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HOW EUROPE WORKS FOR LGBT * RIGHTS

The Croatian Story



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Introduction

Social discrimination against sexual minorities is still widespread in many European countries. However, today - unlike in earlier times - it is internationally addressed and denounced.

Sexual and gender self-determination is a human right. The United Nations officially recognised human rights violations against LGBT* in 2011 with Resolution 17/19: "Human Rights, Sexual Orientation and Gender Identity".

Today, LGBT* rights are also an integral part of EU enlargement negotiations and the respective annual progress reports.

Using Croatia, which started accession negotiations with the EU at the beginning of the 2000s, as an example, political scientist Nikolina Herceg Kolman shows how respect for LGBT rights developed into a "key issue" during this process, even a "litmus test for 'being European'".

It is vividly and clearly shown that this development was no self-runner, but the result of tough negotiations, and close cooperation between EU institutions, political parties and civil society groups and organisations. The latter have created the necessary pressure for changes in national legislation (as in anti-discrimination law and the legal recognition of same sex partnerships) through continuous education and information work – not least among EU representatives – and public campaigns. In 2002, the first Pride Parade of Southeast Europe was successfully held in Croatia's capital city Zagreb. Through targeted lobbying, LGBT groups even succeeded in inserting a special clause in the anti-discrimination legislation, which was not a prerequisite for EU membership.

The fact that Croatia today, as Herceg Kolman writes, has the most progressive LGBT legislation when compared with other Central and Eastern European EU countries shows how necessary and crucially important civil society engagement is when it comes to strengthening civil rights – and that good results can be achieved in spite of considerable social counter-pressure.

The developments and successes described in this brochure are therefore intended not least to encourage people to take advantage of the opportunities that open up in a unique way during particular times, such as EU accession negotiations¹.



Michael Roick

Head of Western Balkans Office

Friedrich-Naumann-Stiftung für die Freiheit

¹ This brochure is based on the author's recently completed dissertation on the subject:
THE IMPACT OF DOMESTIC ACTORS ON THE EUROPEANIZATION OF LGBT* RIGHTS POLICY IN CROATIA

LGBT* rights in EU Enlargement Policy

Although often seen as the cradle of human rights, the European Union actually has limited authority in this respect, as we have been made painfully aware many times in its history. However, during the EU accession process it can be very influential and do a lot of good, if and when it decides to. This is the period when candidate countries incorporate the *acquis communautaire* into domestic legislation, including regulations on human rights. With each round of enlargement, this influence is getting stronger as the negotiation framework gets more sophisticated. At the same time, the “European values” narrative in which human rights have a prominent role is becoming dominant and it is often taken for granted that certain standards in the protection of human rights are a direct consequence of Europeanisation. LGBT* rights as a subcategory of human rights are most strongly linked to the EU, especially in recent times, and it is commonly considered that LGBT* rights have improved in countries that are in the process of EU accession directly as a result of Europeanisation. Former EU Commissioner for Enlargement Štefan Füle referred to the Belgrade Pride in 2014 as a “turning point in the modern history of democratic Serbia”. This statement demonstrates the symbolic importance that LGBT* rights have assumed in EU Enlargement Policy. Within the EU, LGBT* rights have developed through the discourse on fundamental rights and EU values. Through the years, respect for LGBT* rights has developed into a sort of litmus test for being “European”. Eventually, these rights found their way into EU Enlargement Policy and became an integral part of it, as well as of EU Foreign and Security Policy.

