
Sexual Citizenship and EU Conditionality

Can Supranational Organizations Facilitate the Advancement of Sexual Minorities?
The Case of Former Yugoslav Republics and EU Accession

Séhzad M. Sooklall

Citizenship is transcending traditional European states' borders. More than a half billion Europeans are now citizens of both the European Union (EU) and one of the 28 member states.¹ Article 20 of The Treaty on the Functioning of the European Union states that "every person holding the nationality of a Member State shall be a citizen of the Union" and that "citizenship of the Union shall be additional to and not replace national citizenship."² Do the rights and protections afforded by member states necessarily mirror the ones afforded at the supranational level? Is one set of citizenship rights more desirable than the other?

Several factors must be considered: does the citizen in question constitute part

¹ Dimitry Kochenov, "The Present and the Future of EU Citizenship: A Bird's Eye View of the Legal Debate," *Jean Monnet Working Papers (NYU Law School)* No.2/12 (2012): 3, <http://dx.doi.org/10.2139/ssrn.2063200>.

² The Member States, "Consolidated version of the Treaty on the Functioning of the European Union," *Official Journal of the European Union* (2012), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>.

of the minority or majority in terms of the power structure of that state, and very importantly, to which member state does the citizen belong? In the process of EU enlargement, applicant countries have to harmonize their national legislation with the *acquis communautaire* before entry into the union.³ This paper explores whether conditionality to EU membership has served as an effective instrument for positive change in the lives of sexual minorities in the applicant countries. More specifically, this paper will focus on the former Yugoslav republics of Serbia and Montenegro, which are currently in the negotiation phase for EU accession, and Croatia, which was admitted to the union in July 2013.⁴

This paper will begin with the introduction of relevant context, including operational definitions. It will be followed by a review of *Contested Terrain of Sexual Citizenship: EU Accession and the Changing Position of Sexual Minorities in the Post-Yugoslav context*, by Katja Kahlina. It will then compare EU accession of the former Yugoslav republics and the resulting impact on sexual minorities with recent events in France in regards to same sex marriage legalization. This comparative and interpretive analysis finds that although advancement of sexual citizenship in France was not imposed by the European Union, riots and anti-gay violence still

³ Katja Kahlina, "Contested Terrain of Sexual Citizenship: EU Accession and the Changing Position of Sexual Minorities in the Post-Yugoslav Context," *University of Edinburgh School of Law: The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia (CITSEE) Working Paper Series* No. 2013/33 (2013): 23, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2388884.

⁴ "EU Enlargement: Check Current Status," *European Commission*, last modified April 16, 2015, http://ec.europa.eu/enlargement/countries/check-current-status/index_en.htm.

erupted in Paris just as they did in Belgrade, Zagreb and Montenegro, which suggests that causality for anti-gay sentiment might not necessarily be rooted in EU conditionality but is likely a symptom of generalized homophobia. This paper presents the argument that the advancement of sexual minority rights comes at a cost regardless of whether it is endogenously or exogenously promulgated, and often with vitriol and protests targeted toward the very same minority groups expected to benefit from changes in the law. However, because the gains in legal status come with increased rights and remedies, it is a worthy and significant goal to pursue in spite of the costs.

The paper concludes by posing relevant questions concerning the power of supranational organizations, and whether such organizations can facilitate the advancement of sexual minority rights. Taking the EU as a model, can other supranational organizations (World Trade Organization or the World Bank) impose membership requirements that ask not only for the respect of sexual minority rights via declaratory instruments but also impose strict enforcement, regulatory and disciplinary regimes for violating such rights?

BACKGROUND

Gender equality and non-discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation are amongst the founding values of the European Union.⁵ Therefore, citizens of member states and,

⁵ European Commission, "The EU Explained: Justice, Fundamental Rights and Equality," *Luxembourg: Publications Office of the European Union* (2014): 4, http://europa.eu/pol/pdf/flipbook/en/justice_en.pdf.

by extension, citizens of the supranational European Union are afforded equal rights regardless of gender or sexual orientation. A supranational organization lies somewhere between a confederation and a federation, but it does not fall exclusively into either category because there are several characteristics that are unique to this type of union.⁶ For example, while competence is divided between the EU and the individual states, sovereignty remains exclusively within the realm of the member states.⁷ Kiljunen⁸ makes the point that EU legislation takes precedence over national laws in areas where the EU has been accorded competence,⁹ just as U.S. federal law and the constitution take precedence over state law only in matters where the federal government has been granted such powers by the Constitution.

The important concept here is that a supranational organization is a collective body of states acting through a central power in matters delegated to it by the individual states. The states defer to the supranational rule in the matters delegated to that union. The EU started as an economic union, but gradually expanded its scope. Social, political and human rights eventually made their way into the *acquis communautaire*. The *acquis communautaire* is defined as the "[c]ommon foundation of rights and obligations which binds together

⁶ Kimmo Kiljunen, "The European Constitution in the Making," *Centre for European Policy Studies* (2004): 22,

⁷ Ibid.

⁸ "Composition: Representatives of the National Parliaments," *The European Convention*, last visited April 16, 2014, http://european-convention.europa.eu/EN/Static/Static6cf8.html?lang=EN&Content=Parlement_Nat. Kimmo Kiljunen is a former member of the Finnish Parliament and member of the European Convention that drafted a constitution for the EU.

⁹ Kiljunen, "The European Constitution in the Making," 19.

the Member States of the European Union.”¹⁰ It is derived from the French verb *acquérir*, which means to acquire, and therefore conjointly means that which the community has already acquired. This concept is important here because new members seeking to enter the union have to harmonize their national laws to grant those acquired European rights to their citizens as well. Hence, as the rights of sexual minorities became part of the European *acquis* in the 2000s,¹¹ the applicant countries from The Socialist Federal Republic of Yugoslavia (SFRY) had to enact non-discrimination legislation to protect sexual minorities.

The SFRY was a federation of six socialist republics: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia, which disintegrated in the 1990s as a result of a number of regional ethnic conflicts. These countries are pertinent because they constitute the majority of applicants currently negotiating for EU accession.¹² While Croatia successfully acceded to the union in 2013, Serbia and Montenegro are still undergoing the negotiating phase.¹³ Moreover, these three countries are relevant to this study because despite their geographic proximity, they have distinctive narratives and imaginaries in EU accession.

¹⁰ “Community Acqui,” *EuroVoc: Multilingual Thesaurus of the European Union*, last visited April 16, 2014, <http://eurovoc.europa.eu/drupal/?q=request&uri=http://eurovoc.europa.eu/210682>.

¹¹ Council of the European Union, “Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation,” *Official Journal of the European Communities* (2000), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L007&rid=2>.

¹² “EU Enlargement: Check Current Status,” *European Commission*.

¹³ *Ibid.*

This is especially seen vis-à-vis EU conditionality toward harmonization of sexual minority rights.¹⁴

LITERATURE REVIEW

This analysis examines Kahlina’s paper in great depth because of her seminal work on the issue of sexual minority rights in the context of former Yugoslav republics’ accession to the EU. As a current and popular topic in human rights, there is however limited scholarship specifically on the issue of LGBT rights in the context of Western Balkan states. This paper not only builds on the work laid out by Kahlina but also offers a different perspective and analysis using secondary sources.

