



**Freedom of Assembly under the jurisdictions of Croatia, Serbia, and the European
Court of Human Rights; Pride Parades**

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ABSTRACT

Freedom of assembly is recognized as one of the basic components of a democratic society. It is protected by many international and regional legal instruments. Freedom of assembly enjoys constitutional and legal protection in every democratic country. This rights does not have character of absolute rights, it is subject to certain limitations. How wide those limitations are, within the jurisdiction of the European Court of Human Rights and jurisdictions of Croatia and Serbia will be assessed in this research. General overview of the freedom of assembly, as guaranteed by the European Convention of Human Rights, will be introductory way to the more narrow issue. That issue is freedom of assembly in case of pride parades. The Court recently decided two cases concerning issue of pride parades. Because of its consistency these two cases are good setting grounds for further development. I will discuss factual and legal situation from two countries, Serbia and Croatia. I will explain and discuss how was the impact of important governmental, political and social factors on different development of pride parades in two countries with similar culture, history and laws. Through my work I will argue that European pressure, as external factor, is important to secure freedom of assembly for LGBTQI people, but it is not detrimental for success. Internal factors played key role in the process of development of pride parades in Serbia and Croatia.

To my parents, Ivanka and Branko Matuzovic.

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INTRODUCTION

Freedom of assembly is one of the basic values of democratic society; it has been recognized as such by many legal instruments, international, regional and local. Freedom of assembly is especially valued tool for the recognition of minority rights. Pride Parades are tool that has been used by the Lesbian, Gay, Bisexual, Trans, Queer and Intersex community (hereinafter LGBTQI) for many years to increase visibility and fight for recognition of rights and equality. Freedom of assembly should be basic right, available to everyone, not only tool of last resort and for privileged groups.

Neil Jarman and Michael Hamilton explained how important freedom of assembly is for minority groups:

“The right to peaceful assembly is often thus associated with challenging the dominant views within society, presenting alternative ideas and opinion, and promoting the interests and views of minority groups and sections of society. It provides opportunities for public expression by those with less power, wealth, and status.”¹

The European Court of Human Rights (hereinafter the Court) has long tradition of protecting the freedom of assembly, but only recently it has started to address it in a more narrow cases of pride parades. The Court has decided two cases, and both of them in favor of pride parades. Attitude of the Court is very important because it has potential to set standards in the region, and even to influence development of other rights for LGBTQI community.

The other two jurisdictions, Croatia and Serbia, are important to discuss because most of the people look at only one of these countries at the time, little comparison between two

¹ Neil Jarman and Michael Hamilton, “Protecting Peaceful Protest: The OSCE/ODIHR and Freedom of Peaceful Assembly,” *Journal of Human Rights Practice* 1, no. 2 (June 2009): 208.

has been made. I took Serbia and Croatia because they have similar historical background and similar legal framework for protection of freedom of assembly; both of these societies are patriarchal and devoted to religion. But still development of pride parades went completely different in these two countries. In the beginning the same problems were faced in both countries, but development that followed went in two different directions. Today Croatia has reached point where pride parades are held every year, in two cities, without bigger problems. And Serbia has banned four pride parades in last five years.

In first chapter, I will analyze Article 11 of the European Convention of Human Rights (hereinafter ECHR), cases decided by the Court and non-binding but influential documents about freedom of assembly and pride parades. Second chapter will start with the brief history of pride parades in Croatia and Serbia, and continue with reconstruction of legal standards in both countries. At the end of the chapter I will discuss how compatible are those legal standards with the standards established by the Court. Third chapter will focus on factors which were of crucial importance for different development of pride movements in Croatia and Serbia.

It is the purpose of the present work to show that pressure from the international community, in this case European Union, is not enough for rights of minorities, in this case freedom of assembly, to be ensured. In both of the countries I am writing about internal factors decided in which direction development will go. It is important to research and write about issues like this to raise awareness and to get additional explanations that can be used for further development. Problems in Serbia are still ongoing and as long it like that search for new explanations and solutions should continue.

Main limitation that was faced during research is that many conclusions that could be taken out of the situation are very obvious to the person of reasonable mind, but cannot be

proven by material evidence. Literature is limited to the articles and news reports. Reports issued by international organizations and bodies were very useful.

Previous work where these two jurisdictions were compared in greater detail than mere reporting about event is scarce. Materials on individual cases can be found, but most materials are not of analytical character. This research can be used by those who are interested in comparative approach, more in depth analysis that goes beyond factual reporting.

Chapter I

Position of the European Court of Human Rights and EU on Freedom of Assembly and Pride Parades

This chapter is a brief introduction to regulation of the right to freedom of assembly under the European Convention on Human Rights. Article 11 of the Convention protects this right. Article 11 is not very encompassing, and it was developed and clarified through the work of the European Court of Human Rights. In the first section I will discuss text of the Article 11 and cases which set general standards for freedom of assembly. In second section I will focus on two cases from the Court that are directly connected to pride parades. These two cases mirror the Court's positive and protective attitude towards pride parades. Last section is about recommendations and publications issued by other European institutions and non-governmental organizations on this topic.

I.I Article 11 of the European Convention on Human Rights

Article 11 of the Convention protects freedom of association, freedom of peaceful assembly and sets limits that can be used as justifications by the states to restrict Art 11.

Text of the Article 11:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the

protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”²

Article 11 is often interpreted in light of, or together with the Article 10 of the Convention which guarantees freedom of expression. The Commission at one instance held that freedom of assembly “is a fundamental right in a democratic society”³, just like freedom of expression is. From the Courts practice we can see that same test is applied when determining was there a violation of the Article 10 and Article 11. Therefore in the *Ezelin* case the Court applied “*de facto* test which has the same strictness as that applied in pure freedom of expression cases”⁴ Whether this is in practice true could be discussed, because case law shows that the Court has given more weight to the freedom of expression than to the freedom of assembly. Nevertheless, it is beyond any doubt that the Court puts freedom of assembly on very important place in a democratic society. Relation between right to freedom of expression and right to freedom of assembly is well explained in the *Ezelin* case by saying:

“If the essence of applicant’s complaint relates to participation in demonstration, the Strasbourg Court will consider the case under Article 11 rather than Article 10; Article 10 is regarded as *lex generalis*, while Article 11 is regarded as *lex specialis*”.⁵

² European Convention on Human Rights, Article 11, Rome, 4.11.1950, http://www.echr.coe.int/Documents/Convention_ENG.pdf

³ Appl. 8191/78, *Rassemblement jurassien et Unite Jurassienne*, D&R 17 (1989), pg 93

⁴ P. van Dijk, ed., *Theory and Practice of the European Convention on Human Rights*, 4th ed (Antwerp: Intersentia, 2006). Chapter 15, Pg. 821

⁵ Leonard M. Hammer, Frank Emmert, and Petra Bárd, eds., *The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe* (The Hague: Eleven International Publishing, 2012). Chapter 19, Page 453

Another important distinction between freedom of assembly and freedom of expression was defined in the *Young, James, and Webster* case; “freedom of assembly will generally involve the holding and propagation of specific opinions”⁶.

Freedom of assembly is not an absolute rights, in the Article 10§2 we can find exhaustive list of grounds for limitations imposed by states. States are to apply these restrictions on a very strict way. Their margin of appreciation is not wide. This, as well, is similar with the standard used to limit freedom of expression. The Court said this very clearly in the *Communist Party of Turkey* Case;

“In determining whether a necessity within the meaning of Article 11 para. 2 exists, the Contracting States possess only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decision applying it...”⁷.

