



The Europeanization of anti-LGBT hate crime laws in the Western Balkans

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Abstract

Despite high levels of societal homophobia, Western Balkan countries have recently passed laws proscribing anti-LGBT violence. The laws, however, are rarely used, as these countries report few or no recorded cases. The question is: Why do Western Balkan countries legislate against homophobia, but then fail to operationalize that legislation? Hate studies, still over-focused on the West, do not provide the answer. The aim of this paper is to offer a possible explanation based on a combination of secondary data provided by the OSCE and primary research undertaken by the author. Using the theory of Europeanization as an explanatory frame, the paper argues that hate crime laws are enacted as part of the democratization process, with the support of the OSCE and NGOs, and under EU influence. As this is done before favourable sentiments are assured, insufficient resources are put into the policing and monitoring of hate crime.

Key words Europeanization · Anti-LGBT Hate Crime · Western Balkans · Organization for Security and Cooperation in Europe

Introduction and research problem¹

Hate crime is a criminal offence committed with a bias motive [1]. The motivation relates to someone's personal characteristic, such as 'race', ethnicity, religion, sexual orientation, gender, gender identity, disability or other categories. A considerable amount of research has been conducted on the proliferation of hate crime statutes in the North American and British contexts (for a recent review, see [2]). Other parts of the

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world have not received as much attention, even though developments in some regions, particularly in Europe, are remarkable. For example, in the Western Balkans (WB), all seven states – Albania, Bosnia and Herzegovina, Croatia, Kosovo,² Former Yugoslav Republic of Macedonia (FYR Macedonia), Montenegro and Serbia – have recently passed legislation providing penalty enhancements for bias-motivated violence. This is despite having some of the most homophobic societies in Europe [3, 4]. Why do, then, WB governments pass laws protecting LGBT (lesbian, gay, bisexual and transgender) people?

While the proliferation of hate crime laws in the region is already a reason worth investigating, there are more issues that need to be explained. Although the legal framework is established, it seems to be little used in practice, as there are few, if any, prosecutions. For some reason, however, this paradox has failed to attract significant attention of hate crime scholars. With some exceptions (e.g. [5]), if the region is mentioned in hate crime literature, it is in the context of ‘balkanization’, purportedly happening in the US as an effect of introducing hate crime laws [6]. This process, however, if at all happening, has little to do with how WB states respond to hate crime.

One possible answer for the developments in law could be in the ongoing democratization of the region, which overlaps with preparations to join the European Union (EU) – an aspiration of the WB governments expressed over a decade ago [7]. For that, they need to undertake reforms and adopt EU norms and values. This process has been studied in the framework of Europeanization [8]. While current research in this area is helpful, the adoption of hate crime laws has never been a central research question. For this reason, some aspects specific to hate crime laws, as opposed to, for example, equal treatment legislation, have largely skipped attention of scholars of Europeanization. In particular, the literature is almost silent on the activities of the Organization for Security and Cooperation in Europe (OSCE), dubbed a leading international authority on hate crime [9]. Most importantly, little has been offered, in terms of theory, to explain its political impacts.

In attempting to address this gap, this paper responds to the following questions: Have (1) the integration with the EU and (2) the activities of the OSCE impacted how Western Balkan states respond to anti-LGBT violence? If yes, then how? The aim of this paper is to provide a possible explanation for the recent legal and policy developments regarding countering anti-LGBT hate crime in the WB. The paper proposes that the developments are best understood in the context of Europeanization of fundamental rights. This framework allows to appreciate the role of both activists and the OSCE, and describe how they work together to achieve common goals.

The argument expounded in this paper develops as follows: First, it lays out theoretical considerations in relation to the Europeanization of fundamental rights. Next, the paper presents the international framework on countering anti-LGBT hate crime, focusing on the work of the OSCE. The paper then moves onto the empirical section, which provides an analysis on how and why WB governments respond to anti-LGBT hate crimes. From here it is argued that hate crime laws are provided as an expedient way for governments to prove their *bona fide* towards fundamental rights.