Kahlina, in *Contested Terrain of Sexual Citizenship: EU Accession and the Changing Position of Sexual Minorities in the Post-Yugoslav Context*, explores the point brought forth by feminist and sexuality studies scholars that citizenship rights and duties are accorded differently on the basis of gender and sexuality.¹⁵ The author submits that because citizenship is granted largely on the basis of ancestry, which is inevitably linked to reproductive and monogamous sexuality, society has an inherent bias toward heterosexuality.¹⁶ Throughout her paper, Kahlina discusses the tensions between nationalism, nation-building, and the transnational processes of EU accession and how these impacted sexual citizenship in the former Yugoslav republics.¹⁷

It is important to clarify Kahlina’s conceptions of “sexual citizenship” and “sexual minority.” Lister as *quoted in*

¹⁴ Kahlina, “Contested Terrain of Sexual Citizenship,” 11.

¹⁵ *Ibid.*, 1.

¹⁶ *Ibid.*, 1-2.

¹⁷ *Ibid.*, 1.

Kahlina referred to sexual citizenship as “the ways in which sexuality is implicated in the scope of rights that form the basis of citizenship, such as civil, social, and cultural rights, and which determine the unequal citizenship status of sexual minorities, i.e. of those individuals whose sexual practices do not comply with the heterosexual norm.”¹⁸

This paper will attempt to answer if the bundle of rights afforded to the sexual minority can be equalized to those of the majority in the EU. Kahlina presents the concept of “sexual minority” not in a quantitative sense but rather in terms of the power structure.¹⁹ Alcoff and Mohanty as *quoted in* Kahlina posit the concept of *minority* within a “framework [that] signifies the non-hegemonic position that is formed on the grounds of its unequal relation to the dominant group.”²⁰ Following this definition, sexual minorities would consist of the group of people who have unequal power in comparison to the dominant group of heterosexuals in society.

Kahlina submits that although sexual minority rights were already part of the EU legal discourse in the 2000s, they did not play a prominent role in the 2004 and 2007 enlargements.²¹ However, greater

emphasis was placed on sexual citizenship beginning with the accession of Croatia, Montenegro, and Serbia in the late 2000s.²² The author points to the *European Commission Progress Report for Croatia* and *Article 33* of the *EP Resolution 2012* on the European integration process of Serbia calling on the respective countries to do more against homophobia and to conform with European standards when it comes to protection of sexual minorities.²³ Kahlina purports that those stricter standards were imposed because of EU bias against the Western Balkan states, which were depicted as “backward,” “not civilized enough” and “not ‘European’ enough.”²⁴

On the other hand, it could be argued that the EU’s motivation was sincerely founded upon a desire to create a more unified community that shared similar human rights values among other things. In *Citizenship and the Problem of Community*, Lynn A. Staeheli explains that citizenship is closely linked to community. She argues that “community is where contests are waged over membership and the political subjects and subjectivities that ‘belong’ in a political community ... [community] is a site in which power relationships are both expressed and solidified through citizenship formation.”²⁵ Staeheli suggests that citizenship is a struggle or contest to *belong* to a particular polity.

¹⁸ Ruth Lister, “Sexual Citizenship.” In *Handbook of Citizenship Studies*, eds. Engin F. Isin and Bryan S. Turner, 191-209. London: SAGE Publications Ltd., 2002. doi: 10.4135/9781848608276.n12, quoted in Kahlina, “Contested Terrain of Sexual Citizenship,” 2.

¹⁹ Kahlina, “Contested Terrain of Sexual Citizenship,” 5.

²⁰ Linda Martín Alcoff and Satya P. Mohanty, “Reconsidering Identity Politics: An Introduction.” In *Identity Politics Reconsidered*, eds. Satya P. Mohanty, Linda Martín Alcoff, and Michael Hames-Garcia, 1-9. Gordonsville, VA, USA: Palgrave Macmillan, 2006. Accessed May 1, 2015. ProQuest ebrary, quoted in Kahlina, “Contested Terrain of Sexual Citizenship,” 5.

²¹ Kahlina, “Contested Terrain of Sexual Citizenship,” 9. The 2004 and 2007 enlargements

included the following countries: Hungary, Poland, Romania, Slovakia, Latvia, Estonia, Lithuania, Bulgaria, Czech Republic and Slovenia. “EUROPA: The History of the European Union,” European Union, last visited April 16, 2014, http://europa.eu/about-eu/eu-history/2000-2009/index_en.htm.

²² Kahlina, “Contested Terrain of Sexual Citizenship,” 9.

²³ *Ibid.*, 9-10.

²⁴ *Ibid.*, 10.

²⁵ Lynn Staeheli, “Citizenship and the Problem of Community,” *Political Geography* 5, 7 (2008): 27.

In studying how different communities in the Western Balkan states were imagined, Kahlina paid close attention to the sharp distinctions in the national imaginaries of the respective states.²⁶ Following the dissolution of the former Yugoslav federation, the previously repressed sense of ethnic belonging came to the forefront in the states once again.²⁷ Kahlina finds that this concept of national imaginary built around ethnic identity is significant in the study of EU accession. In Croatia, for example, being more “European” was considered more desirable than being “Balkan,” which was the reverse in Serbia.²⁸ These distinctive discourses eventually led to different paths toward EU accession in the respective states. Building on national imaginaries can be a powerful tool for social change. Western democracies often pride themselves on issues such as inclusion of minorities, tolerance, and human rights. It is a way to mark their difference from the *others*.²⁹

National imaginaries translate into legal realities. Kahlina explains that conceptions of nation, gender and sexuality define the citizenship status of sexual minorities because they not only relate in a cultural context but also in the allocation of rights through family codes, citizenship and immigration acts, and labor and health

²⁶ Kahlina, “Contested Terrain of Sexual Citizenship,” 11-12.

²⁷ Thomas Hylland Eriksen, *Social Identity, Intergroup Conflict, and Conflict Reduction*, eds. Richard D. Ashmore, Lee Jussim & David Wilder (2001), 47-51.

²⁸ Kahlina, “Contested Terrain of Sexual Citizenship,” 11.

²⁹ Fred Joseph LeBlanc, “Sporting Homonationalism: Russian Homophobia, Imaginative Geographies & the 2014 Sochi Olympic Games” (presentation, Sociology Association of Aotearoa New Zealand, Annual Conference December 2013) <https://otago.academia.edu/FredLeBlanc/Conference-Presentations>.

insurance laws.³⁰ Kahlina, however, stops short from endorsing the concept of Europeanization of the Western Balkan states as a definite and progressive change in the national imaginaries that results in greater inclusion of sexual minorities. She suggests that importing Western European standards has also provided ammunition to conservative and nationalist groups to disenfranchise and discriminate against sexual minority groups, implying that there was no clear advancement of sexual minority rights as a result of the Western Balkan states’ legislative harmonization with EU requirements. Kahlina therefore suggests that the EU was not necessarily an unambiguous liberator of the oppressed sexual minorities in the former Yugoslav republics. She specifically cautions against the assumption that a Europeanization movement would become a protector of local LGBT populations.³¹

In fact, changes in the legal code that decriminalized homosexuality did not occur at the same time across the former Yugoslav states, Kahlina argues. It was not a single Europeanization wave that swept decriminalization of homosexuality through Yugoslavia at a particular point in time. Decriminalization of homosexuality actually began in 1977, long before EU accession, at a time when criminal law shifted from federal to the state level—Slovenia, Croatia, and Montenegro, and the Province of Vojvodina decriminalized in 1977 but Serbia waited until 1994.³² Serbia was actually one of the last countries in the Eastern European block to address the issue of homosexuality altogether. In fact, it took 15 years after the 1994

³⁰ Kahlina, “Contested Terrain of Sexual Citizenship,” 4.