The discourse on fundamental rights and EU values took over with the enlargement to eastern and south-eastern European countries in 2004. The Copenhagen criteria had set three general conditions that each country must meet to become an EU member: political, economic, and full compliance with the EU *acquis*. Political conditions included criteria on the rule of law, democracy, human

rights, and minority rights. However, early on, human rights and minority rights were not defined very precisely and LGBT* rights were almost completely absent from the fifth round of enlargement to Eastern Europe. Most of the Eastern European countries that applied for EU membership in the late nineties had very discriminatory laws when it comes to LGBT* rights; in some of them homosexual relationships were still a criminal offence (Cyprus and Romania). After an intensive campaign by ILGA Europe, the European Parliament adopted a Resolution in 1998 stating that it would not give its consent to EU membership for any country that had such or similar legislation in place. The Resolution called for LGBT* rights to be in the EU membership negotiating frame, but this was only symbolic, since the European Parliament had no co-deciding power until the Treaty of Lisbon. Things changed for the better with Croatian EU accession, especially after 2005, when a new negotiating chapter on the judiciary and fundamental rights was introduced. This chapter gave the EU much more negotiating power when it came to standards in human rights, including LGBT* rights. Since 2013, LGBT* rights have become a key issue within this chapter. This development has led to a new discourse on LGBT* rights within the EU, making it an issue of respecting and promoting EU values and standards, especially the EU fundamental rights standards. This discourse has become dominant in all EU documents and the public statements of EU officials.

LGBT* rights in the process of Croatian EU accession

Croatia entered the process of EU accession in the early 2000s, which was also a time when LGBT* rights began gaining prominence within the EU, following the Treaty of Amsterdam and the first ever EU Directive to address LGBT rights (2000/78/EC), forbidding discrimination in employment and occupation on the grounds of sexual orientation.

In the process of EU accession, Croatia negotiated according to a set of rules that had not been applied during any of the previous rounds of enlargement. The process of EU accession, espe-

cially the introduction of **Chapter 23: Judiciary and fundamental rights** into the negotiating frame, brought about new opportunities for domestic actors to influence policies on human rights and minority rights.

This fact influenced LGBT* rights in Croatia in a positive way. Several key Acts were adopted during Croatia's EU accession, some were among the conditions Croatia had to fulfil in the process, while others were the result of domestic political relations and interactions between LGBT* groups and political parties. The Act that gave gay couples rights equal to those of heterosexual couples (aside from adoption) was adopted after Croatia entered the EU. Furthermore, even some of the legislation that was part of the **acquis** implementation was heavily influenced by domestic actors, mostly LGBT* groups. This was the case with the Anti-Discrimination Act, which included standards higher than those conditioned by the EU in the negotiating process. This suggests that domestic actors were very influential when it comes to LGBT* rights in Croatia. That was possible because the EU accession process served as a window of opportunity for LGBT* groups, enabling them to put their issues on the agenda. According to many LGBT* activists, this is something they consciously used at every opportunity to promote their cause. Crucial events and processes for the development of LGBT* rights in Croatia's EU accession process are the following: the first Pride Parade in Zagreb (2002) Same-Sex Union Act (2003), opening of negotiations for EU membership (2005), the Criminal Code amendments (2006, 2011), Anti-Discrimination Act (2008), the first Split Pride Parade (2011), Same-Sex Life Partnership Act (2014) and Foster Care Act (2018).

How it all started – the first Pride Parade in Zagreb and the beginning of advocacy for LGBT* rights

The first Pride Parade in Croatia was organised on 29 June 2002 in Zagreb, by members of the LGBT* groups Iskorak and Kontra. The motto of the first Zagreb Pride was "Gay Pride Zagreb – Iskorak (step forward) KONTRA (against) Prejudice". Only three hundred people marched in the Parade, mostly activists, although some members of the centre-left coalition government were also there. The event did not attract much attention from the representatives of EU member states in Croatia or the EU Delegation: only one diplomat from the Embassy of Netherlands was present. Pride was held under very heavy police protection and protestors that gathered threw all kinds of objects at the marchers, while yelling all sorts of insults: "Faggots to the camps", "Death to faggots", "Get out of Croatia", "Go to Serbia", "Seig Heil" etc. More than 30 people were attacked before or after the Pride Parade and 27 were arrested.