² Kosovo is not uniformly recognized as an independent state. However, as law and police systems are separate from those in Serbia, and the OSCE has separate operations in Prishtinë/Priština, this study treats Kosovo as a separate case.

Lack of statistics means, however, that the norm of protecting people from homophobia is yet to be realized in practice. The paper closes by reflecting on implications for future research and policy. Specifically, it points to the need: (1) for a broader comparative research; and (2) to find a way of making hate crime laws work in the context of delays in joining the EU.

Fundamental rights and Europeanization

Research from the US evidences that jurisdictions with an active advocacy community, higher income and progressive population and friendly elites are more likely to legislate against anti-LGBT violence [2, 10, 11]. In line with US research, some European scholars link hate crime laws with advocacy work of minority organizations. For example, Schweppe [12] asserts that '[m]any hate crimes statutes are created, not out of an evidence-based objective approach, but rather as the result of sustained lobbying on the part of particular interest groups'. Observations of scholars focused on the Western world, are, however, some way off in parts of Europe (cf. [13], p. 441). In most countries on the continent, laws proscribing racism and xenophobia can be traced to international human rights treaties enacted after the World War 2 ([13], p. 423). The current wave of anti-LGBT hate crime laws is, however, not so easily explicable. Laws providing for higher penalties for anti-LGBT hate crimes are passed in some LGBT-friendly and some LGBT-hostile countries; some countries with high and some countries with low GDP; some older democracies and some countries in the process of democratization.

In the context of the WB, particularly the last category seems to be the key. While EU accession negotiations are mostly about economic issues, in recent years the EU has developed an approach in which human rights are pushed to the front, described as 'fundamentals first' [14]. Among the norms championed by European institutions is LGBT equality. For example, in 2012 the European Commission (EC) confirmed that LGBT rights constitute 'an integral part of both the Copenhagen political criteria for accession and the EU legal framework on combatting discrimination' [15].

The process of adopting EU rules by third states is known as Europeanization ([16], p. 7). Europeanization can include the transfer of 'formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms' ([17], p. 3). When engaging in norm promotion, the EU uses two mechanisms – external incentives [18, 19] and social learning [20]. In the former, the norm is implemented by new-adopters when they decide that the benefits outweigh the costs. In the latter - the norm is adopted if it resonates domestically and is perceived as natural, legitimate and appropriate [16, 21]. To encourage states to adopt norms the EU often uses conditionality, providing a reward to candidate states and withholding something if states fail to comply. The reinforcement by reward is visible particularly before accession. Krizsan and Popa observe that the 'logic of consequences dominates before accession, while appropriateness becomes the predominant logic post-accession, when conditionality is no longer in place' ([22]:384 citing Beveridge 2009 and Krizsan 2009).

Both the above mechanisms – external conditioning and social learning – are top-down processes, in which the norms are transferred from the EU to third countries [23]. Scholars such as Kulpa [24] critique this aspect of Europeanization theories arguing

that it is a form of a cultural hegemony of the West. Sloomaeckers [25] adds that the EU does not introduce new norms to enlargement countries, but rather helps to mobilize norms which are already present, though perhaps marginalized. The mobilization is facilitated by transnational advocacy networks, in which non-governmental organizations (NGOs) play the central role [26]. In the context of LGBT rights, NGOs received a lot of attention, most recently from Ayoub [27], Ayoub and Paternotte [28] and Paternotte [29]. Considerably less academic attention has been paid to the role of institutional actors, particularly the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and OSCE missions. In the context of hate crime, as the section below shows, a closer look at the mandate and activities of OSCE bodies allows us to better explain the proliferation of laws.

Anti-LGBT hate crime and international organizations

To date, there is no international obligation to recognize anti-LGBT hate crimes as specific offences. The most relevant EU law pertaining to bias-motivated violence – the Framework Decision 2008/913/JHA [30], while setting out an obligation to provide penalty enhancements for crimes motivated by racism and xenophobia, leaves out sexual orientation and gender identity (SOGI), as well as gender or disability hate crime. The Directive 2012/29 [31] recognizes a range of personal characteristics that should be taken into account when assessing victim's needs (including SOGI), but does not provide for penalty enhancements.