³¹ *Ibid.*, 5.

³² Douglas Sanders, “Getting Lesbian and Gay Issues on the International Human Rights Agenda,” *Human Rights Quarterly* 67, 71 (1996): 18.

decriminalization for the country to enact the first law banning discrimination based on sexual orientation, and it would not be until 2009 that the first non-violent gay pride parade took place.³³ The relative speed of change in Serbia is arguably slower compared to the neighboring countries, and the possible reasons behind this particular Serbian exception will be examined below.

As SFRY broke up in 1992, Ragazzi and Štiks explain, the successor states used their “founding documents, constitutions and citizenship laws as effective tools to accelerate nation-building and to ‘ethnically engineer’ their populations to the advantage of the majority ethnic group.”³⁴ The authors argued that the new citizenship laws both “deterritorialized inclusion and targeted exclusion” because in Croatia, for example, Croatian ethnicity at its core was used “not only to homogenise the national population through the exclusion of non-Croats, but also to include all ethnic Croats in a single national group, regardless of their place or country of residence.”³⁵

In *Negotiating Interests: Women and Nationalism in Serbia and Croatia, 1990-1997*, Lilly and Irvine submit that nationalist ideologies in Serbia and Croatia reflect the concept of nation as a patriarchal family, assigning the role of the father in the public sphere as soldiers and workers, and positioning women to the private sphere as “reproducers and socializers of future citizens” teaching them the nation’s

³³ Bojana Dunjić-Kostić et al., “Knowledge: A Possible Tool in Shaping Medical Professionals’ Attitudes Towards Homosexuality,” *Psychiatria Danubina* 24, 2 (2012): 143-144.

³⁴ Francesco Ragazzi & Igor Štiks, *Citizenship Policies in the New Europe*, eds. Rainer Bauböck, Bernhard Perchinig & Wiebke Sievers (2009), 339.

³⁵ *Ibid.*

“history, traditions, culture, and values.”³⁶

As such, women are framed as not only carriers of the genetic material of the ethnic group but also as transmitters of the cultural ethnicity. Heterosexuality emerged as the dominant and only legitimate form of sexual relationship, which *de facto* delegitimized other sexualities for the sake of the nation—this of course paved the way for exclusionary laws that made citizenship particularly difficult for sexual,³⁷ and arguably, other minority groups.

After the first decade of the breakup of the SFRY, Jović explains that a new consensus emerged towards Europeanization— notions of nationalism in Croatia were not necessarily being rejected but on the contrary, they were being secured by ensuring continuity of the nation through membership in powerful institutions such as the NATO and the EU.³⁸ It was a means to ensure Croatia’s survival as an independent state would not be challenged.³⁹ Kahlina posits that the defining or redefining of what it is to be Croatian or Serbian probably started around the same time as a result of the socio-political and symbolic processes of EU accession.⁴⁰ The question of what it is to be European was therefore posed, and, as a result, the place for sexual and other minorities also became part of the discourse. Ultimately, the question becomes whether these new aspiring EU states would become more like the

³⁶ Carol S. Lilly & Jill A. Irvine, “Negotiating Interests: Women and Nationalism in Serbia and Croatia, 1990-1997,” *Eastern European Politics and Societies*, 16 (2002): 112.

³⁷ Kahlina, “Contested Terrain of Sexual Citizenship,” 7-8.

³⁸ Dejan Jović, *The Western Balkans and the EU: The Hour of Europe*, ed. Jacques Rupnik (Institute for Security Studies European Union, 2011), 40-41.

³⁹ *Ibid.*

⁴⁰ Kahlina, “Contested Terrain of Sexual Citizenship,” 9.

Western European nations, where difference and inclusiveness is a matter of national pride, or if they would follow a different trajectory.

Croatia applied for EU membership in 2003, followed by Montenegro in 2008 and Serbia in 2009, and last year, in 2013, Croatia's application was approved making it the 28th member of the Union.⁴¹ Montenegro and Serbia are still in the negotiation phase.⁴² Kahlina posits that although desire to join the EU was "largely present" in the former Yugoslav republics, legal improvements for sexual minorities were however "portrayed as part of European values and EU conditionality . . . [which] in turn influenced the joining of homophobic, nationalist, religious, and anti-EU discourses in the mobilization against the transformation of sexual citizenship."⁴³

Sexual minority rights did not come as a pre-condition for accession until the 2000s.⁴⁴ Kochenov points out that discrimination against sexual minorities was not raised as an issue until *Council Directive 2000/78/EC*, which stated that "[d]iscrimination based on . . . sexual orientation may undermine the achievement of the objectives of the EC Treaty,"⁴⁵ and Kahlina points out that the issue similarly was not raised until the year 2000 in the *Charter of Fundamental Rights of*

the European Union.⁴⁶ It is noteworthy that in 2000 the following member states, part of the original 15, still did not have anti-discrimination laws protecting the employment rights of sexual minorities : United Kingdom, Germany, Italy, Belgium, Greece, Portugal and Austria.⁴⁷ They passed such legislations in 2003.⁴⁸

But after *Council Directive 2000/78/EC* and the *Charter of Fundamental Rights of the European Union* in 2000 and the subsequent legislative harmonization in the above EU member states, non-discrimination on the basis of sexual orientation became a more pronounced European value. Therefore, countries that wanted to become more *European* or that had aspirations to join the EU, Kahlina suggests, probably started viewing movements toward liberal pluralism more favorably.⁴⁹ This can be argued in the case of Croatia where, following the dissolution of SFRY, strong anti-Balkanist sentiment

⁴¹ "EU Enlargement: Check Current Status," *European Commission*.

⁴² Ibid.

⁴³ Kahlina, "Contested Terrain of Sexual Citizenship," 9.

⁴⁴ Ibid.

⁴⁵ Dimitry Kochenov, "Democracy and Human Rights - Not for Gay People?: EU Eastern Enlargement and its Impact on the Protection of the Rights of Sexual Minorities," *Texas Wesleyan Law Review* 13, 2 (2007): 487, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1022307.

⁴⁶ Kahlina, "Contested Terrain of Sexual Citizenship," 9. The charter specifies "[a]ny discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or *sexual orientation* shall be prohibited." European Convention, "Charter of Fundamental Rights of the European Union," *Official Journal of the European Communities* (2000) (emphasis added), http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

⁴⁷ Robert Wintemute, "Sexual Orientation and Gender Identity Discrimination: The Case Law of the European Court of Human Rights and the Court of Justice of the European Union," *ILGA-Europe* (2013): 1, [http://www.ilga-europe.org/content/download/19297/124445/version/4/file/Council+of+Europe+\(Comm+for+HR\)+2013-10-21.pdf](http://www.ilga-europe.org/content/download/19297/124445/version/4/file/Council+of+Europe+(Comm+for+HR)+2013-10-21.pdf). Notable exceptions in the list of the original 15, which passed such anti-discrimination provisions prior 2000 include France in 1985, and Denmark and Sweden in 1987. Ibid.

⁴⁸ Ibid.

⁴⁹ Kahlina, "Contested Terrain of Sexual Citizenship," 11.

fueled the country, and because Croatians saw themselves more as Europeans they perceived EU accession as their grand return to Europe. They therefore became more accommodating to the imported European non-discrimination values—a cause which united both right and left wing politicians of the country.⁵⁰ Therefore from a Croatian perspective, it made sense to return to Europe given their self-perception, and they also understood it was in their security interest to become part of the EU and NATO.