With development of Article 11 by the Court it is undisputable that states now do have positive obligations to ensure that everyone can exercise their freedom of assembly. In both cases that will be discussed in next section the Court emphasized importance of positive obligation of states in connection to Article 11. In the *Ouranio Taxo and others v Greece*⁸ the Court affirmed that state`s positive obligation is equally important for freedom of association and freedom of assembly. It is not enough from state give possibility for the associations to be registered; it has to go further and make possible for them to express their attitudes and views publicly. “A purely negative conception”, of freedom of assembly, “...would not be

⁶ Dijk, *Theory and Practice of the European Convention on Human Rights*. Chapter 15, Pg. 818

⁷ *United Communist Party of Turkey and Others v. Turkey*, App No. 19392/92, 30 January 1998, URL: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58128>

⁸ *Ouranio Taxo and others v. Greece*, App No. 74989/01, 20 October 2005, Decided in 2007 by the European Court of Human Rights, URL:

compatible with the object and purpose of Article 11...Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals.”⁹

Right to freedom of peaceful assembly did not develop as fast as freedom of expression or freedom of association, but this did not prove to influence will of the Court to protect right to peaceful protests. The Court even went further and developed positive obligations of the states, with the aim to protect minorities and those who are trying to express views different than those that majority has.

I.II Case law of the European Court of Human Rights

In this section I will write only about cases that are relevant to freedom of assembly when pride parades are in question. Since now only two cases on pride parades issue have been decided by the Court. The Court took protective attitude towards LGBTQI population and freedom of assembly. Generally there is no unique position towards all LGBTQI rights, for example equality in right to marry. Whether this balancing by protecting some rights but not all is result of political side of the Court could be discussed, but it is not topic for this section.

First case in front of the Court was *Case of Baczkowski and others v. Poland*¹⁰. Facts of the case are as follows; Mr. Baczkowski and others who are activists in different non-governmental organizations filed a complaint in front of the Court for violation of their right to freedom of assembly. They wanted to organize event called Equality Days (10-12 June 2005) with the purpose to alert society about discrimination against minorities. Mayor of Warsaw refused to give permission to the march with explanation that the organizers failed to

⁹ *Plattform Arzte fur das Leben` v Austria*, App No. 10126/82, 21 June 1988, Decided in 1991 by the European Court of Human Rights, URL: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57558>

¹⁰ *Case of Baczkowski and others v Poland*, APP NO. 1534/06, 3 May 2007, Decided on 24 September 2007 by the European Court of Human Rights, URL: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-80464>

submit a “traffic organization plan”. On the same day applicants filed requests for six stationary assemblies on 11 June 2005. Four assemblies were against discrimination against minorities and two against discrimination against women. Only two demonstrations that were against women’s discrimination were allowed. Other four were refused “in order to avoid any possible violent clashes between participants in various demonstrations”¹¹ All other counter-protests were allowed to be held. Despite lack of the permission the Pride march was held. Appellant authorities in Poland quashed decision of the first instance court, and established violation of applicant’s freedom of assembly. But this happened after protest was held without permission. This was addressed by the Court as “chilling effect”¹².

The Court found violation of Article 11, and violation of Article 13 and Article 14 in conjunction with Article 11. In its reasoning the Court stressed importance of democracy for civil society. It lined up Articles 8, 9, 10, and 11 as “spring of democratic society”.¹³ Values like plurality, diversity and social cohesion were recognized as essential for proper and harmonized functioning of civil society. Once again, positive obligation of the state to ensure respect of the right to freedom of assembly is must and in Court’s opinion not even slight possibility that this is only negative right exists. It is very important that the Court recognized the need to afford special protection for groups which are marginalized. According to the Court lack of possibilities in short time between refusal to issue permit and date when the event should have happen to seek for legal remedies has chilling effect on the applicants. It was issue in this case, and situation is similar in Serbia and Croatia as well. Once event is banned you have right to file a complaint but usually there is no enough time to manage to change decision before the time when event was planned.

¹¹ Ibid. Pg. 3, Para. 14

¹² Ibid. Pg. 14, Para. 67

¹³ Ibid, Pg. 13, Para. 61

Second case about pride parades was *Case of Alekseyev v Russia*.¹⁴ Mr. Alekseyev tried to organize “Gay Pride” and similar protests several years in a row and every attempt was banned by the Moscow authorities. From 2006 until 2009 none of his attempts to organize protests in support of LGBTQI minority was allowed by the government. The mayor of Moscow publicly and openly admitted that events such as pride will not be held in Moscow. His attitude, and attitude of the authorities, was that such events are against public order and morality, against will of the majority of the people, and against three major religions. LGBTQI people were presented as something imported by the Western world. Another justification, which is used in Serbia as well, was to prevent public disorder and violence.

Mr. Aleksey was arrested in 2006 under the charge for “breaching the conditions for holding a demonstration”.¹⁵ In 2007 he and other two individuals were detained again when they tried to approach the mayor’s office. He filed multiple complaints to local courts. He claimed that under the Assemblies Act government could not ban assembly, only propose change in time and place. All of his appeals were dismissed.

The Court found violation of Article 11 and Articles 13 and 14 in conjunction with Article 11. Russian government used argument of protection from violence and participant’s safety. In its answer to this argument the Court “stressed...that Article 11 protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that is seeking to promote”.¹⁶ Threat from violence was not good justification to ban pride parades three or more years in a row. The same attitude was taken by the Serbian Constitutional Court in its case about Belgrade Pride, but Russian local courts never had this attitude. Another

¹⁴ *Case of Alekseyev v Russia*, App nos. 4916/07, 25924/08, and 14599/09, 21 October 2010, Decided on 11/04/2011, URL: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101257>

¹⁵ Ibid. Para. 21

¹⁶ Ibid. Para. 72

argument from the Russian authorities was lack of European consensus on acceptance of LGBTQI persons. This argument as well was rejected by the Court; "...the absence of a European consensus on these questions is of no relevance to the present case because conferring substantive rights on homosexual persons is fundamentally different from recognizing their right to campaign for such rights."¹⁷ Again, positive obligation of the state was emphasized by the Court.

The Court has protective attitude, as we can see from these two cases, for the right of freedom of assembly of minorities. But as I have already mentioned the Court is not taking such attitude towards all LGBTQI rights. This not so strong and unified attitude of the Court may influence slower acceptance by all states.

I.III Non-binding resources about Freedom of Assembly and Pride Parades

A lot of importance to the protection of freedom of assembly has been given by institutions and non-governmental organizations by issuing documents, recommendations, guidelines, and other non-binding instruments. These documents serve as guidelines for state governments and local non-governmental organizations when they are trying to make legal changes in national systems.

Sometimes the Court in its opinions makes references to documents and recommendations which are not legally binding but still are influential. In *Alekseyev v Russia*, the Court made reference to the Recommendation CM/Rec (2010)5 of the Committee of Ministers (the Recommendation). The Recommendation are proposed measures for states members of the Council of Europe on how to decrease amount of discrimination on grounds of sexual orientation and gender identity. Title III of the Recommendation is dedicated to the freedom of expression and assembly. According to it "member states should take appropriate

¹⁷ Ibid. Para. 83

measures at national, regional, and local levels...” to ensure that Article 11 of the Convention is respected. The Recommendation also reads positive obligation of the member states to protect participants of peaceful demonstrations from violence and disruption.¹⁸

OSCE always gave strong support to the right of freedom of assembly. OSCE issued several handbooks, guidelines and reports on this issue. In 2007 OSCE and ODIHR published *Guidelines on Freedom of Peaceful Assembly*¹⁹, which set six foundational principles and “focus on the interpretation of laws and their practical implementation”.²⁰ The Guidelines subsequently were approved by the Venice Commission.²¹ In 2011 they issued *Handbook on Monitoring Freedom of Peaceful Assembly*²², where direct reference has been made to the *Handbook on Observations of Pride Marches*²³ issued by the International Lesbian and Gay Association of Europe (ILGA). As one of the leading advocates of LGBTQ rights, ILGA, issued more than one publication about freedom of assembly and pride parades. The *Prides without Prejudice*²⁴ is a toolkit issued by ILGA, and can be very helpful to organizers in hostile environment.