The term 'hate crime' first appeared in international commitments in the context of the OSCE in 2003 [32]. Since the early 2000s, as Swiebel and van der Veur observe, the OSCE 'has become the leading international authority in combating hate crimes, including hate crimes against LGBT persons', despite 'the lacking official mandate to include sexual orientation and gender identity as a "bias ground" ([9], p. 31). Indeed, OSCE states have made a number of commitments relating to bias-motivated violence, including enacting legislation which would provide for enhanced sentences if bias motivation is detected, and reporting statistics to ODIHR [1].

The OSCE promotes the 'hate crime model' (according to Goodey [13] 'based essentially on a US model') as a new and effective way of understanding and responding to the old problem of bigoted violence. The model, as Perry [5] describes,

... elaborate[s] on traditional descriptions of racist violence in that more than one type of bias motivation is covered and that the response to this violence goes beyond the legal sphere, and into the realm of policy actions that aim to increase reporting, victim support, practitioner training and access to justice (P. 75).

Because hate crime is such an 'OSCE thing,' it is the most obvious aspect of democratization work conducted by the OSCE to analyse. But the organizations' bodies' unique characteristics provide even more reasons to look at the OSCE more closely. ODIHR, the human rights agency working across 57 countries, has a mandate 'to serve as a collection point for information and statistics on hate crimes and relevant legislation', build capacity of law enforcement and criminal justice personnel, and to review current and proposed hate crime laws [33]. Field missions, on the other hand,

each with an individual mandate, are tasked with assisting host countries in the democratization process.³ In this sense, OSCE bodies are in a unique position between international institutions, such as the European Commission, which sets requirements and provides incentives for fulfilling them, and NGOs, which facilitate the adoption of the international norm on the ground.

But, while the OSCE (through the missions and ODIHR) has been active in the field of hate crimes for about fifteen years now, it has attracted surprisingly little attention from academics. Commentaries are few and far between, and they seem to contradict each other. On the one hand, Goodall [34] speaks about the ‘under-acknowledged influence’ of the OSCE. On the other hand, Garland and Funnell [35] suggest that, ‘... while they have devised well-intentioned hate crime policies, organisations like ODIHR appear to have little influence over whether states actively seek to address and combat hate’. Findings below show, however, that the truth may lie somewhere in the middle.

Data and methods

This research uses data collected for a broader, pan-European comparative research between March 2015 and December 2016. Seven WB states are selected for analysis: Albania, Bosnia and Herzegovina, Croatia, Kosovo, FYR Macedonia, Montenegro and Serbia. They share a number of characteristics: low GDP *per capita* [36], compared to the rest of Europe; deeply ingrained anti-gay attitudes [37]; unresolved interethnic conflicts and minority issues; and an ongoing process of democratization.⁴ Finally, as current or recent EU candidates,⁵ all have been subject to similar EU conditioning (‘fundamentals first’).

Results and discussion

Influencing factors

Homophobia in the Western Balkans is explained through a combination of cultural, social and religious factors. Homosexuality (and LGBT visibility) is seen as a threat to national dignity, an insult to public morals and religion ([40], p. 20). Despite high levels of societal homophobia, Western Balkans have an active LGBT advocacy community. ILGA-Europe has three member organizations from Albania, Bosnia and Herzegovina, Kosovo and Montenegro each; four from FYR Macedonia; and seven from Croatia and Serbia each.⁶ Similarly to other countries in Central and Eastern Europe, the movement ‘experienced a ‘condensed’ version of the development in the West ([41], p.

³ See the list of missions and their mandates on the OSCE website at <http://www.osce.org/where-we-are> (accessed 29 April 2017).

⁴ Except for Albania, all countries are in a post-war state. For an up-to-date discussion on the democratization of the WB, see contributions in the volume edited by Keil [38].

⁵ This group includes countries at various stage of integration with the EU (see [39]). Croatia joined the EU in 2013.