Kahlina argues that the same was not necessarily true for Serbia, however, and that Montenegro found itself somewhere in the middle of these two extremes.⁵¹ Montenegrins did not view the Europe and Balkan notions as mutually opposing, and like Croatia, Montenegrin politicians, both left and right, were united behind the cause of EU accession.⁵² These different perceptions of local attitudes toward Europe and the Balkans ultimately had an impact on the feasibility of the adoption of the imported European values.

Whether the adoption of these imported European values is genuine and effective is another story, but what remains true and enduring is that mechanisms, structures, policies, and institutions required in the acceding countries can and will ultimately have an important impact in the facilitation and genuine integration of such values in civil society. Anti-discrimination laws and institutions that should monitor their implementation are now an inevitable part of the obligations imposed in the EU accession process.⁵³ The EU, through its delegations and monitoring instruments in the acceding countries, can serve as an important

⁵⁰ Ibid.

⁵¹ Ibid., 11-12.

⁵² Ibid., 12.

⁵³ Ibid.

promoter for the advancement of sexual minority rights in the respective states. These delegations paid particularly close attention to the Gay Pride Marches because they were seen as an important and visible “marker of democratization and human rights promotion,” argues Kahlina.⁵⁴

In *State-Sponsored Homophobia and the Denial of the Right of Assembly in Central and Eastern Europe: The “Boomerang” and the “Ricochet” between European Organizations and Civil Society to Uphold Human Rights*, Holzacker argues that gay pride marches are more than just symbolic public displays. These marches “communicate specific political and societal demands to elites, including social acceptance, the need for equality and antidiscrimination laws, as well as the recognition of same-sex partnerships and marriage.”⁵⁵ Holzacker goes so far as to say that not providing adequate protection to participants or banning the gay pride marches altogether is a form of state-sponsored homophobia. The author argues that “such state action serves to legitimize homophobia in the broader society; cues other actors, such as employers, to engage in discriminatory behavior, and emboldens those who use verbal and violent attacks in the streets against [LGBT] persons who wish to exercise their right of assembly to bring about social and legal change.”⁵⁶

Although gay pride marches may attract greater opposition, they are one of the few visual indicators available to the EU delegations and human rights watchers.

⁵⁴ Ibid., 15-16.

⁵⁵ Ronald Holzacker, “State-Sponsored Homophobia and the Denial of the Right of Assembly in Central and Eastern Europe: The “Boomerang” and the “Ricochet” between European Organizations and Civil Society to Uphold Human Rights,” *Law & Policy* 1, 3 (2012): 35.

⁵⁶ Ibid., 2.

Also, these marches are not just symbolic because they are also the very embodiment of the human right of assembly, codified in articles 10 and 11 of the Declaration of Rights of Man and Citizen (1789), the First Amendment to the U.S. Constitution, and in various regional European human rights treaties, notably article 11 of the European Convention on Human Rights (ECHR) and article 12 of the Charter of Fundamental Rights of the European Union.⁵⁷ Gay Pride embodies the political right of assembly. If the right of assembly cannot be protected, it is improbable that other rights such as protection from discrimination or even marriage equality could ever be achieved. For this reason, it is an important symbol that can be used by delegations to measure the extent of protection afforded to sexual minorities.

The first Pride March in Belgrade took place in 2001, but was cut short because of the eruption of violent protests.⁵⁸ Instead of arranging for greater police protection, the second Pride March organized eight years later in 2009 was cancelled by city authorities out of fear that the march would erupt into widespread violence.⁵⁹ A year later, in 2010, the Belgrade Pride under the watchful eye of the head of the EU mission in Serbia, Vincent Degert, who said it was a moment to "celebrate the values of tolerance, freedom of expression and assembly," was again met with violent protests culminating in more than 100 people being injured, mostly police, and around another 100 people being arrested.⁶⁰ The Pride March

⁵⁷ Ibid., 3.

⁵⁸ Mark Lowen, "Gay March Plan Tests Serb Feelings," *BBC News*, last modified September 19, 2009, <http://news.bbc.co.uk/2/hi/europe/8263116.stm>.

⁵⁹ Ibid.

⁶⁰ Mark Lowen, "Scores Arrested in Belgrade after Anti-gay Riot," *BBC News*, last modified October

was again cancelled in 2011, 2012, and 2013 by the government citing fears of violent protests, which raised concerns at the European Commission when considering Serbian membership to the EU.⁶¹

Serbian resistance to inclusion of sexual minorities have come under various pretexts. Kahlina brings forth the issue of *White Plague* in Serbia, which is a term used to describe the decreasing birthrates and resulting insufficient reproduction of ethnically pure Serb-citizens.⁶² The *White Plague* is closely linked to the concept of lineage and became a dominant theme following the breakup of SFRY in the 1990s.⁶³ Per this framework, "non-reproductive practices and non-heterosexual identities were perceived as a direct threat to the nation . . . [and were to] be excluded from belonging to the national community."⁶⁴ Kahlina points out how some activists organized anti-Pride protests called Family Pride under the *White Plague* theme, which framed the future existence of the pure Serbian nation as being compromised by an aggressive movement of the LGBT community.⁶⁵

Pride Marches in the other acceding countries did not go without disruption either, but they were less violent than Belgrade's. Zagreb held its first Pride

10, 2010, <http://www.bbc.co.uk/news/world-europe-11507253>.

⁶¹ Julia Druelle, "La Serbie Interdit la Gay Pride pour la Troisième Année Consécutive" [Serbia Bans Gay Pride for the Third Consecutive Year], *Le Monde*, last modified September 28, 2013, http://www.lemonde.fr/europe/article/2013/09/28/la-serbie-interdit-la-gay-pride-pour-la-troisieme-annee-consecutive_3486625_3214.html.

⁶² Kahlina, "Contested Terrain of Sexual Citizenship," 21.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

in 2002,⁶⁶ and Montenegro did not have its first march until 2013.⁶⁷ Right of assembly is a core European value and human right, and Serbia's consecutive cancellations of the Gay Pride marches have raised serious concerns at the EU. The Swedish Minister for European Affairs, Birgitta Ohlsson, stated in 2012 that the recent Gay Pride bans has damaged Serbia's membership bid, and she also stressed that membership in the union comes with "commitment to human rights, commitment to minority rights, commitment to freedom of speech, commitment to freedom of assembly. These are the core values of the union. LGBT-rights are human rights."⁶⁸

Similarly, commenting on the violence at the first Split Pride in Croatia in 2011, the Dutch EU MP Marije Cornelissen, who participated in the parade, explained that the violence in Split showed that "Croatia still ha[d] a lot to do to properly protect human rights" and to firmly combat homophobia.⁶⁹ Stella Ronner Grubačić, Ambassador of the Kingdom of the Netherlands in Croatia, went even further and stated that the EU should more closely monitor Croatia in

⁶⁶ "Croatian Gays Join First 'Pride' March," *BBC News*, last modified June 29, 2002, <http://news.bbc.co.uk/2/hi/europe/2074653.stm>.

⁶⁷ "Monténégro: Incidents en Marge de la Première Gay Pride" [Montenegro: Incidents at the First Gay Pride], *Le Parisien*, last modified October 20, 2013, <http://www.leparisien.fr/flash-actualite-monde/montenegro-incidents-en-marge-de-la-premiere-gay-pride-20-10-2013-3243477.php>.