The Amnesty International addressed issue of freedom of assembly and pride parades in one of its working papers.²⁵ This paper recognized problem when police fail to protect participants of pride events, because in many countries attacks by those who oppose them are

¹⁸Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, Adopted by the Committee of Ministers on 31 March 2010, URL: <https://wcd.coe.int/ViewDoc.jsp?id=1606669>

¹⁹ OSCE and ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2004, URL: <http://osce.org/item/23835.html>

²⁰ Jarman and Hamilton, “Protecting Peaceful Protest.”

²¹ Ibid. Pg. 215

²² Corporate Author, *Handbook on Monitoring Freedom of Peaceful Assembly* (Warsaw, Poland: OSCE, September 27, 2011), <http://www.osce.org/odihr/82979>.

²³ Christine Loudes, *Handbook on Observations of Pride Marches* (Brussels, Belgium: ILGA Europe, June 2006), file:///C:/Users/user/Downloads/Handbook%20on%20prideswww.pdf.

²⁴ Corporate Author, *Prides against Prejudice* (Brussels, Belgium: ILGA Europe, September 2006), file:///C:/Users/user/Downloads/toolkit-reportwww%20(1).pdf.

²⁵ Corporate Author, *Policing Assemblies*, Police and Human Rights Program- Short Paper Series No.1, Amnesty International Dutch Section, December 2013, Amsterdam, The Netherlands

not unusual. List of examples where police successfully defended participants is offered and very basic guidelines on how to make cooperation between police and organizers productive.

This is only partial review of non-binding publications discussing freedom of assembly, and it mostly covers regional documents. There are plenty more editions on different levels and about different aspects of the freedom of assembly. Importance of this right is crucial for a democratic society, many institutions and organizations work on it.

Chapter II

Factual and legal situation in Serbia and Croatia

This chapter will serve as introduction to development and problems of pride parades in Croatia and Serbia. It will explain legal frameworks and standards for protection of freedom of assembly in both countries. The chapter will end with short overview of compatibility between domestic laws and standards of the European Court of Human Rights. At the end of the chapter different paths of development in these two culturally and legally similar countries will be visible for the reader. Also, we will see that legal standards and laws are not in clash with the standards of the Court.

II.II History of Pride Parades in Serbia and Croatia

First attempts to organize pride parades in Zagreb and Belgrade started in 2000, with increased democratization of these two post war countries. The Belgrade Pride parade was organized first, in June 2001, and it faced serious amount of violence.²⁶ Participants of the Parade were attacked by crowd of approximately thousand, mostly young man. Police forces were outnumbered and failed to protect demonstrators. Different videos that can be found on YouTube clearly show that police was not prepared well and that counter-demonstrators were well equipped to attack.²⁷ Police knew that violent counter-demonstrations will be held and still failed to protect participants of the Parade. Hooligans, members of “Svetosavska omladina” (Saint Sava Youth) and football fans in advance announced threats and openly warned that they will use violence. Boško Buha, who at that time was chief police officer, in

²⁶Marek Mikuš, “‘State Pride’ Politics of LGBT Rights and Democratisation in ‘European Serbia,’” *East European Politics & Societies* 25, no. 4 (November 1, 2011): 834–51, doi:10.1177/0888325411426886. Published by SAGE, Pg. 834

²⁷ *Gay Pride Belgrade 2001 TV B92*, 2012, http://www.youtube.com/watch?v=A0wuGPE7a-Y&feature=youtube_gdata_player.

his interview for TV station B92 said that only 50 police officers were present, without any additional equipment than what they carry usually.²⁸ Small number of police officers who were not equipped adequately is irresponsible response from the Ministry of Interior Relations in circumstances as those from 2001. According to the reports from different non-governmental organizations around forty (40) persons were injured, and according to the police reports fourteen (14) persons were injured.²⁹ No one from the attackers was prosecuted. None of the political figures attended 2001 Belgrade Pride and most of the public statements made by them afterwards did not criticize and judge violence but only declared how Serbian society is not ready for such events.

First Croatian pride, Zagreb Pride, was held on June 29, 2002, only a year after violent Belgrade Pride.³⁰ This Pride did not go without violence as well. Around thirty (30) persons were injured. Most of the attacks happened before and after Pride march. Few political figures attended event, and violence was highly criticized in public. However, violence did not stop organizers to continue to organize pride parades each year after 2002. Violent attacks were recorded again in 2007, 2008 and 2009.³¹ Each pride was held with open support from big part political and governmental officials, only parties with strong affiliation with the Roman Catholic Church in Croatia publicly criticized event. Roman Catholic Church has strong influence in Croatia. I will speak more about religious and political influences in third chapter. According to the short official report from Zagreb Pride Organization, in 2007 violence cumulated, there were few injured persons and attempted use of Molotov cocktails

²⁸ "Silom prekinuta gej parada u Beogradu," *Online News B92*, June 30, 2001, http://www.b92.net/info/vesti/index.php?yyyy=2001&mm=06&dd=30&nav_id=27332.

²⁹ Corporate Author, "History of Prides," *Belgrade Pride*, August 21, 2011, <http://www.belgradepride.info/index.php/en/history>.

³⁰ Corporate Author, "Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Sociological Report: Croatia" (COWI, The Danish Institute for Human Rights, 2010), http://www.coe.int/t/Commissioner/Source/LGBT/CroatiaSociological_E.pdf.

³¹ Ibid. Pg. 7

was recorded.³² Police forces were protecting the march, but failed to bring any criminal charges against attackers. In 2009, when violent attacks were repeated, counter-demonstrators reported their protests as well in the Ministry of Internal Relations and they were allowed.³³ Corridor of police officer protected Pride march and protected participants from counter-demonstrators, but insults and threats could be heard all the time. Reaction of Ministry of Internal Relations about hate speech that was spread was that freedom of speech prevailed in this case.

This was not case in Belgrade, Serbia. Next attempt of Belgrade Pride was in 2009 and it was cancelled. In 2009, Ministry of Internal Relations decided to change location that was originally registered by the organizers, and issued permission for another location instead of city center of Belgrade. This suggestion was not accepted by organizers because government, more precisely Prime Minister, did not offer any plan for protection of event on the new location (Ušće). Organizers have developed plan of protection with the experts on security issues for the location that was primarily registered. Because of these reasons and strong belief that this was violation of freedom of assembly organizers brought complaint in front of the First Instance Court in Belgrade. This case reached Serbian Constitutional Court, but it will be discussed more in next section. In 2010 Belgrade Pride was held but with enormous amount of violence again. Around one thousand of participants were secured by five thousands police officers.³⁴ This was last time when Belgrade Pride was allowed. Since then every application for permission to hold demonstrations was rejected by the Ministry of Internal Relations on the ground that it is not safe to have pride parade and that police forces cannot secure event.

³² Franko Dota, Jelena Poštić, and Marko Jurčić, *Short Report on Zagreb Pride Violence in July 2007*, Short report (Zagreb: Zagreb Pride, July 2007).