⁶ As of 19 April 2017. See the list of organizations at <http://www.ilga-europe.org/who-we-are/members>.

30), prioritizing legal recognition of same-sex unions from the onset. Many organizations are also involved in hate crime advocacy. For example, Bosnian activists welcomed the amendments of the law in the Federation of Bosnia and Herzegovina (FBiH; one of three jurisdictions in the country), calling them ‘the result of all the hard work and advocacy of all the members of [hate crime] Coalition and other BH and *international organisations*’ ([42], emphasis added). Indeed - hate crime advocacy in the WB – unlike in the West – is conducted side by side with international organizations. The involvement of international actors includes, *inter alia*, joint activities on the ground, shadow reporting and funding.

First, international organizations, as well as NGOs, are involved in countering hate crime in the WB through working with legislators. For example, in Serbia, activists drafted a bill proposing amendments to the criminal code [43]. ODIHR, on its part, provided three law reviews – two for FYR Macedonia and one for Bosnia and Herzegovina [44–46], recommending changes in the criminal code provisions proscribing targeted violence.

Second, further to working on the legal framework, OSCE missions often engage in monitoring hate crime on the ground (e.g. [47]). The OSCE is also active in capacity-building, delivering training to police, prosecutors, judges and civil society representatives. So far, Croatia, FYR Macedonia, Kosovo and Montenegro signed agreements with ODIHR to implement its hate crime training programme for law enforcement, whereas in other countries the training is provided as one-off events.⁷ OSCE bodies engage also with academia. For example, in November 2016, the mission in Sarajevo organized a conference *Hate crimes in South-East Europe*, gathering over 70 participants [48].

Third, local activists engage in the so-called ‘boomerang pattern’ of advocacy [26], sending shadow reports to the European Commission, ODIHR, or various United Nations (UN) human rights bodies. The aim of that is to provide the international community with an alternative – to the one presented by the government – information about the adequacy of the legal and policy frameworks to tackle hate crime. In return, international bodies are expected to apply pressure on the government. For example, in 2012 advocates from Montenegro sent a shadow report to the UN Human Rights Council, in which they recommended ‘that the Criminal Code should be amended so that hate crimes against persons of homosexual orientation (homophobia) or transgender persons (transphobia), as well as other forms of hate crimes, would be considered as severe forms of criminal offence’ ([49], p. 4). ODIHR, too, provides the Human Rights Council with information about hate crime in countries under review, similarly to NGOs.⁸

Finally, another way in which international bodies aim at influencing WB governments’ hate crime policies is through money transfers. In general, both NGOs and governments from accession countries have access to various international funding sources which may be useful in improving protection from hate crime. Funds may come from international organizations (e.g. the European Commission) or Western countries’ governments. For example, between 2016–2017 the USA State Department

⁷ Email from ODIHR representative to the author, 20 April 2016.

⁸ See the website of the Universal Periodic Review at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/RSSession15.aspx> (accessed 19 April 2017).

financed a project called *Using EU integration process for improvement of LGBT rights in the Western Balkans*, developed across the region by a consortium of six organizations [50]. The empirical consequences of the involvement of international bodies in the of hate crime advocacy in the WB are presented below.

Legal framework

As of 1 August 2016, all seven countries have hate crime laws in the form of penalty enhancements (sometimes mixed with substantive offences). Sexual orientation is explicitly recognized as a protected category in six countries (except FYR Macedonia). Out of the six, five also include gender identity in the list of protected grounds (Kosovo does not). Croatia was the first jurisdiction to recognize sexual orientation (2006), while the Federation of Bosnia and Herzegovina is the most recent one (2016).⁹ The overview of adoption is presented in Table 1 below.