⁶⁸ "Cancelled Pride Festival Damages Serbia's EU Membership Bid," *Alliance of Liberals and Democrats for Europe Party*, last modified October 8, 2012, <http://www.aldeparty.eu/en/news/cancelled-pride-festival-damages-serbias-eu-membership-bid>.

⁶⁹ "Unsafe Pride Event in Croatia Casts Shadow over Accession Prospects," *The European Parliament's Intergroup on LGBT Rights*, last modified June 13, 2011, <http://www.lgbt-ep.eu/press-releases/unsafe-pride-event-in-croatia-casts-shadow-over-accession-prospects>.

relation to the accession process following the violent protests at the 2011 march.⁷⁰ It is likely that these marches were serving as important social indicators to EU officials in evaluating whether the acceding countries were indeed endorsing and practicing European values of inclusion and respect for minority rights.

ANALYSIS

Kahlina's paper maintains a conservative approach in giving the EU accession process credit for advancing sexual citizenship in the former Yugoslav republics. In contrast, this paper will examine the significance of EU-inspired legislative reform. Regardless of whether endogenously or exogenously promulgated, such reforms are arguably always accompanied with local strife, and in the end, either path, local or supranational, can ultimately lead to significant advances in sexual minority rights. The important point to analyze here is : (1) whether setting the law in a hierarchical manner in a supranational context can be effective in transforming sexual citizenship and assuring equal rights, or (2) whether the advancement of sexual minorities come from the groundswell support of the individual peoples constituting a nation.

Kahlina suggests a cautious approach in examining the effectiveness of a supranational approach in advancing sexual minority rights, but it can be argued that both approaches, supranational and local, acting individually or in concert with each other, can lead to significant gains in the cause of sexual citizenship. However,

⁷⁰ "Gay Pride u Zagrebu: Nova Kušnja Tolerancije u Hrvatskoj" [Gay Pride in Zagreb: New Test of Tolerance in Croatia], *Deutsche Welle*, last modified June 18, 2011, <http://www.dw.de/gay-pride-u-zagrebu-nova-kušnja-tolerancije-u-hrvatskoj/a-15170887>.

to become most transformative, these battles should probably be fought both at the supranational law level and at the local level by civil society organizations. Often times, it is via the engagement of the local NGOs using supranational law to pressure their governments that advancement in sexual citizenship can be most effectively attained.⁷¹ However, this analysis finds that, even alone, EU-inspired legislative reform can become an effective instrument to ensure equal citizenship rights.

It is also quite possible that the EU process is not the actual cause of the mobilization of religious and nationalist groups against local gay communities, but the very nature of the legal reforms themselves. Whether via the instrumentation of the EU or that of any other institution at the local, national, regional, supranational or even international level, the advancement for equal rights has almost always been accompanied by violent protests of the powerful ruling majorities, regardless of the impetus for reform.

Considering France, a progressive country in Western Europe and founding member of the EU, for example, it legalized same sex marriage just in May 2013 – this legislative act came into existence only after months of severe and violent protests by the hundreds of thousands in the streets of Paris.⁷² The

⁷¹ Kahlina, “Contested Terrain of Sexual Citizenship,” 13-14. Montenegro, for example, has been slow in implementing legal protections for the LGBT community, and one of the reasons could be although in the midst of pre-existing supranational law, there was low pressure from local activists, who became more organized and visible only recently.

⁷² Steven Erlanger, “Hollande Signs French Gay Marriage Law,” *New York Times*, last modified May 8, 2013, [http://www.nytimes.com/2013/05/19/world/europe/hollande-signs-french-gay-marriage-](http://www.nytimes.com/2013/05/19/world/europe/hollande-signs-french-gay-marriage-law.html?_r=1&)

main right wing party of former President Nicolas Sarkozy, the Union pour un Mouvement Populaire [Union for a Popular Movement] was opposed to the same-sex marriage law.⁷³ The radical right wing parties, the Front National⁷⁴ and the Parti Chrétien-Démocrate [Christian Democrat] were also against it.⁷⁵ In addition, almost all religious groups in France united against the proposed law.⁷⁶ On November 17, 2012, there were 70,000 activists, according to police, and 200,000, as reported by protest organizers, in Paris rallying against same sex marriage – the same month that the draft bill was submitted in Parliament.⁷⁷ On January 13, 2013, there were 340,000, according to the police, and 1 million, per organizers,

[law.html?_r=1&](http://www.nytimes.com/2013/05/19/world/europe/hollande-signs-french-gay-marriage-law.html?_r=1&).

⁷³ Laura Smith-Spark, “French Lawmakers Approve Same-Sex Marriage Bill,” *CNN.com*, last modified April 24, 2013, <http://edition.cnn.com/2013/04/23/world/europe/france-same-sex-vote/>.

⁷⁴ “Contre le “Mariage Pour Tous”, Marine Le Pen en Appelle au Principe de Précaution” [Marine Le Pen Against Marriage for Everyone], *20 Minutes*, last modified January 27, 2013, <http://www.20minutes.fr/ledirect/1088305/contre-mariage-tous-marine-pen-appelle-principe-precaution>.

⁷⁵ Alexandre Lemarié, “Christine Boutin: “Il y a des Lois Supérieures à la Loi de la République”” [Christine Boutin: There are Superior Laws than the Laws of the Republic], *Le Monde*, last modified May 20, 2013, http://www.lemonde.fr/politique/article/2013/05/20/christine-boutin-il-y-a-des-lois-superieures-a-la-loi-de-la-republique_3378882_823448.html.

⁷⁶ Bernadette Sauvaget, “Les Cathos sur la Voie du Veto” [Catholics on the Path to Veto], *Libération*, last modified May 10, 2012, http://www.liberation.fr/societe/2012/05/10/les-cathos-sur-la-voie-du-veto_817881.

⁷⁷ “Mariage Gay: Entre 70,000 et 200,000 Opposants ont défilé à Paris” [Gay Marriage: Between 70,000 to 200,000 Opponents Marched in Paris], *Le Parisien*, last modified November 17, 2012, <http://www.leparisien.fr/societe/mariage-gay-les-opposants-se-rassemblent-a-paris-et-en-province-17-11-2012-2329543.php>.

assembled in Paris against same sex marriage.⁷⁸

In addition to protests on the streets, homophobic violence also tripled during the time the law was under consideration.⁷⁹ In 2013, in less than a six-month period, the number of homophobic violence reported to the nonprofit SOS Homophobie had already equaled the 2012 record, which was in itself already 27 percent higher than the previous year.⁸⁰ In April 2013, a month before the enactment of same-sex marriage in France, SOS Homophobie confirmed in a communiqué that it was receiving about 10 reports of homophobic violence a day, which was three times the level of the year before.⁸¹ A different organization, Refuge, which hosts young gays and lesbians between 15 and 25 years old rejected by their families, also saw a tripling in the number of phone calls they were receiving.⁸² Refuge confirmed that since December of 2012 when the debate on same-sex marriage had just started in Parliament, the number of phone calls reached around 400 to 450 a month in

⁷⁸ "Opposition au Mariage Gay: Le Récit de la Journée de Manifestation" [Opposition to Gay Marriage: A Day of Protest], *Le Parisien*, last modified January 13, 2013, <http://www.leparisien.fr/societe/en-direct-les-opposants-au-mariage-gay-defilent-deja-en-outre-mer-13-01-2013-2476941.php>.

⁷⁹ "Homophobie: Un Nouveau "Record"" [Homophobia: A New "Record"], *Marianne*, last modified September 4, 2013, http://www.marianne.net/Homophobie-un-nouveau-record_a231754.html.

⁸⁰ Ibid.

