td>
<td>20</td>
<td>Condemning the Pride parade for political points</td>
</tr>
<tr>
<td></td>
<td>20</td>
<td>Miletic: Nothing will prevent us from holding the Pride parade</td>
</tr>
<tr>
<td></td>
<td>21</td>
<td>DS: Unnecessary debate about pride parade</td>
</tr>
<tr>
<td></td>
<td>21</td>
<td>There is still no willingness to support the Pride parade</td>
</tr>
<tr>
<td></td>
<td>22</td>
<td>Gay and lesbian info center: Politicians are encouraging the hooligans</td>
</tr>
<tr>
<td></td>
<td>23</td>
<td>Politicians are inciting the hooligans against the gays</td>
</tr>
<tr>
<td></td>
<td>23</td>
<td>LSV supports the pride parade</td>
</tr>
<tr>
<td></td>
<td>24</td>
<td>Pride parade in the second half of September</td>
</tr>
<tr>
<td></td>
<td>25</td>
<td>Dveri: Mutiny is needed, but a channeled one</td>
</tr>
<tr>
<td></td>
<td>25</td>
<td>“True patriots” against the Pride parade in Belgrade</td>
</tr>
<tr>
<td></td>
<td>26</td>
<td>Dacic: The exact date for the “Pride parade” has not been agreed yet</td>
</tr>
<tr>
<td></td>
<td>27</td>
<td>How much do we trust our politicians</td>
</tr>
<tr>
<td></td>
<td>27</td>
<td>Pride Parade on the 2nd of October</td>
</tr>
<tr>
<td></td>
<td>30</td>
<td>Police union against holding of the “Pride parade”</td>
</tr>
<tr>
<td></td>
<td>31</td>
<td>Police officers ask the state to guarantee their safety at the Parade</td>
</tr>
<tr>
<td>September</td>
<td>01</td>
<td>State in fear from hooligans</td>
</tr>
<tr>
<td></td>
<td>01</td>
<td>NGOs called out to President Tadic to support “The Pride Parade”</td>
</tr>
<tr>
<td></td>
<td>02</td>
<td>Dacic: Police won’t ban the Pride parade</td>
</tr>
<tr>
<td></td>
<td>05</td>
<td>Police demands bigger authorities at the parade</td>
</tr>
<tr>
<td></td>
<td>06</td>
<td>Police officers can’t withdraw on their own from the Pride parade</td>
</tr>
<tr>
<td></td>
<td>07</td>
<td>Threats to the gay parade participants – the state needs to react urgently</td>
</tr>
<tr>
<td></td>
<td>07</td>
<td>Djurdjevic: Most of the citizens are ready for the Parade</td>
</tr>
<tr>
<td>Month</td>
<td>Day</td>
<td>Headline</td>
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<td>-------</td>
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<tr>
<td>11</td>
<td></td>
<td>Gay and lesbian info center calls raspberry farmers to join the Pride parade</td>
</tr>
<tr>
<td>13</td>
<td></td>
<td>Police was late last year to arrest the hooligans</td>
</tr>
<tr>
<td>13</td>
<td></td>
<td>Organisers of the Pride parade supported the charity action “Battle for the babies”</td>
</tr>
<tr>
<td>18</td>
<td></td>
<td>Place and the itinerary of the Pride parade will be known in the following days</td>
</tr>
<tr>
<td>19</td>
<td></td>
<td>A call to the LGBT organisations to give up on organising the Pride parade</td>
</tr>
<tr>
<td>19</td>
<td></td>
<td>Dacic: It’s better for the police not to be at the Pride parade</td>
</tr>
<tr>
<td>22</td>
<td></td>
<td>Pride parade won’t be cancelled for sure</td>
</tr>
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<td>22</td>
<td></td>
<td>Itenerary of the Pride parade same as the last year</td>
</tr>
<tr>
<td>23</td>
<td></td>
<td>Degert: There is no EU condition that Serbia should hold a Pride parade</td>
</tr>
<tr>
<td>27</td>
<td></td>
<td>Police union: Destructive demonstrations are being prepared for the Pride parade</td>
</tr>
<tr>
<td>27</td>
<td></td>
<td>Palma again talked offensively about the gay population</td>
</tr>
<tr>
<td>27</td>
<td></td>
<td>“Obraz” announces &quot;prayer walk&quot; on the day of the Pride parade</td>
</tr>
<tr>
<td>28</td>
<td></td>