It is interesting that activists who were among the organisers don't mention the state of LGBT* rights in the EU as their motivation, but rather the interruption by brutal violence from different protesting groups of the Belgrade Pride Parade held a year earlier. Others state that the change of government in 2000, which brought centre-left parties to power for the first time since the independence of Croatia, was what made the Pride Parade possible. The EU was not a factor during that period, even on the level of discourse. LGBT* rights were framed by LGBT* groups as an issue of tolerance and equality, namely marriage equality, and members of the Pride Parade held banners with messages like "Let's step out of the silence" and "Silence is degradation".



The first Pride Parade in Zagreb, 2002

Soon after the first Pride Parade in Zagreb, LGBT* groups Kontra and Iskorak began their fight for the legal recognition of LGBT* rights. They demanded the legalisation of gay marriage, within the Family Code. They had a partner in government, as the main ruling party, the SDP (Social Democratic Party), was prepared to amend the Family Code in line with that demand, although this was stopped by one of the junior partners, the rather conservative HSS (Croatian Peasant Party).

It was around this time that LGBT* groups began using Europe, the European Union and Croatia's determination to become an EU member as a tool for achieving their goals.

At the beginning they mostly used EU discourse to influence or “shame” government parties by referring to European Parliament resolutions, examples of EU member states, even the values of the European parties to which Croatian parties were affiliated. Very soon afterwards they also began to use lobbying of the EU delegation and representatives of EU member states. In an open letter to the government, for example, Kontra and Iskorak mentioned a letter of support they had received from the Delegation of the European Commission to Croatia, stressing that the legalisation of gay marriage within the Family Code was also important for Croatian EU accession. This was very early on, when there was still no real recognition of LGBT* rights within the EU Enlargement Policy. Nevertheless, the link between LGBT* rights and the EU was present from the very beginning of Croatia's EU accession, and it is something that should definitely be attributed to LGBT* groups active at that time.

In the end, gay marriage wasn't legalised within the Family Code, but rather in the special Act on Same-Sex Unions. It gave gay couples a very limited set of rights, but it was, nonetheless, the very first legal recognition of their rights in Croatian legislation.

LGBT* rights in Croatia after opening negotiations

After Croatia opened negotiations with the EU, LGBT* groups gained a very "tangible" and useful tool for advancing their rights. This was possible, first and foremost, because of the introduction of the new **Chapter 23: Judiciary and fundamental rights** which, for the first time in the history of the EU Enlargement Policy, led to LGBT* rights being specifically mentioned in the annual progress reports of the European Commission on the country negotiating EU membership. This was also a time when LGBT* rights were already quite prominent within the EU, as several "new" member states (Poland and Latvia in particular) saw a backlash against LGBT* groups shortly after they entered the EU, which drew the attention of the EU and western EU member states.

In 2005 Kontra and Iskorak began lobbying for the category of hate crime to be introduced into the Penal Code. Again, they used EU discourse, reminding the government and MPs that many EU member states protect LGBT* people from violence through their penal codes. The Penal Code was amended in 2006, after Croatia opened negotiations with the EU. Again, LGBT* groups reminded them that the hate crime clause was in line with the standards of EU member states. In their report on the state of LGBT* rights in 2006, Iskorak and Kontra stated that the amendments to the Penal Code were made because Croatia was in the process of EU accession.



ZA REGISTRIRANO PARTNERSTVO

organizatorice: feministička grupa Epikriza
podržavaju: Centar za mirovne studije, Kontra

2005 Zagreb Pride – For legalisation of same-sex partnerships



2005 Zagreb Pride - For legalization of same-sex partnership

The interaction between LGBT* groups, political parties and EU institutions was most intense during the process of the adoption of the Anti-Discrimination Act. It was part of the alignment of Croatian legislation with EU acquis, but only within **Chapter 19: Social policy and employment**, where the Directive on equal treatment in the field of employment and occupation had to be implemented. The scope of the new anti-discrimination legislation was eventually much broader when it comes to LGBT* rights, and this was the result of efforts by LGBT* groups, mostly Iskorak, Kontra and Zagreb Pride. They actually managed to “squeeze in” a clause that forbade discrimination on the grounds of gender identity, even though this wasn't a condition for EU membership. And they did so despite the fact that the conservative HDZ (Croatian Democratic Union) was in power, and a very heated argument on the issue was instigated by the Catholic Church, which pressured the