The influence of the OSCE's hate crime model on the criminal codes in the region is identifiable in the use of penalty top-ups, a broad list of protected grounds, and types of crime under the umbrella of 'hate crime.' For example, FYR Macedonia, which did not have hate crime laws before 2009, introduced a general penalty enhancement for bias-motivated crimes, as suggested by ODIHR in its law review [45].¹⁰ In the Federation of Bosnia and Herzegovina, ODIHR suggested expanding the definition of hate crime to include property damage, as a reminder that any type of criminal act may be motivated by bias ([44], p. 4). In fact, even actual definitions of hate crime, based on that of the OSCE, found its way to some of the criminal codes in the region. For example, the amendments in the Federation of Bosnia and Herzegovina define hate crime as 'every criminal act committed because of the race, skin colour, religious belief, national or ethnic origin, language, disability, gender, sexual orientation or gender identity of the victim' [42].

The openness of WB countries to legislating against old problems, such as interethnic violence, with new solutions provided by the OSCE is noted by some informants interviewed in this research.¹¹ For example, one international civil servant comments that

. . . candidate countries are [a] really good kind of target for international organizations, because they are in this learning state. . . And they are very open to what's coming from the international environment. So, if the question is, 'are they more receptive?' Yes, they are much more receptive to new concepts – because it [hate crime] is a new concept – but also to solutions, and how to address them.¹²

⁹ Two out of three Bosnia and Herzegovina constituencies – Brčko District and Republika Srpska – included sexual orientation as one of the protected characteristics in 2010. In 2013 Republika Srpska additionally improved the legislation and gender identity was added to the list. Email from representative of the Sarajevo Open Centre to the author, 7 June 2016.

¹⁰ Article 39(5). Excerpts of hate crime laws from the OSCE participating states are available at <http://www.legislationline.org/topics/subtopic/79/topic/4>.

¹¹ Interview with an international civil servant, 30 May 2016; interview with a former member of the UN Human Rights Committee, 21 November 2015.

¹² Interview with an international civil servant, 30 May 2016.

Table 1 Selected measures to tackle anti-LGBT hate crime in the Western Balkans. Explanation of symbols: ✓-present; (5)- number of cases registered in 2015. Source: Author's own analysis, based on Rainbow Europe 2016, legislationline.org and ODIHR Hate Crime Reporting 2015.

Country	Law	Policy	Statistics
<i>Albania</i>	✓		
<i>Bosnia & Herzegovina</i>	✓		
<i>Croatia</i>	✓	✓	✓(5)
<i>FYR Macedonia</i>			
<i>Kosovo</i>	✓ ^a		
<i>Montenegro</i>	✓		
<i>Serbia</i>	✓		

^a Sexual orientation only.

This finding is in line with previous research, which confirms that democratizing countries, observant of their international reputation, are susceptible to both new concepts and solutions [38]. As a result, they are likely to pass the most recent version of the legislation, ‘despite being followers on LGBT rights in earlier years’ (Moravcsik, in [51], p. 308). Similarly, in the US, Jenness and Grattet [52] observe that, as time went on ‘laggard states, those who passed the laws later, ironically tended to employ a more expansive and progressive definition of hate crime.’ Conversely, countries which had undertaken reforms earlier have little incentive to ‘update’ their frameworks. For example, in the old EU, Ireland has provisions prohibiting incitement to hatred based on sexual orientation, but the law does not stipulate for penalty enhancements for bias-motivated violence ([53], p. 49). Despite criticism from international bodies [54] and evidence showing the inadequacy of the current provisions [55], the government has so far not started works to introduce harsher sentences for hate crime.

In the Western Balkans, the norm to protect people from targeted violence is mobilized in the light of the new ‘fundamentals first’ standard and facilitated by templates provided by the OSCE. As one of the experts observes,

The OSCE and the Council of Europe played a very important role in shaping their [WB countries] legal systems, and at that time it [sexual orientation hate crime law] was already a standard.¹³

As a result, countries in the accession process passed hate crime laws as asked by activists, in a form promoted by the OSCE, and approved by the EU. Since this was a part of ongoing legislative reform, and the templates were provided by a trusted partner – the OSCE, the deliberative process as to whether SOGI should be included in the new hate crime laws was limited to a minimum. As one of the informants interviewed in this research states,

¹³ Interview with a former member of the UN Human Rights Committee, 21 November 2015.

sexual orientation makes its way to criminal law without the government explicitly knowing or noticing. . . Often it ends up being there by accident. I think rarely there's a specific public debate about how the hate crime law should look like.¹⁴

The above observation – that laws in accession countries are passed as presented, as part of a larger reform – is confirmed in the literature on Europeanization. For example, Ladrech (2011, cited in [56], pp. 221–222) found that ‘laws were passed quickly, without proper debate, because of the desire of political elites to ‘gain membership in the EU, as soon as possible.’ It is, however, new to the field of hate studies, which rarely considers international organizations, focusing on advocacy work of minority groups (e.g. [52]).