⁸¹ Michaël Szadkowski & François Béguin, "Des Associations Dénoncent la "Radicalisation" des Actes Homophobes" [LGBT Organizations Denounce Rise in Radical Homophobic Acts], *Le Monde*, last modified April 9, 2013, http://www.lemonde.fr/societe/article/2013/04/08/des-associations-denoncent-une-radicalisation-des-actes-homophobes_3156119_3224.html#.

⁸² Ibid.

comparison to just around 150 calls a month before the debate.⁸³

Nicolas Noguier, president and founder of Refuge, explained that he does not think that there is as a radical increase in homophobic violence in France as much as there is a *revelation* of the existing hidden homophobia.⁸⁴ Noguier argued that the marriage debate in fact only highlighted or provoked a public expression of existing homophobia. He emphasized that the debate around marriage equality had ultimately allowed for the "liberation of this homophobic expression" which had to be put out in the open anyway.⁸⁵ For Noguier, the new marriage equality law was "necessary," but it was accompanied by "important collateral damage" as well.⁸⁶

The sociocultural and geopolitical dynamics in France and the former Yugoslav republics are worlds apart, and yet in both cases advances in sexual minority rights have yielded similar aggressive protests and opposition. If equal citizenship rights were truly a Western European concept, how are such rights also vehemently opposed when it came down to the legalization of same-sex marriage in France in 2013? Could it be that public debates on equal citizenship and the visibility of gay pride marches are not the *cause* but the *revelation* of existing homophobia, as explained above by Noguier? In colloquial language, are public debates around same-sex marriage in France or Gay Prides in the former Yugoslav republics bringing homophobia out of the closet but not necessarily *causing* it?

Regardless of whether these debates are the cause or the revelation of homophobia, stating the law of the land or

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

region in favor of equal rights can ultimately lead to significant gains for minority communities, even if such legal changes also spur violent opposition. The net effect seems positive in the end. Taking the United States for example, after the landmark U.S. Supreme Court case, *Brown v. Board of Education*, which held that racially segregated educational facilities were inherently unequal, in spite of the massive and violent resistance organized across the Southern states, the ultimate impact of *Brown* was groundbreaking for the civil rights movement and for the integration of African Americans in civil society. In June 2013, the Supreme Court in *United States v. Windsor* held that the federal government could not discriminate against same-sex couples and that the Defense of Marriage Act was unconstitutional.⁸⁷ The *Windsor* decision led to a number of cases in lower courts around the country on the issue of same-sex marriage prohibitions. The important point to note here is the implications of an overarching law, which states or smaller jurisdictions have to subsequently follow. Whether it is U.S. federal law determined by the Supreme Court or EU supranational law, stating

⁸⁷ Alison M. Smith, "Same-Sex Marriage: A Legal Background after United States v. Windsor," *Congressional Research Service*, (2014): 1, <https://fas.org/sgp/crs/misc/R43481.pdf>. As of October 2014, there were already 18 states: California, Connecticut, Colorado, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, Washington, and the District of Columbia that allow for same-sex marriage. Following *Windsor*, federal district courts in Utah, Oklahoma, Virginia, Michigan, and Texas have struck down same sex marriage bans in those states. *Id.* at 5. In Kentucky and Ohio, federal district courts held that they are to recognize same-sex marriages validly entered in other jurisdictions. *Id.* at 7. All these rulings have been stayed pending appeal. *Id.*

equal status of minorities in the eyes of the law goes a long way not only in advancing their legal status but also leads to a greater fulfillment of the promise of citizenship. This is illustrated by the gradual integration of African Americans in "white-only" public schools or the grant of marriage rights to gays and lesbians, at least at the Federal level for the time being.

EU accession is an attractive economic and national security goal, and tying membership conditions with equal rights and non-discrimination against sexual minorities ultimately promises more good than harm. Opposition against full citizenship rights for sexual minorities happens in other places where EU accession is not a factor at all, from Uganda to progressive France. Reforming the law and establishing institutions to monitor implementation of these laws as a condition of membership can be an effective instrument to ensure full citizenship rights for sexual minorities. Today, all three states: Croatia, Serbia and Montenegro have anti-discrimination acts that explicitly condemn discrimination against sexual minorities, and they have also set up instruments to report and monitor any such discrimination.⁸⁸

⁸⁸ Kahlina, "Contested Terrain of Sexual Citizenship," 12-14. The following offices have been set up: in Croatia, there is an Ombudsperson for Gender Equality; in Serbia, a Commissioner for the Protection of Equality, and there is an office for the Protector of Human Rights and Freedoms of Montenegro. Other legal changes also took effect in the former Yugoslav republics – a Same-Sex Partnership Act was passed in Croatia although it provided only a few limited rights to same-sex couples instead full marriage rights. Before the *Zakon o suzbijanju diskriminacije* [Anti-discrimination Act] in 2008, which explicitly banned discrimination on the basis of sexual orientation, gender identity and gender expression, the Croatian Parliament had already incorporated anti-discrimination stipulations in a number of acts covering social, economic and political life, namely: the *Zakon o radu* [Labor Act],

These legal changes were often presented by local politicians as exogenously imposed requirements on states applying for membership to the EU.⁸⁹ However, regardless of the EU-scapegoating, the fact remains that these countries are passing laws to protect sexual minorities on a number of civic, social and political fronts. Positioning the move toward equal citizenship for gays and lesbians as EU-imposed does not take away from the very fact that in the end: equality in the eyes of the law for such minorities is achieved. Becoming equal in the eyes of the law is no small feat. If the law of the land of an EU member country is to hold any meaning—it follows that justice and remedies should become eventually accessible and achievable.

The Ombudsperson for Gender Equality in Croatia indeed plays an important role in monitoring the implementation of the Anti-discrimination Act. The office is responsible for the investigation of individual complaints and to provide assistance to petitioners about discrimination based on sex, marital or

the *Zakon o medijima* [Media Law], the *Zakon o sportu* [Sport Act], and the *Zakon o znanosti i visokom obrazovanju* [Science and Higher Education Act] among others. Similarly in Serbia, before passing the *Zakon o zabrani diskriminacije* [Anti-discrimination Act] in 2009, explicitly forbidding discrimination on the basis of gender identity and sexual orientation, the country also enacted stipulations banning discrimination against sexual minorities in a number of laws, namely: the *Zakon o javnom informisanju* [Public Informing Act], the *Zakon o radu* [Labor Act], the *Zakon o visokom obrazovanju* [Higher Education Act], and the *Zakon o radiodifuziji* [Broadcasting Act]. The Montenegrin government on the other hand passed the *Zakon o zabrani diskriminacije* [Anti-discrimination Act] in 2010, which included sexual orientation and gender identity as protected classes, and they also passed the *Zakon o radu* [Labor Act] and the *Zakon o medijima* [Media Law], also geared toward increasing protection for sexual minorities.

⁸⁹ Ibid.

family status and sexual orientation.⁹⁰ In its 2012 Annual Report, the office reported a slight increase in complaints based on sexual orientation.⁹¹ The slight yearly increases could suggest growing visibility and reliability of the institution as an effective instrument to channel discrimination complaints.⁹²

The Commissioner for Protection of Equality in Serbia explained in its 2012 Abridged Report that discrimination based on sexual orientation is still widespread in the country.⁹³ In 2012, there were only eight discrimination complaints on the

⁹⁰ Ombudsperson for Gender Equality, “Annual Report 2012,” *Republic of Croatia* (2013): 8, <http://www.prs.hr/attachments/article/858/IZVJESCE%202012%20-%20ENG2-KB.pdf>.