ruling party to remove this clause from the draft of the legislation. In the 2007 and 2008 progress reports on Croatia, the European Commission warned that Croatia still hadn't adopted legislation on the prevention of all forms of discrimination, and LGBT* groups used these documents while lobbying with Croatian political parties. In this phase of Croatian EU accession, LGBT* groups were meeting with EU officials very frequently, making sure they were well informed on the state of LGBT* rights in the country. In one of those meetings they warned EU officials about the Catholic Church's pressure and the Government's inclination to bow to such pressure. According to the report on the state of LGBT* rights in 2008, after the meeting, the Delegation of the European Commission in Croatia contacted them and informed them that this issue was something that they were "working on". Shortly afterwards, Prime Minister Jadranka Kosor (HDZ) issued a statement that her party's amendment calling for the removal of the clause on discrimination on the grounds of gender identity had been withdrawn and that their coalition partner, the previously mentioned HSS (which was also split on the issue) would support the bill.

The surge of violence against LGBT* groups, the new Penal Code and EU monitoring

The first Pride Parade in any other Croatian city besides the capital, Zagreb, was held in Split, in June 2011. The Parade was met with great violence and many LGBT* activists were injured.

The next day the LGBT* Group Kontra, which was one of the organisers of the Split Parade, issued a statement highlighting that this violence against LGBT* groups had happened only a day after the European Commission President had announced that the Commission would propose the closure of negotiations between Croatia and the EU, with the intention of Croatia becoming an EU member by July 2013. They also stressed that one of the conditions of entering the EU was the adoption of



Campaign against hate crimes – Zagreb Pride

EU standards in the field of fundamental rights and the protection of minorities. Two Green MEPs, Marije Cornelissen (Netherlands), and Ulrike Lunacek (Austria) (both also influential members of the Intergroup for LGBT* rights in the EP) marched in the Split Parade. Both of them issued statements after the violence and warned that Croatia evidently still hadn't achieved EU standards when it came to human rights, and that there would probably have to be some kind of mechanism established that would monitor the protection of human and minority rights in Croatia. Several days later, the Dutch ambassador to Croatia, Stella Ronner-Grubačić, confirmed to the Croatian media that the Netherlands would ask for monitoring of Croatia after the closure of the negotiations.

Shortly after the violent Pride Parade in Split, the Croatian Parliament adopted a new Penal Code, which introduced more severe sanctioning of hate crime. According to LGBT* activists, the new Penal Code was drafted because the European Commission warned in several annual progress reports on Croatia (2009, 2010, 2011) that the legislation sanctioning hate crime was inadequate. Indeed, in 2009 LGBT* rights were mentioned for the first time in the Progress Report, and it was in the context of violence against LGBT* groups and the inadequate sanctioning of hate crimes. The 2011 European Commission Progress Report mentioned the violence in Split, stating that the authorities had not reacted adequately.

In late 2011 a new, centre-left government took over and finalised the process of Croatia's EU accession. The new Government gave LGBT* rights an important place in their agenda. In 2012 five ministers marched in the Split Parade, which was noted in one of the three monitoring reports on Croatia.