³³ Corporate Author, "Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Sociological Report: Croatia."

³⁴ Corporate Author, "History of Prides." URL: <http://www.belgradepride.info/index.php/en/history>, Accessed: March, 2013,

From 2011 Pride parades are held in another Croatian city, Split. Situation from the 2011 Split Pride was reported in ILGA's report to the European Commission as follows:

“Prior to the Split Pride the authorities were informed about the threats of violence and were requested by the organisers of the Pride to act upon those calls and investigate the threats. However, no actions was take in this regard and the 300 participants of the Pride were lead to march under the shower of stones, bottles, bricks, cigarette lighters, explosives and other objects. Police officers didn't make serious effort to protect the participants and failed to organise timely evacuation when it was necessary.”³⁵

Second Split Pride was more successful. Under the significant amount of pressure from the internal and external institutions city government secured around 900 police officers and two helicopters to protect participants.³⁶ No one was injured, but that was the case only because of high level of security. Many politicians attended Split Pride 2012; among them was Foreign Minister Vesna Pusić. With its third Pride in 2013 Split looked more relaxing and true purpose of even was not disrupted by violence or high levels of security. No attacks were reported, and for the first time city major attended Pride.³⁷ Split Pride in three years experienced significant advancement. This advancement is particularly distinguished if we compare it to Belgrade Pride, where it took nine (9) years for second pride to happen. Nikola Visković, prominent university professor, described “first Split Pride as massacre, second one as occupation and third one as relaxing”.³⁸

This section was used to describe factual situation and give basic insight what has happened in both countries. More discussion about different factors that have influenced

³⁵ ILGA- Europe's Submission to the European Commission's 2012 Progress Report on Croatia, Progress Report (Brussels: ILGA-Europe, May 11, 2012), http://www.ilga-europe.org/home/how_we_work/european_institutions/enlargement/submissions/submissions_to_the_2012_progress_reports. Pg. 1

³⁶ “Drugi Split Pride Je Uspio - Može Se Kad Se Hoće,” *Www.tportal.hr*, accessed March 9, 2014, <http://www.tportal.hr/vijesti/hrvatska/198479/Split-uz-vodene-topove-i-helikopter-docekuje-Pride.html>.

³⁷ Mašenjka Bačić, “Relaksirajući Gay Pride u Splitu + FOTOGALERIJA - Ljudska prava - H-Alter,” August 6, 2013, <http://www.h-alter.org/vijesti/ljudska-prava/relaksirajuci-gay-pride-u-splitu-fotogalerija>.

³⁸ Ibid.

freedom of assembly and pride parades to develop in one or another way can be found in chapter three.

II.II Legal frameworks for protection of freedom of assembly

In this section I will describe legal mechanisms for protection of freedom of assembly in Serbia and Croatia. I will briefly mention obligations that are coming from international law, other than the Convention. Detailed information about Article 11 of Convention is already provided in the Chapter I. In two paragraphs I will first describe legal system in Serbia and then in Croatia. Third paragraph will talk about the decision of Serbian Constitutional Court on 2009 Belgrade Pride. What I would like readers to bring out of this section is that both countries have similarly constructed laws, and limitations to freedom of assembly that can be imposed are similar.

Serbian domestic legal system protects freedom of assembly in the Constitution of the Republic of Serbia and Freedom of Assembly Law. According to the Article 54 of the Constitution of the Republic of Serbia “citizens may assemble freely”³⁹ and freedom of assembly can be restricted “by the law only if necessary to protect public health, morals, rights of others or the security of the Republic of Serbia”⁴⁰. As in most of the cases constitution sets only the most basic standard and more detailed directions and provisions are given in the law, is is the case in Serbia as well. According to the Serbian Law, freedom of assembly is “granted to all”⁴¹ and can be prohibited only if in conformity with the list of restrictions from the law. List of the possible grounds for limitations is as follows:

³⁹ Constitution of the Republic of Serbia, Chapter II, Article 54, „Službeni glasnik“ 98/2006, RS English version, Accessed on 10.03.2014, http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav_odredbe.php?id=218

⁴⁰ Ibid. Art 54

⁴¹ Freedom of Assembly Law of the Republic of Serbia, Article 2, Zakon o slobodnom okupljanju građana, „Sl. Glasnik RS“, 51/92, 53/93, 67/93, 48/94, 101/05, Accessed on 10.03.2014, Serbian version

- If aim of protest is to destroy constitutional order of the country
- If protest is not registered in front of authorities on time
- If aim of the protest is to call and abet on violence or armed conflict, on violation of freedoms guaranteed to the citizens of the Republic of Serbia, to call upon spread of racial, national, religious, or other hatred
- If there is danger that protest would endanger security of people and property, or if greater danger from destroying peace exists
- If organizers fail to fulfill additional measures requested by the government authorities
- If it is necessary to protect health of the people,
- If protests are organized by organization whose work is prohibited.⁴²

If protests are not allowed, Government is under the obligation to file rejection notice in front of the first instance court 48 hours before event is to happen.⁴³ First instance court has twenty four hours to evaluate rejection and organizer gets notice of rejection from the court. In most of the cases organizer acknowledges about prohibition only twenty four hours before the event. Another interesting provision for our topic can be found in Article 7 of this law; in cases when two demonstrations are registered to happen on the same place, the one which was registered first is to happen. With all above mentioned protections the Serbian Constitution in its Article 21 prohibits discrimination, sexual orientation is not included, but general provision “on all grounds” is encompassing. In modern, democratic systems, interpretation of such general prohibitions is expected to cover sexual orientation as well. In addition to that Serbia has adopted anti-discrimination law in 2009 and discrimination based on sexual

⁴² Ibid. Art. 9

⁴³ Ibid. Art.9

orientation is prohibited according to it.⁴⁴ This law has been adopted after long debate and much disapproval from the Serbian Orthodox Church and conservative political parties.⁴⁵

The Constitution of the Republic of Croatia in Article 42 provides that “all citizens shall be guaranteed the right to peaceful assembly and public protest”.⁴⁶ Constitutional provision does not have list of limitations to this right, but limitations can be found in the Croatian Freedom of Assembly Law. According to the Article 14 protest can be prohibited if:

- If protest is not properly registered
- If place where protest should happen is prohibited by this Law
- If place where protest should happen is within 20 meters from the building of Croatian Government
- If protest calls on violence or war, on national, racial, or religious hate, or any other form of hatred
- If there is reasonable belief that protest will lead to direct and serious violence and public disturbance⁴⁷

The process to deny freedom of assembly for government is the same as described earlier in Serbia. In the end, organizers get notice of rejection twenty four hours before the event. Both laws, Serbian⁴⁸ and Croatian⁴⁹, explicitly prohibit anyone who takes part in protest, and anyone who is moving into the direction of protests, to carry weapons or objects that can be used to harm someone. Also, both laws prohibit uniforms, parts of uniforms, clothing, or any other marks that call on war or use of violence, racial, national, and religious or any other form of hatred. If this prohibition exists I wonder how it was possible for

⁴⁴ Zakon o zabrani diskriminacije, Republika Srbija, Narodna skupština Republike Srbije, 26 March, 2009, URL: <http://www.minrzs.gov.rs/doc/podrobnosti/Zakon%20o%20zabrani%20diskriminacije.pdf>

⁴⁵ “The Serbian Anti-Discrimination Law Is Adopted,” accessed March 30, 2014, http://www.ilga-europe.org/home/guide_europe/country_by_country/serbia/the_serbian_anti_discrimination_law_is_adopted.