⁹¹ Ibid., 10. There were 39 cases (10.6 %) in 2012 compared to 16 cases (8.5%) in 2011, 12 cases (5.8%) in 2010, and 9 cases (4.4%) in 2009

⁹² Ombudswoman for Gender Equality, “Annual Report for 2011,” *Republic of Croatia* (2012): 10, <http://www.prs.hr/attachments/article/107/Summary%20of%20Annual%20Report%20for%202011%20web.pdf>. In its 2011 Annual Report, the office mentioned that there was 22 criminal charges for hate crimes against LGBT people and 103 misdemeanor charges against 62 people after the Split Pride in June 2011. Ibid. And using her authority under Anti-Discrimination Law, the Ombudswoman also intervened in four judicial proceedings in 2011 concerning discrimination claims based on sexual orientation: one case before the Municipal Court, one before the Administrative Court, and two before the Supreme Court. Ibid. In its 2011 report, the Ombudsperson for Gender Equality also made recommendations in a number of areas from education curriculum in public schools to the training of judges, prosecutors and law enforcement officials concerning discrimination issues against LGBT persons, and finally the report also asked for the development of a new legal framework that would appropriately protect LGBT persons in accordance with obligations vis-à-vis the EU and the Council of Europe. Ibid., 24.

⁹³ Commissioner for the Protection of Equality, “Abridged Report for 2012,” *Republic of Serbia* (2013): 43, <http://www.ravnopravnost.gov.rs/jdownloads/files/engleski-web.pdf>.

basis of sexual orientation, accounting for only 2 percent of all claims.⁹⁴ Of the eight complaints, discrimination was found only in one case.⁹⁵ The report pointed out that such a small number suggests that cases were not being sufficiently reported.⁹⁶ The Protector of Human Rights and Freedoms of Montenegro handled 64 cases in 2012, and only three were discrimination claims based on sexual orientation and gender identity.⁹⁷ Although the 2012 Annual Report says that progress has been made in regards to the rights of LGBT persons,⁹⁸ still per the same report, as of 2012, only one person in Montenegro had publicly declared himself as an LGBT person.⁹⁹ However, the report also points out that adoption of the Strategy of Improvement of the Quality of Life of LGBT Persons 2013-2018, which ensures freedom of assembly at public events like the Gay Pride along with a new law on same-sex unions would help contribute to the advancement of sexual minorities in Montenegro.¹⁰⁰

⁹⁴ Ibid., 15-16.

⁹⁵ Ibid., 44.

⁹⁶ Ibid. The report also expressed its concern over the consecutive cancellations of the Belgrade Pride in 2011 and 2012. Ibid., 43. Finally, the report concluded with recommendations for the education curriculum in public schools and training of law enforcement, judges, and prosecutors in regards to discrimination issues, among others. Ibid., 64-66. The report noted that the recommendation made in the previous year in regards to amending the Criminal Code to provide adequate punishment for hate crimes, including those based sexual orientation of the victim, had been implemented. Ibid., 64.

⁹⁷ Protector of Human Rights and Freedoms of Montenegro, "Annual Report 2012," *Government of Montenegro* (2013): 82, http://www.ombudsman.co.me/docs/izvjestaji/19112013_Final_Izvjestaj.pdf.

⁹⁸ Ibid., 106.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

A brief review of the work implemented by these newly installed organizations shows that although they have only achieved modest success, these Western Balkan states are moving in the right direction with increasing political support. In fact, local politicians have been able to use EU conditionality to externalize the reasoning behind enacting unpopular anti-discrimination laws. Therefore, in many instances, EU conditionality has *enabled* local politicians to undertake risky political maneuvers that would have otherwise been impossible given the cultural context.¹⁰¹

Hence, although change could be more effective when it comes directly from a grassroots level, these supranationally-inspired organizations can and do play an important role in strengthening local civil society organizations by ensuring and advocating for their freedoms of assembly and speech. In addition, creating a supranational standard for equal rights is no *de minimis* feat either. The accompanying changes in the national legal codes will have a lasting impact and will also provide additional and alternative recourse at the supranational judicial bodies. In the end, having supranational anti-discrimination laws is of great significance.

Yet some of these new laws don't go as far as they should—like the Same-Sex Partnership Act in Croatia, which provides only three stipulations: "the right to common property, the right to be sustained by the partner, and prohibition of discrimination on the grounds of same-sex relationship and homosexual orientation."¹⁰² Nevertheless, it is uncontestedly a move in the right direction in comparison to the previous legal regime that was in place.

¹⁰¹ Kahlina, "Contested Terrain of Sexual Citizenship," 20.

¹⁰² Ibid., 12.

Finally, in the post-Yugoslav space, could EU conditionality be the actual culprit for the increased violence against sexual minorities? Not necessarily so—because such violent acts did peak up even in the absence of EU conditionality as a factor in other spaces, like same-sex marriage legislation in France. The common denominator in these cases seems to be increased visibility and public debates around issues of equal citizenship, and it is this common denominator that radicalizes and galvanizes the anti-gay movements, and that is regardless of the source of these debates—whether local, national or supranational. Same-sex marriage in France and EU conditionality requiring protection of sexual minorities in the former Yugoslav republics both essentially led to massive demonstrations, protests and violence against LGBT communities. Arguably, it is not the origin or the source of these debates that causes such unrest and detrimental effects on gay communities, but rather it is the very *nature* of these debates. Equal citizenship rights whether at the behest of national or supranational laws both tend to radicalize the opponents of such causes.

CONCLUSION

The eternal debate in human rights scholarship is often fixated on the issue of cultural relativism. Inevitably, cultural perceptions of human dignity often varies from society to society, but the main question raised in this paper is that – can the law serve as an effective instrument to set a universal standard on some basic rights afforded to Mankind? More specifically, this paper looks to the European Union and posits whether the law of the supranational union can serve as a positive force in effecting change or is it a detriment in the advancement of sexual

minority rights? Kahlina argues that the EU should not be confounded as an unambiguous liberator and that sexual minority groups have suffered consequences emanating from EU-imposed legal changes. On the other hand, this paper presented a comparative and interpretive analysis, which argued that because similar backlashes occurred in the French context during the endogenous legalization process of same-sex marriage in 2013, causality for anti-gay sentiment is not necessarily because legal reform is exogenously promulgated by supranational bodies but is rather an expression of heteronormative preference in many societies.

Strides toward augmenting citizenship rights for minorities often come at a cost and are usually part of a slow and incremental process. The battle for equal citizenship continues today in the EU-acceding countries and across the world, from Uganda to the United States. Whether the movement for equal citizenship is spurred at a grassroots level or by an external supranational body does not necessarily determine the rate of acceptance of such causes. Despite being an imperfect tool, EU conditionality can actually serve as an effective instrument to broaden the scope of rights of sexual minorities in the acceding countries. In just the space of eleven years, the Croatian capital city of Zagreb has transformed: while the first Zagreb Pride in 2002 was mostly remembered for the violent protests against the marchers, numbering around 200,¹⁰³ the 2013 Zagreb Pride had around 15,000 participants, and it went on without disruption.¹⁰⁴

¹⁰³ “Croatian Gays Join First 'Pride' March,” *BBC News*.