While all countries need to meet the same criteria, country-specific issues can explain differences in the level (and time) of norm adoption. For example, Vasilev [57] observes that ‘Croatia’s strong identification with Europe accelerated LGBT recognition there while Serbia’s relatively weaker identification with Europe slowed it down’. On the other hand, in FYR Macedonia, the parliament did not include sexual orientation as a protected ground until today, despite amending the law in 2009 and 2014, and despite ODIHR recommendations [45]. Instead, the list of protected grounds includes vague categories of ‘belonging to a marginalized group’, as well as ‘any other ground provided in law or ratified international agreement’ – which are supposed to cover ‘any discrimination on grounds of any personal characteristic’ ([58], p. 7). In the Federation of Bosnia and Herzegovina, SOGI hate crime law was passed only in 2016, several years after the hate crime law reform commenced. Therefore, while the passage of the law in the form of penalty top-ups is a good example of OSCE influence on the region, non-inclusion of SOGI reflects how controversial LGBT rights remain in the region.¹⁵

Enforcement

Although criminal codes have been reformed across the region, as Table 1 shows, only Croatia has drafted an anti-hate policy document indicating steps to counter hatred against LGBT people. While levels of reporting of anti-LGBT hate crime across the region are very low (for example, in Croatia, only 7.7 per cent of participants of a survey reported violence to the police ([59], p. 40), governments’ efforts to improve these statistics are limited. In most countries, activities are isolated and implemented on the initiative of NGOs, or the OSCE, rather than governments. For example, the OSCE mission to Bosnia and Herzegovina organized hate crime training sessions for law enforcement, the judiciary and NGOs, sometimes jointly with the Sarajevo Open Centre, in the framework of a project *Fighting Hate Crime in BiH*.¹⁶ Government activities can amount to allowing the OSCE and NGOs to work, and to symbolic gestures. For example, in 2015, the European forum on anti-LGBT hate crime was

¹⁴ Interview with an international civil servant, 30 May 2016.

¹⁵ Recently, the Macedonian authorities have started works on another amendment of the hate crime law, and ODIHR was once again asked to provide a law review [46]. This suggests that either the country has learned that the flawed law contains gaps (interview with an international civil servant, 30 May 2016), or it has ‘given into’ external pressures, ‘sacrificing’ homophobic views for the European perspective.

¹⁶ See the information in *Developments* on <http://hatecrime.osce.org/bosnia-and-herzegovina>.

organized in Montenegro, with the participation of government ministers from across the region. While everyone expressed commitment to tackling the problem, the event was not followed by any concrete actions.¹⁷

While some governments say that they monitor anti-LGBT hate crime,¹⁸ as Table 1 shows, there are virtually no detected cases. Only Croatia reports on anti-LGBT hate crime to ODIHR, and the number of cases is negligible (five in 2015). As such, it does not reflect the actual victimization levels, as evidenced in surveys [59, 60]. In other words, the laws on paper are not being put into action, meaning there are few prosecutions of anti-LGBT hate crime offenders. Such a disconnect between law and implementation has already been noticed in hate crime scholarship, with authors such as Garland & Funnell [35] and Turpin-Petrosino [61] noting their concerns about the level of commitment in those states that do not publish hate crime statistics.