2012 Zagreb Pride – Families with same-sex parents

LGBT* rights after Croatia entered the EU

Only a few months after Croatia became an EU member on 1 July 2013, conservative groups gathered around the “In the name of the family” initiative managed to collect enough citizens' signatures to organise a referendum on the constitutional definition of marriage as a union between a man and a woman. This chain of events could have been linked to very strong EU pressure on LGBT* rights in the last year or two of the membership negotiations. More likely, however, it was a part of a much broader European conservative movement, and Croatian groups only waited for their chance. They knew that the Government would do anything possible to prevent the referendum while still negotiating with the EU and that there would be pressure from the EU to do so. Once you are in (the EU), as some of the activists have put it, there is nothing the EU can do anymore. Croatian EU membership indirectly and inadvertently helped the success of the referendum; the Croatian Parliament had changed the constitutional requirements for referenda and lowered the threshold for voter turnout considerably, to make sure that the referendum on EU membership went smoothly: it did, but it also made it possible for this subsequent referendum to succeed, and for the definition of marriage as a union between a man and a woman to enter the Constitution.



Campaign against the Referendum on the constitutional definition of marriage

On the other hand, the referendum led, in a strange way, to the adoption of legislation giving gay couples a very high level of rights. LGBT* groups had a longstanding promise from the centre-left government and the two leading parties, SDP and HNS (Croatian People's Party – Liberal Democrats), that new legislation with a much broader scope of rights would be adopted. It did, however, rather drag along until this aggressive attempt at curbing LGBT* rights gave the process just the right amount of “boost”. This was also the first time that an LGBT* group, Zagreb Pride, was a member of the Government working group preparing the Act. The new Act on Same-Sex Life Partnership gave gay couples rights equal to marriage rights, excluding adoption rights. It was a bittersweet victory for the LGBT* movement in Croatia. But the fact remains that Croatia today has very progressive legislation on LGBT* rights, certainly the most progressive when compared with other eastern European EU members.

After the Act on Same-Sex Life Partnership was adopted, Croatia climbed to a very high fifth place (out of 49) on ILGA's map **Rainbow Europe** for 2015. Croatian activists, while very happy with this progress, warned that the **Rainbow** map only measured progress when it came to legislation, but said nothing about its implementation or the social climate towards LGBT* groups.



"Time for Life Partnership"

Activists are almost unanimous in their opinion that, since Croatia entered the EU and the Act on Same-Sex Life Partnership was adopted, LGBT* rights in Croatia have, at the very best, been stagnating.

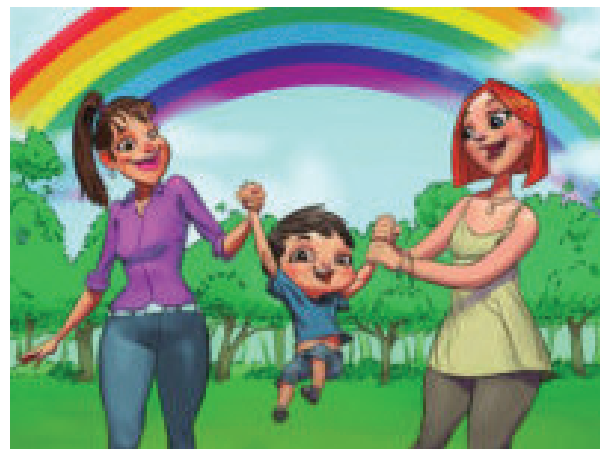
There was another step forward, very recently, when the Constitutional Court ruled that all foster rights should be granted to life partners, as to everyone else. This happened after a new, conservative government adopted a Foster Care Act which excluded life partners from foster care, and one gay couple were denied the right to become foster parents. As it happens, they were also activists, members of the "Rainbow Families" group, and again, they used whatever means possible,



Zagreb Pride in 2019, after the adoption of Foster Care Act. Inscription on the banner: "Jesus had two dads".

including EU discourse, especially the EU Charter on Fundamental Rights, to get equal treatment. Once again, LGBT* groups found partners in left and liberal parties that supported them very strongly in Parliament and, along with LG-BT* groups, filed a request to the Constitutional Court for a constitutional revision of the Foster Care Act.

In 2018 the "Rainbow Families" group published "My Rainbow Family", the first children's book to depict the everyday lives of children who live with same-sex parents. The book was distributed to child-care facilities in Croatia, mostly in Zagreb, Istria, and Northern Croatia. A second edition was published a year later.