¹⁰⁴ “ALDE Party Vice President joins Ljubljana Pride,” *Alliance of Liberals and Democrats for Europe Party*, last modified June 15, 2013,

Although Kahlina does not unequivocally state that EU-inspired reforms in regards to LGBT rights has been completely counterproductive, she nevertheless argues against representing the EU as an “unambiguously liberating force” and that EU accession in fact facilitated turning “sexual citizenship into a contested terrain where the struggles between the competing visions of ‘Europeanness,’ national identity, and tradition take place.”¹⁰⁵ While the second part of this conclusion could be quite plausible, especially in regards to the debate on ‘Europeanness,’ national identity, and tradition being probably partly encouraged by the LGBT rights movement, however, the impressively liberating force of the EU accession process should nevertheless also be recognized. It is not as ambiguous as the author professes.

The accession process has firstly put forward a legal guarantee for sexual minorities that enables them to utilize their rights to peaceful assembly and freedom of speech. Over the first decade of the new millennium, this legal right has been translated into tangible changes for sexual minorities in the acceding countries. By asking for guarantees of a safe space for the LGBT community, EU accession has contributed by giving to this group a chance to give expression to its rights and identity. Thus, the EU-inspired legal rights have created a gateway for both the anti-gay and LGBT groups to bring this cultural conflict into the sphere of public debate. Now Zagreb, Belgrade, Podgorica and others can speak, both for and against, openly about these issues just like they do in Paris. Before the EU-inspired reforms, these debates were largely taboo, which is

<http://www.aldeparty.eu/en/news/alde-party-vice-president-joins-ljubljana-pride>.

¹⁰⁵ Kahlina, “Contested Terrain of Sexual Citizenship,” 24.

counterproductive to the LGBT rights movement. And from this perspective, even catalyzing protest against new laws is also a good thing in itself because it’s part of the public debate on something that was previously unmentionable.

By allowing this issue to come out in public, even in the midst of violent protests, different stakeholders are given the opportunity to debate the merits and prioritization of the values that define their societies. What does it mean to be Serbian and European? Is this about a clash of values—is equal dignity, respect and rights of every human being, irrespective of one’s sexual orientation, exclusively a Western value or is it a universal human value? Like the Former Secretary of State Hillary Rodham Clinton once said: calling gay rights as such is by no means “creating new or special rights” for the LGBT people, it is only a way of “honoring rights that people always had.”¹⁰⁶ She went on to say that “[l]ike being a woman, like being a racial, religious, tribal, or ethnic minority, being LGBT does not make you less human. And that is why gay rights are human rights, and human rights are gay rights.”¹⁰⁷

EU accession enables these societies to bring this kind of debate out in the open because in existing legal and social relations, inequality had already been institutionalized and unexamined. The law plays a unique role here as it makes an explicit and public promise that the legitimate authorities will act within particular boundaries¹⁰⁸ and allow this

¹⁰⁶ Hillary Rodham Clinton, Secretary of State, “Remarks in Recognition of International Human Rights Day,” *U.S. Department of State*, last modified December 6, 2011,

<http://www.state.gov/secretary/20092013clinton/rm/2011/12/178368.htm>.

¹⁰⁷ Ibid.

¹⁰⁸ Holzhaecker, “State-Sponsored Homophobia,” 5.

debate to take place. As such, stakeholders in the EU-acceding states are given the opportunity to negotiate whether these legal reforms are consistent with their national values. Law reflects community morality, and the importance of change in law cannot be underestimated because it's also a testament of the changing values in society, which here is concluded via a negotiation process that is guaranteed in the EU space. Hence, in that sense, EU accession has in fact been an awesome liberator by allowing sexual minority groups to bring this debate out in the open.

If a country wants to be member of an institution, it has to follow certain rules. And thus imposing non-discrimination provisions as a condition of entry into exclusive economic partnerships, like the EU, can be an effective way to ensure equal citizenship across the membership. This is more effective than non-binding resolutions, conventions and charters on human rights because of the legal enforcement and remedies available within the EU-acceding states and at the supranational judicial level.

Although not currently on the agenda, the question could ultimately be posed as to whether the international landscape would look any different if we impose human rights provisions as a condition of membership into vital economic organizations like the WTO, IMF or World Bank? Although such organizations pursue a wholly different aim, could requiring strict adherence to human rights provisions from members, with sanctioning mechanisms in place, actually change the world for the better? In fact, the World Bank is currently reviewing its "lending policies to make sure that no loan assists discrimination" and has currently put on hold a \$90m loan to Uganda after the country enacted one of

the most severe and cruel anti-gay laws.¹⁰⁹ While many argue that the poor are the ones who ultimately suffer from such cuts and not the politicians, a more appropriate strategy is not to cut all aid but rather to redirect the funds to international aid agencies and local NGOs like Britain currently does.¹¹⁰

Attaching economic sanctions to human rights violations can send a very strong signal to the world community. Redirecting funds to local NGOs and international aid agencies can paralyze, or at the very least take some power away from, local governments that are engaging in the persecution of minority groups. Imposing non-discrimination requirements at a supranational level is already having an impact on the advancement of sexual citizenship in the EU. The challenge of this century is for our world leaders to make the bold linkage between human rights and membership in supranational economic organizations. After two world wars, the Universal Declaration of Human Rights (UDHR) was adopted— the world community was united in its resolve that everyone was entitled to the rights and freedoms in that declaration, irrespective of one's belonging to a minority group. However, we see that the translation of the UDHR into actually securing the rights of minorities in member countries is not

¹⁰⁹ "The World Bank: Right Cause, Wrong Battle," *The Economist*, last modified April 12, 2014, <http://www.economist.com/news/leaders/21600684-why-world-banks-focus-gay-rights-misguided-right-cause-wrong-battle>.

¹¹⁰ Alex Whiting, "Western Donors Cut Aid to Uganda in Response to Anti-Gay Law," Thomson Reuters Foundation, last modified February 26, 2014, <http://www.trust.org/item/20140226160032-td4jl/>. In addition to the World Bank, the following countries, Denmark, The Netherlands, Norway, United States, Austria and Sweden, have also followed the same strategy by cutting or threatening to cut direct economic aid to the Ugandan government because of its anti-gay laws.

necessarily effectual. But, the EU as an economic union, on the other hand, has succeeded not only in keeping Europe safe after two world wars, it has also actively augmented the rights of its citizens. Non-discrimination on the basis of sexual orientation is *de jure* the current state of affairs in the EU member countries. It is this sort of economic union and interdependence that's leading to a new order in world affairs. Rather than continually adopting human rights non-binding resolutions, societies should maybe move toward an economic, social and legal *belonging* strategy, as magnificently employed by the EU.



SÉHZAD M. SOOKLALL is a graduating law student at Yeshiva University Benjamin N. Cardozo School of Law and a concurrent Master of Arts in Politics candidate at New York University. Séhzad completed his first year law school curriculum at Tulane

University after graduating summa cum laude from Louisiana State University in Baton Rouge with a Bachelor of Arts in Mass Communication and a minor in International Studies. Additionally, he also holds a Master of Public Administration from the LSU College of Business. Séhzad would like to thank the following people—foremost his parents, Sahejakoom and Farozia Sooklall; his American parents, John and Annette Douthat; his uncle, Kader Parahoo, and his professors and supervisors: Dr. Carole L. Jurkiewicz, Josephine Mason Ellis, Morgan Russell, Sheri P. Rosenberg, Julia Harrington Reddy, Kammae Owens, and Hafida Lahiouel. Finally, Séhzad would like to thank these very important people for their constant love, support, and friendship: Thomas Kyle Bridges, Kathlyn Van Buskirk, and Barbara Douthat Chatelain.