⁴⁶ The Constitution of the Republic of Croatia, Article 42, Accessed on 10.03.2014, <http://www.constitution.org/cons/croatia.htm>

⁴⁷ Freedom of Assembly Law in Croatia, Article 14, Zakon o javnom okupljanju, Hrvatska verzija, <http://www.zakon.hr/z/444/Zakon-o-javnom-okupljanju>

⁴⁸ Freedom of Assembly Law in Serbia, Art 11

⁴⁹ Zakon o javnom okupljanju Republike Hrvatske, Art 18, Freedom of Assembly Law in Croatia, Art 18

counter-demonstrators to bring all those objects that were used to attack prides. We are not talking about small amounts of stones and similar materials. It is impossible to prepare such weapons without someone noticing. This is especially connected to Belgrade Pride, where is obvious that police did not make any effort to control spaces around pride parades.

When we speak about domestic case law two cases have been decided in front of the Serbian Constitutional Court.⁵⁰ First case concerned Pride Parade from 2009 (decided in 2011) and the second one concerned Pride Parade from 2011 (decided in 2013). Both cases have been decided in favor of the applicants and limitations imposed by the Ministry of Interior Relations were asserted as unconstitutional.⁵¹ In the decision of the Constitutional Court from 2011, concerning pride parade in 2009, the Court concluded that government is legally not allowed to change the place of demonstrations, and even there was no explicit prohibition, such measure amounted to violation of freedom of assembly.⁵² Also, the Constitutional Court assessed that increased possibility of violence was not legitimate justification for the Government to avoid its positive obligations to protect freedom of assembly. This decision was very encouraging, but the Constitutional Court rejected claim for discrimination. According to the Constitutional Court there was not enough evidence to prove presence of discrimination based on sexual orientation. In my opinion this was step back by the Court. If it only have looked at the history of unequal treatment, on the fact that events with similar amount of danger were allowed, different conclusion could have been reached. In the case about Pride Parade 2011, which was decided on April 18, 2013, the Court again emphasized positive obligation of the state to protect right to freedom of assembly.

⁵⁰ "An Important Victory for Freedom of Assembly," *Civil Rights Defenders*, accessed March 30, 2014, <http://www.civilrightsdefenders.org/news/achievements/an-important-victory-for-freedom-of-assembly/>.

⁵¹ Tanjug, "Labris: Odluka Ustavnog suda o prajdu je obaveza za vlast," *Blic Online*, April 30, 2013, <http://www.blic.rs/Vesti/Drustvo/380452/Labris-Odluka-Ustavnog-suda-o-prajdu-je-obaveza-za-vlast>.

⁵² Odluka o usvajanju, Predmet Уж-1918/2009, 22.12.2011, "Službeni glasnik RS" 8/2012, Podnosioci Žalbe(Applicants): Dragana Vučković, Dušan Kosanović, Marija Savić, Majda Puača i Milica Đorđević, <http://www.ustavni.sud.rs/page/predmet/sr-Latn-CS/6016/?NOLAYOUT=1>

While standards from the ECtHR were taken into account by the Serbian Constitutional Court, decision from the Serbian Constitutional Court did not get much attention by the public or by the Government. Last court decision was about Pride Parade from 2011 and still the same scenario happened in 2012 and 2013.

II.III Compatibility of domestic laws with the EHCR

Serbia and Croatia are signatory states of the European Convention on Human Rights. On 22 October 1997 Croatia ratified the Convention⁵³, while in Serbia it happened seven years later, on 3 March 2004⁵⁴. Legal systems of both states give similar status to the Convention; it is superior to domestic laws. In Croatia, position of international documents and treaties is determined by the Article 134 of the Croatian Constitution which says:

“International agreements concluded and ratified in accordance with the Constitution and made public shall be part of the Republic's internal legal order and shall in terms of legal effect be above law”.

Present Serbian Constitution was adopted after ratification of the Convention, but it recognizes the Convention as part of the law. According to the Article 16§2 of the Serbian Constitution “generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and apply directly”.

Formally the Convention is part of national legal systems but in both countries national courts are not keen to use it in practice, except constitutional court in few occasions. The judges and attorneys are not educated enough to use it, and lack of their interest conduces to such situation. There are laws in both countries that have been changed and accommodated

⁵³ Siniša Rodin, “Croatia,” in *The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe* (The Netherlands: Eleven International Publishing, 2012), 135–62.

⁵⁴ Dejan Pavlović, “Serbia,” in *The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe* (The Netherlands: Eleven International Publishing, 2012), 479–98.

to the Convention. Freedom of assembly laws were not under such revision in either one of those two countries. Out of this reason, in this section, I will compare texts of Serbian and Croatian laws with basic principles from the case law of the ECtHR and instructions and manuals on freedom of assembly issued by different international bodies. Text of the Article 11 of the Convention is not instructing states as how to formulate their laws, but by case law it manages to set certain guidelines.

From the text of the laws we can see that drastic violation of the Convention does not exist, few provisions could have been changed and adjusted to more liberal approach. For example, government should give announcement about prohibition more in advance so that applicants still have time to exhaust at least basic legal remedies. And legal remedies with quicker mechanisms for solutions should be introduced. Another option is to introduce narrower set of legitimate justifications for restriction of freedom of assembly. Lack of these suggestions does not make freedom of assembly laws in Serbia and Croatia extremely scarce and bad. Laws are not contrary to the European Court of Human Rights standards, but the situation in Serbia is. It mirrors Polish and Russian situation, similar excuses were used, and the Court took position against such governmental moves.

Chapter III

Why are Pride Parades in Serbia and Croatia different?

Third chapter will be dedicated to the factors that influenced pride parades in Serbia and Croatia. Many argue that accession to the European Union is of crucial importance for this issue, but my attitude is that internal factors are coming first and that they play more important role than external. External pressure cannot work without internal mechanism to support it. Especially I will argue that political willingness is main key to have successful pride parades in Croatia and Serbia.

III.I EU accession and pressure

Croatia is from recently one of the member states of the European Union⁵⁵, and Serbia is one of the states who have signed application to become part of the European Union. As we know member states have to adjust their laws to the laws of the European Union. They do have certain level of margin of appreciation but their laws and application of those laws should not be against EU principles. Admitted or not, not every situation is given the same weight in process of EU accession and adjustment to the EU standards. Different amount of external pressure is at hand on different issues. Sometimes, other issues like economic conditions and regulations are more in focus than the right of freedom of assembly. I am not implying that external pressure, in this case pressure from the European Union, is not significant at all. I am saying that this balance between pride parades and other issues should be taken in account when determining how influential external pressure is.

⁵⁵ Croatia joined the European Union on 1 July 2013, as 28th Member State.

The argument presented above supports my claim that external factors are not leading vehicle towards positive protection of pride parades in Croatia and Serbia. In 2012 Peter Stano, spokesman for Serbia's enlargement commissioner Stefan Fuele, said on banned pride parades: "This is an important area. But it's just one element and there are other more important issues..."⁵⁶ In Serbia other circumstances, such as Kosovo and organized crime, are decisive factors in process of negotiations. Soon after above quoted statement Serbia was given EU candidate status and in June 2013 European Council opened accession negotiations with Serbia. Given that Serbia has banned pride parades in last three years and failed to protect two pride parades from violence, it seems like it did not have large impact on process of negotiations with the EU. As I have already mentioned, criticism was present, but mere criticism does not equal to real pressure. European Commission in its Joint Report to the European Parliament and the Council on Serbia's progress⁵⁷ only briefly addresses issue of discrimination of LGBTQI population and in two sentences issue of pride parades and freedom of assembly. What is surprising is that Commission in this Report is not using negative connotations and criticism as deserved when speaking about freedom of assembly. Cancelled 2012 Belgrade Pride was not mentioned, they only say that 2013 Pride Parade is being prepared. In the end 2013 Parade was banned as well.⁵⁸ In another Commission's Report⁵⁹ on Serbia pride parades are mentioned in one sentence as "missed opportunity to demonstrate respect for fundamental rights"⁶⁰. Aldo only briefly mentioned, lack of respect

⁵⁶ Andrew Rettman, "Gay Rights Not Decisive for Serbia-EU Talks," April 10, 2012, <http://euobserver.com/enlargement/117756>.