<td>Dacic would like now that the Europeans secure the parade</td>
</tr>
<tr>
<td>29</td>
<td></td>
<td>Western embassies support the Pride parade</td>
</tr>
<tr>
<td>29</td>
<td></td>
<td>Support for the Pride parade</td>
</tr>
<tr>
<td>29</td>
<td></td>
<td>Incidents at the Pride parade will be a defeat for Serbian security services</td>
</tr>
<tr>
<td>29</td>
<td></td>
<td>Pride parade: There is no quitting, no delaying</td>
</tr>
<tr>
<td>29</td>
<td></td>
<td>See the change in traffic on the Pride parade day</td>
</tr>
<tr>
<td>30</td>
<td></td>
<td>Irinej: Ban the Parade of shame</td>
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<tr>
<td>30</td>
<td></td>
<td>The state is considering a ban of the gay pride</td>
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<td>30</td>
<td></td>
<td>The state is considering a ban of the gay pride</td>
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<td>30</td>
<td></td>
<td>All gatherings this weekend banned, including the Pride parade</td>
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<td>30</td>
<td></td>
<td>The Concert for Kosovo at Marakana is cancelled</td>
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<tr>
<td>30</td>
<td></td>
<td>Dacic: We are not banning the parade we are preventing chaos</td>
</tr>
<tr>
<td>30</td>
<td></td>
<td>Tadic supports the ban of Pride parade</td>
</tr>
<tr>
<td>30</td>
<td></td>
<td>You can’t do in two days what you didn’t do during the year</td>
</tr>
<tr>
<td>01</td>
<td></td>
<td>State cracked before extremists because of elections</td>
</tr>
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<td>01</td>
<td></td>
<td>State should guarantee the right to freedom of assembly</td>
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<td>01</td>
<td></td>
<td>How much do we trust our politicians</td>
</tr>
<tr>
<td>02</td>
<td></td>
<td>The police apprehended 6 persons with phantom masks and baseball bats</td>
</tr>
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<td>02</td>
<td></td>
<td>Human rights organisations: The State has been defeated</td>
</tr>
<tr>
<td>02</td>
<td></td>
<td>Amfilohije: By misusing the God’s forces a person can lose a soul</td>
</tr>
<tr>
<td>02</td>
<td></td>
<td>Djilas: The society is not ready for the Pride parade</td>
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<tr>
<td>02</td>
<td></td>
<td>The Police has to determine who was preparing riots at the gay parade</td>
</tr>
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<td>03</td>
<td></td>
<td>EU regrets because of cancelling of Pride parade</td>
</tr>
<tr>
<td>03</td>
<td></td>
<td>Djilas: If I was deciding, I would not allow the Parade</td>
</tr>
<tr>
<td>03</td>
<td></td>
<td>Council of Europe: Tadic to explain why the Pride parade was not held</td>
</tr>
<tr>
<td>04</td>
<td></td>
<td>Europe is asking Tadic to write down why there was no Parade</td>
</tr>
<tr>
<td>05</td>
<td></td>
<td>Tadic will reply to the Council of Europe about why there was no Parade</td>
</tr>
<tr>
<td>05</td>
<td></td>
<td>Neo-Nazis are threatening: &quot;In some better times we will put the supporters of the gay parade in front of the firing squad&quot;</td>
</tr>
</tbody>
</table>

October
<table>
<thead>
<tr>
<th>Month</th>
<th>Day</th>
<th>Headline</th>
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<tbody>
<tr>
<td>November</td>
<td>02</td>
<td>Palma is proud of his conviction for discrimination against the gay</td>
</tr>
<tr>
<td></td>
<td></td>
<td>population</td>
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<tr>
<td></td>
<td>25</td>
<td>The slogan “We are waiting for you” is a call for a lynch</td>
</tr>
</tbody>
</table>