Covers of the first edition children's book
"My Rainbow Family"



Second edition of children's book on rainbow families

The EU – from tool to cognitive frame for LGBT* rights

Throughout the process of Croatian EU accession, the EU served LGBT* groups both as a practical “tool” and as a frame for interpreting LGBT* rights.

LGBT* groups began using the opportunities that EU accession opened for them very early on, already by the time of the first Pride Parade in Zagreb and the beginning of the advocacy for marriage equality. Two of the most important tools in that sense were financial possibilities and the opportunities for lobbying with representatives of EU institutions and EU member states. Financial

grants that were used came, at first, mostly from the Embassies of EU member states' to Croatia (in particular the Netherlands) and western European NGOs. But even discourse was used strategically, with the intention of influencing the politicians in power, mostly by referring to the conditions for EU accession and, very often, European Parliament resolutions.

Later, after negotiations were opened, LGBT* groups used financial possibilities and lobbying very intensely, especially towards the end of the negotiations from 2009, when LGBT* rights were for the first time explicitly mentioned in the Commission's Progress Report on Croatia. Meetings with the EU representatives were very frequent and LGBT* groups were invited to take part in "shadow reports", which were, basically, reports that the European Commission prepared based on reports given by NGOs on certain issues. Many LGBT* projects and campaigns were financed using EU pre-accession funds. Since Croatia became an EU member, the strategic use of the EU, especially lobbying, has waned, which is understandable, considering there are no longer any substantial pressure possibilities for the EU to apply in regard to LGBT* rights, especially within family policy. On the other hand, throughout this period, both before and after EU membership, LGBT* groups have used discourse on EU values, standards, documents, and pre-accession conditions, while advocating different policies advancing LGBT* rights. Thus, they used discourse on the EU strategically to achieve a certain goal. However, the EU eventually became more than just a strategic tool; long term and persistent use of EU discourse in the context of LGBT* rights also gave LGBT* groups, along with the political parties that supported them, a cognitive frame for interpreting and "colouring", so to speak, those rights. Being pro-LGBT* was, and still is, considered European, in line with European values and standards and, often, in contrast to "Balkan" bigotry and narrow mindedness.

Lessons from the Croatian experience

The Croatian experience demonstrates that LGBT* organisations not only used the favourable opportunities which EU accession opened for them, but also influenced the very process of the Europeanisation of LGBT rights, its direction and scope. This applies to the legislation regulating family relations (Act on Same-Sex Unions in 2003 and Act on Same-Sex Life Partnership in 2014), but even to the legislation that was part of the alignment with the *acquis* (Anti-Discrimination Act and amendments to the Penal Code).

Another important lesson from the Croatian example is that political parties which support LGBT* rights as a part of their value system and political agenda are an important factor for the advancement of those rights. All the parties that supported LGBT* rights demonstrated strong EU identity, and this could be one possible explanation for their positive view on this issue. However, the parties that were part of Governments that proposed the laws on LGBT* rights (SDP and HNS, predominantly) considered those rights a part of their political agenda, regardless of the process of EU accession. This fact and the interaction between these political parties and LGBT* organisations was a crucial factor for adopting those laws.





Zagreb Pride is 18!

These findings might have relevant implications for other countries in the process of EU accession. Even though it is hard to predict the influence of EU accession on LGBT* rights in those countries, due to their specific circumstances and other topics that dominate the process, it can be argued that this process will create favourable conditions for LGBT* groups to advocate and advance their rights. However, for that to be possible, LGBT* groups have to be strong and very active, and there has to be at least one large and sufficiently influential political party that stands for LGBT* rights and is willing to put forward policy that protects and advances those rights. In the process of EU accession, it is also crucial for the ruling party to be highly interested in gaining EU membership, and to have strong EU identity as one of its core values. When and if these conditions are met, developing partnerships between LGBT* groups and both EU institutions and domestic political parties is the key element for success.

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their photos!



18th Zagreb Pride, 2019

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