⁵⁷ *Joint Report to the European Parliament and the Council on Serbia's Progress in Achieving the Necessary Degree of Compliance with the Membership Criteria* (Brussels: European Commission, April 22, 2013), http://ec.europa.eu/enlargement/pdf/key_documents/2013/sr_spring_report_2013_en.pdf. Pg. 9

⁵⁸ Ibid.

⁵⁹ *"Enlargement Strategy and Main Challenges 2013-2014", COM(2013)700, Conclusions on Serbia, Progress Report* (Brussels: European Commission, 2013), http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/serbia_2013.pdf.

⁶⁰ Ibid.

for freedom of assembly was in the reports, but negotiations still proceeded without any changes being made prior.

Situation in Croatia was different, pride parades were held regularly, but we should not forget that violence was present on few occasions. Political situation was unlike the one in Serbia and there was less space for criticism from the European side. Still criticism was needed especially when the first Split Pride was held. Again, public statements from the EU officials were not lacking, but official reports are not mirroring those statements. In its Report to the European Parliament and the Council, Commission approved efforts of the Croatian government to support Split and Zagreb prides.⁶¹ Croatia signed its Accession Treaty in 2011, only few months after the violent and unsuccessful Split Pride. However criticized it was in public, it does not seem to have influenced much negotiation between Croatia and the European Union. If freedom of assembly is not in the focus of EU requirements then political elites, if they want, will avoid it and sacrifice other things to prevent pride parades. That is why external factor, the EU, is not detrimental.

We have Serbia where level of criticism was much higher still not doing anything to change situation, and Croatia where pressure was not that high putting more effort to work on the issue. It shows that initiative should come from within the state, and if it is lacking positive obligation to protect pride parades can be avoided.

III.II Political influences

This section is very important because I am arguing that political factors were detrimental to the development of the freedom of assembly and pride parades in Croatia and Serbia. I am not excluding influence of other factors mentioned in this chapter, but I am

⁶¹ *Communication from the Commission to the European Parliament and the Council on the Main Findings of the Comprehensive Monitoring Report on Croatia's State of Preparedness for EU Membership* (Brussels: European Commission, October 10, 2012), http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/hr_rapport_2012_en.pdf.

giving greatest weight to this one. Every attempt to organize pride parades failed if there was no internal political will and when there was political will way to succeeded was found regardless other factors. This was the main point where these two jurisdictions separated on two different paths. By the force of internal political influence Croatia now much more than Serbia mirrors the attitude of the European Court of Human Rights in cases of *Alekseyev* and *Baczkowski*. By the term political factors I encompass internal structure, parties, state officials and leaders who govern the country.

Until the shift to democracy in the beginning of this century Serbia⁶² and Croatia⁶³ both were led by the right oriented parties. In the beginning of 2000-01 parties with similar theoretical attitudes, left oriented, came to the power and won elections. In Croatia it was “a center-left coalition led by the Social Democratic Party (SDP)”.⁶⁴ In Serbia “an anti-Milošević coalition took power following Serbian parliamentary elections in December, and Zoran Đinđić of the Democratic Party (DS) became Serbia’s prime minister”.⁶⁵

What was different is that in reality Croatian politicians always showed greater support when compared to Serbian politicians. As we said in previous paragraph, theoretically political path was similar in these two countries, but in practice attitude of politicians was very different. Serbian politicians did not hesitate to show open and public disagreement with the pride parades. Many of them who represented democratic government never stood as true support and expressed their disagreement on a diplomatic way. For twelve years since the first Belgrade Pride was organized politicians even now use the same excuse that people of Serbia are not ready for such step. Their avoiding of responsibility can be viewed as an attempt to avoid loss of support from conservative part of the population. In 2012, Serbian Prime

⁶² “Serbia, Freedom in the World,” 2013, <http://freedomhouse.org/report/freedom-world/2013/serbia#.Uzc-NqhdWb->.

⁶³ “Croatia, Freedom in the World,” 2013, http://www.freedomhouse.org/report/freedom-world/2013/croatia-0#.Uzc-t6hdWb_.

⁶⁴ Ibid.

⁶⁵ “Serbia, Freedom in the World.”

Minister Dačić characterized ban on Belgrade Pride as “victory for Serbia because Saturday will be a peaceful day”.⁶⁶ It was not uncommon from politicians to show support for pride parades as an obligation imposed by the EU and on that way create attitude towards LGBTQI community as it is “imported” from the West. Importance of political influence in Serbia undermines even the role of judiciary because government authorities successfully walked around the decisions of the Serbian Constitutional Court about 2009 and 2011 Belgrade Prides.⁶⁷

All encouragement from the EU was not enough to make Serbian authorities to ensure protection of Belgrade Pride and fulfill its positive obligation. Michael Davenport, head of EU mission to Serbia, pointed out that Serbia has means and “professional capacity to provide security at such an event”.⁶⁸ If we analyze justifications used to ban Belgrade Pride it is obvious that alternative solution could have been found. For example, football matches in Serbia are well known for its violence.⁶⁹ Rival fans are very violent, and some of them are main actors on counter-demonstrations against pride parades.⁷⁰ Football matches often erupt with huge violence between fans. This was not used as a reason to ban gatherings. Instead authorities made sure to secure events on such way to avoid possible tragedies.

Also, research made by the Cesida⁷¹, shows that although 56% of citizens expresses disapproval for LGBTQI people, 5% of the examinees would consider to use violence, while

⁶⁶ Milana Knežević, “Belgrade Gay Pride Ban a Blow to Serbia’s EU Hopes” (XIndex, October 11, 2012), <http://uncut.indexonensorship.org/2012/10/serbia-belgrade-gay-pride-ban/>.

⁶⁷ See Footnote 28

⁶⁸ Corporate Author, “‘Pride Parade Signals Faster Accession Talks’ - B92 English,” B92, accessed March 28, 2014, http://www.b92.net/eng/news/politics.php?yyyy=2013&mm=09&dd=27&nav_id=87817.

⁶⁹ *Red Star vs. Partizan (Fire in the South, Derby Interrupted)*, 2013, http://www.youtube.com/watch?v=oHGYG8UbE2Y&feature=youtube_gdata_player. *Neredi I Tuca Na Utakmici Crvena Zvezda - Partizan - 115 Veciti Derbi, 14.10.2000.*, 2013, http://www.youtube.com/watch?v=N49zuHkGzrk&feature=youtube_gdata_player.

⁷⁰ Serbian football fans organized and led attacks on the 2001 and 2010 Belgrade Pride. They openly admit their involvement in attacks.

⁷¹ Centar za slobodne izbore i demokratiju (Center for free elections and democracy), Results of the research available on <http://gay-serbia.com/srbija-uporno-homofobi%C4%8Dna-4042/>, Accessed on March 15

more than 65% completely rejects violence as a tool to express their disapproval. State cannot claim that all those who are against pride parades present danger; instead it should concentrate on small, well known, groups of hooligans, football fans and religious organizations. What is not mentioned in public often is that Serbian government each year spends huge amounts of money to make plans for pride parade security and in the end bans it.⁷² With high levels of corruption Serbian pride events seem to turn into political manipulative tools and lose its true purpose. Mirjana Bogdanović, one of the organizers of Belgrade Pride, thinks that “Belgrade pride has become tool of political manipulation”.⁷³

Political attitude like described in Serbia was not present in Croatia. Authorities were influenced by the same factors, religion, patriarchal attitudes of the society, EU accession process, but continued to provide certain level of security for pride parades. Politicians and state officials publicly supported pride parades. The whole political atmosphere in Croatia was moving towards the more democratic position. Starting from the pride itself, it was not as politicized as it was in Serbia. The first Zagreb Pride was followed with violence but it was used as lesson on how to secure in future. Are reasons behind political support honest wish to protect minorities, or other less noble causes, falls to second plan if that support is effective. Not all political parties and governmental officials support development LGBTQI rights and pride parades, many sharp discussions on issue can be heard in the Croatian Parliament. Still hardly anyone is raising question should pride parades be held.

Support from Croatian high state officials did not look as it was result of pressure by the EU accession, but as a true belief that it is legally guaranteed right which cannot be refused to any group. Croatian President, Ivo Josipović, offered his full support to pride

⁷² Svetomir Marjanović, “Two Million Euros Spent for Pride Parade That Was Not Held,” *Blic Online*, accessed March 29, 2014, <http://english.blic.rs/In-Focus/9930/Two-million-Euros-spent-for-Pride-Parade-that-was-not-held>.

⁷³ Interview with Mirjana Bogdanović, <http://rexpro.b92.net/ikd/files/Parada%20i%20politika%20-%20komentar%20-%20Mirjana%20Bogdanovic.pdf>

parades.⁷⁴ Many high ranking politicians attended pride parades in Croatia, and it was not case on Belgrade Pride 2010 or Belgrade Pride 2001.

Split Pride is indicator how important attitude of governing authorities is. In 2011 when first Split Pride was organized city authorities were not supportive of it. Željko Kerum, city major at that time, in public expressed disgust for pride parades and said that “it is not welcome in Split”.⁷⁵ He was not re-elected in 2013 and his successor, Ivo Baladasar, showed completely different attitude and participated in 2013 Split Pride. With increased governmental support from Zagreb and local support which was not only based on nice words 2013 Split Pride looked completely different than two years before.

As we can see attitude of many high ranking officials in these two countries differ to large extent. While support that comes from Serbian officials, if given at all, seems like it imposed by the EU. In Croatia that support is given under the impression of doing the right thing and as the only legally correct option. First Zagreb Pride faced violence as well as Belgrade Pride did, but it was not used as justification to cancel all other prides. Even now counter demonstrations are present during every pride in Croatia, but authorities take steps to secure event. Croatia took harsh measures to sanction all groups likely to cause violence, extremist groups. Belgrade authorities also know groups who are using violence, and there are legal means to prevent these people. By taking positive attitude, state apparatus can influence change in culture to become more supportive. Therefore, one of the main pitfalls of the pride parades in Serbia is lack of honest support from the political and state apparatus.

⁷⁴ Corporate Author, “President Supports Gay Pride Parade,” *Croatian Times*, June 10, 2010, http://www.croatiantimes.com/news/General_News/2010-06-10/11561/President_supports_gay_Pride_Parade.

⁷⁵ Corporate Author, “Croatian Town Mayor: Gays Aren’t Welcome - B92 English,” *B92*, accessed March 28, 2014, http://www.b92.net/eng/news/region.php?yyyy=2012&mm=06&dd=10&nav_id=80686.

III.III Religious influences

Religious influences were very strong from the beginning in both countries. Serbia has long tradition of strong connection to the Orthodox Church, and Croatia with the Roman Catholic Church. Majority of population in both countries are strongly connected to the religion. Even if they do not practice it they build attitudes based on what churches promote. Since the dissolution of Yugoslavia influence of long oppressed churches bloomed. People started to connect their national identity with religion. In Serbia and in Croatia religion became part of everyday life, of politics, education and almost every sphere of life. Both of these religions, Orthodox Church and Roman Catholic Church, have negative attitude towards the LGBTQI community.

Expression of those negative attitudes was not lacking in Serbia and Croatia as well. Every attempt to increase visibility of the group or to promote equality was aggressively attacked. Pride parades were received as deathly parades that lead straight to hell from which chosen people, Serbs and Croats, should be saved. While the Orthodox Church in Serbia from the beginning took more aggressive approach, the leaders of the Roman Catholic Church in Croatia have not expressed calls for violence publicly.

Melanija Jančić in her work⁷⁶ recognizes problem of negative reaction from the Serbian Orthodox Church on pride parades. She also implies that Serbian Orthodox Church has influence on legislative processes in Serbia. In my opinion greater attention should be paid on amount of influence upon state apparatus that is responsible for application of laws. As we could see, Serbia has solid and workable legal framework to protect freedom of assembly, but mechanisms to apply that law have failed. The Serbian Orthodox Church was

⁷⁶ Melanija Jančić, "Sloboda Mirnog Okupljanja I Zabrana Diskriminacije Na Osnovu Seksualne Orijentacije. (Bosnian)," *Freedom of Peaceful Assembly and Prohibition of Discrimination on the Basis of Sexual Orientation. (English)* 16, no. 2 (June 2013): 149. Pg. 159-160

not diplomatic and reserved in their fight against pride parades and LGBTQI population as whole. Each year, together with few political parties, head of the Serbian Orthodox Church have requested ban on pride parade from the Government.⁷⁷ Amount of negative comments from the Church and its representatives is uncountable. On many occasions negative comments become open invitations to use violence. From the video records and photographs religious marks can be seen among counter-demonstrators all the time. Few religious organizations, representing attitudes of the Serbian Orthodox Church, organized violent attacks in 2002 and 2010. One of them is “*Obraz*”⁷⁸, Orthodox fascist organization that has been banned in 2012 by Serbian Constitutional Court.⁷⁹ The Croatian Government reacted much earlier on movement with extremist attitudes, prohibited them, and applied the law in practice.

While top of the Croatian Catholic Church is very careful, they always express their disapproval but refrain from calling on violence. Institutions with such strong influence should be more careful because their statements, even if not calling on direct violence, can have strong consequences. Marko Jurčić, an activist and pride organizer from Croatia, said that the Church uses agitation to discredit pride events.⁸⁰ Also, the Church is refraining from sanctioning and preventing its representatives for much serious statements. Adalbert Rebić, a priest and university professor, commented on Split Pride violence as “deserved punishment”, that he “feels compassion with those who attacked” and that “homosexuals and lesbians

⁷⁷ Corporate Author, “Zabranjena Parada Ponosa,” March 10, 2012, <http://www.euractiv.rs/ljudska-prava/4816-zabranjena-parada-ponosa->.

⁷⁸ *Obraz* is Serbian organization, representing far right and extremist attitudes. They are classified as Orthodox and fascist youth group. They are well known for violent attacks and they swear allegiance to Serbian nation.

⁷⁹ Bojana Barlovac, “Serbia Bans Far-Right Organisation ‘Obraz’ :: Balkan Insight,” June 12, 2012, <http://www.balkaninsight.com/en/article/serbia-bans-far-right-obraz>.

⁸⁰ D. Ma, “Organizator Zagreb Pridea: Crkva Je Postala Huškačka Organizacija Koja Ne Ispunjava Misiju,” *Dnevnik.hr*, accessed March 28, 2014, <http://dnevnik.hr/vijesti/hrvatska/organizator-zagreb-pridea-crkva-je-postala-huskacka-organizacija-koja-ne-ispunjava-misiju.html>.

should stay in their privacy”.⁸¹ Franjo Jurčević, a Catholic priest who was convicted for discrimination based on sexual orientation⁸², regularly gives statements that could be classified as hate speech. Before first Split Pride in 2011 he called on “violence as it was in Belgrade”.⁸³ He went unpunished for that and top of the Church never expressed disagreement with his statements. Sanja Juras, an activist from Croatia, correctly stated that “state apparatus is first to blame for cases of violent pride parades, but that the Church has big impact on people as well”.⁸⁴

Almost all of the people and organizations that have used violence have underlining ideas that homosexuality is sin. Knowing power and influence of the churches in both countries, Serbia and Croatia, they must be very careful when producing ideas and opinions. No one expects to see church representatives attacking pride parades by themselves. Still they should be responsible for creating ideas of inequality, deadly sin of homosexuality and hatred among people who will go outside and attack instead of them.

III.IV Homophobic nationalism and patriarchal society

Nationalism is very present and alive in all ex-Yugoslav countries. When there is combination of strong nationalism with ethnic identity, which in these two countries is often mixed with religious identity, dangerous combination of extremism appears. This is especially pronounced in patriarchal societies. Serbia and Croatia are patriarchal societies, where men still have dominant position, driven by the strong feeling of ethno-nationalism. This context

⁸¹ S. Dukić, “TEOLOG O GAY PRIDEU Dr. Adalbert Rebić: Žao Mi Je Stradali, Ali Dobili Su Što Su Tražili,” *Slobodna Dalmacija*, June 13, 2011.

⁸² “Annual Review 2011 / Croatia / Country-by-Country / Guide to Europe / Home / Ilga - ILGA Europe,” accessed March 6, 2014, http://www.ilga-europe.org/home/guide_europe/country_by_country/croatia/review_2011.

⁸³ Ines Brajević, “Kontra u Splitu: crkva ima veliku ulogu protiv zagovaranja prava LGBT osoba,” *Dalmacija News*, May 30, 2012, <http://stari.dalmacijanews.com/Hrvatska/View/tabid/77/ID/89863/Kontra-u-Splitu-Crkva-ima-veliku-ulogu-protiv-zagovaranja-prava-LGBT-osoba-FOTO.aspx>.

⁸⁴ Ibid.

has created attitudes of majority of the population about the LGBTQI community and pride parades.

Majority of authors who wrote about nationalism did not connect it with gender. This concept of gender neutral nationalism was challenged by the feminist authors. With their work they tried to point on presence and importance of masculinity in nationalism. With further developments we have authors who developed theories of homophobic nationalism, especially focusing on Eastern Europe.⁸⁵ Mosse⁸⁶ in his work describes masculinity, with its standard values of honor, strength, lack of emotions, as one of the underlying characteristics of modern nationalism. He claims that such concept of masculinity needed to define complete opposite of weak, feminine and gay man, to be prominent upon. Of course, this misconception and prejudice about gay men are completely wrong.

Živković⁸⁷ claims that men in Eastern Europe faced erosion of masculinity from the end of Second World War until the present day. With emancipation of women, their economic and political empowerment, enormous losses from recent wars, masculine men with strong national identity felt weakened. Since typical heterosexual, masculine man, perceives gay men as weak and feminine, lesbians as butch and opposite of what subordinate women should be, hatred and disapproval developed. This attitude was rooted and connected to the national identity. If I follow the logic expressed by Živković I reach conclusion that in Serbia homophobic nationalism should be more pronounced than in Croatia. Both nations faced losses from the war that followed dissolution of Yugoslavia, but if we take all the factors that occurred in Serbia, losses in three war operations, loss of Kosovo (which is very important

⁸⁵ Milićević, A. S. "Joining the war: Masculinity, nationalism and war participation in the Balkans war of secession, 1991-1995", *Nationalities Papers*, 34: 2006, 265 — 28

Greenberg, J. "Nationalism, masculinity and multicultural citizenship in Serbia", *Nationalities Papers*, 34: 2006, 321 — 341

⁸⁶ Mosse, G. "The Image of Man: The Creation of Modern Masculinity", Oxford, 1998

⁸⁷ Živković, M. "Ex-Yugoslav masculinities under female gaze, or why men skin cats, beat up gays and go to war", *Nationalities Papers*, 34: 2006, 257 — 263

issue in Serbian national identity), national identity of masculine men was hurt more and therefore homophobic nationalism is expressed on a more aggressive way.

Development of homophobic nationalism in Serbia and Croatia was contributed with the patriarchal attitude that heterosexual family, with male as head of the family, is only honorable and correct unit of society. In both societies family is sacred and most valuable unit, but only above described type of family. Every attempt to introduce something different has been seen and characterized as attack on family. Religious and political elites have in many occasions used this argument to increase national hatred against LGBTQI population.

Pride parades were perceived by people with developed homophobic national identity as first step to destroy everything they value. Therefore they offered strong resistance to stop it at the beginning. Fueled with lack of proper education and plenty of wrong religious beliefs this attitude spread among majority of population. Serbia faced stronger movement than Croatia. Still this should not be accepted as justification for government authorities when they are able to ensure freedom of expression for both sides.

Conclusion

This work has showed that the position of the European Court of Human Rights is positive towards protection of freedom of assembly in case of pride parades. The Court does not have universal standing ground on all LGBTQI rights, but uniformity can be tracked in decisions concerning obligation of the state to protect pride parades. Further on we determined that Croatia and Serbia have satisfying legal provisions to protect freedom of assembly. Both countries have anti-discrimination laws as well, but application of those laws is different. While Croatia shows long tradition of fulfilling its positive obligation to secure pride parades, Serbia has failed to do so.

Discussion about different factors of influence in Croatia and Serbia has showed that external EU pressure is of less importance and cannot make many changes if internal factors are not working in favor of the parade. Among internal factors will of political and state officials proved to be the most influential. Of course other internal factors do contribute as well, but they are not crucial.

For those who wish to proceed with further research I suggest to focus on factors mentioned in third chapter for every pride parade separately. Also, additional more focused research can be made on each one of the influential factors mentioned above. I hope that more people will work with this issue to raise awareness and contribute to the education. Another important issue which was not addressed in my paper is work of local non-governmental organizations; what their role was and how they performed.

At the end I want to express my full support for pride parades because they are basic tools used in conservative countries to raise visibility of the LGBTQI community and awareness about inequality which is faced on everyday basis. I strongly believe that minority

groups should be free to communicate their needs and show their existence through legally guaranteed right of freedom of assembly. I hope that recent elections in Serbia will not lead country to even more conservative attitudes⁸⁸ and that Croatia will not face negative steps as last year's referendum about definition of marriage as union between man and woman was. I wish to all people who are dedicated to the promotion of LGBTQI rights plenty of strength and wisdom.

⁸⁸ On last parliamentary elections in Serbia, party of Aleksandar Vučić (SNS) won absolute majority in Serbian Parliament. Last time this happened in 1992 when Slobodan Milošević won elections. Current President of the Republic of Serbia is Tomislav Nikolić, who was member and vice-president of the Serbian Radical Party. Serbian Radical Party was led by Vojislav Šešelj, who is currently tried at the International Tribunal for Former Yugoslavia.

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