While the low number of detected cases may largely be a question of apathy, or worse, bad will, there are likely to be other practical reasons for their non-enforcement. One potential problem is that the template for laws provided by ODIHR is not enough to change the established practices of a country, particularly where financial resources are limited. In 2012, FRA came to a realization that simply having a general penalty enhancement, as in the case of Albania, may not be sufficient to address hate crime and to collect data ([62], p. 11). Having this in mind, ODIHR has recently started recommending adding a list of substantive offences, together with a general penalty enhancement, when reviewing hate crime provisions ([63], p. 10). The institution argues that such a combination facilitates law enforcement and recording.

ODIHR's and NGOs' interventions in the WB, while sufficient to change the law, have yet to bear fruits when it comes to actual implementation, evidenced by good quality data being captured and reported. Here, there is an important role of both the OSCE and NGOs on the one hand, and the government on the other. Paraphrasing McVeigh et al. [64], 'the presence of resourceful civil rights organizations in a county can lead to higher numbers of reported hate crimes', but their impact 'is contingent upon the political context'. In the WB, the political context includes both internal politics (e.g. elections), and the European perspective.

External pressures

The fact that laws are passed, but not enforced, suggests that the political will and resources to implement legal changes are lacking. It also suggests that laws are passed under external pressure. Adding a few provisions to the criminal code (in the extreme form, in Albania, only one - Article 50) is an easy and low-cost way for governments to prove their *bona fide* towards fundamental rights.¹⁹ Commenting on this, one of the informants in this research complains:

¹⁷ Interview with an international civil servant, 27 October 2016.

¹⁸ For example, according to ODIHR's Hate Crime Reporting website, Bosnia and Herzegovina conducts a victimization survey with questions about hate crime.

¹⁹ Interviews with a member of the European Commission against Racism and Intolerance, 20 November 2015; and a former member of the UN Human Rights Committee, 21 November 2015.

I find, speaking generally, that this is a stronger motivator than a real will to do something about hate crime . . . They're not interested in solving domestic problems: They want to score points.²⁰

Lack of enforcement suggests that the system – and society, remaining largely homophobic in social attitudes—does not see the value in protecting LGBT people from targeted violence. In other words, the EU norm of safeguarding LGBT people does not resonate well. In this sense, WB countries are simply fulfilling the EU external conditionality superficially, without attempting to internalize the norms seriously. Similar findings suggesting shallow Europeanization because of incongruence with dominant norms have been found in previous in research. For example, Ayoub [51] argues that accession countries ‘were confronted with policy and programmatic frameworks before philosophical viability –favourable public sentiments – could be assured’.

The above finding (laws without implementation as an effect of the external incentives) is also confirmed by the fact that the enthusiasm for reforms seems to decrease after the country is already inside the EU. As one of the interviewees observes,

. . . I can compare them [current EU candidates], and their enthusiasm, and their openness, to those which are already in. And Croatia... Croatia is not very open nowadays. And I know from the annals of the OSCE history that once they were very open.²¹

This is in line with previous research on the topic. For example, a Montenegrin activist interviewed by Pelz ‘suggested that Montenegro needs to remain in the accession process for several more years to help build the LGBT movement, and to ensure proper implementation of laws while EU oversight remains significant’ ([56], p. 15). A tendency to slow down reforms, or even undergo an anti-gay backlash, was observed in some 2004 enlargement countries as well. For example, Lithuania adopted a law on the protection of minors forcing news outlets to censor information related to LGBT persons, effectively limiting the right to freedom of expression of LGBT persons ([65], p. 3). The law has been compared with the ‘Section 28’ which used to prohibit discussion of homosexuality in UK schools [66].

Quasi-activists

As shown above, OSCE bodies are in an interesting position between activists and the European Commission. They both set the standards and support governments in meeting standards set by others. From the point of view of social movements theory, they are *quasi-activists*, engaged in work on the ground, but with international credentials and additional tools, giving them more legitimacy and leverage. Together with local activists and ILGA-Europe, they form part of a transnational advocacy network [67], bound together by a shared commitment to tackle hate crime in all its forms. From the point of view of Europeanization theory, the OSCE, through sharing expertise and offering solutions to the issue of bias-motivated violence, helped activists to

²⁰ Interview with an international civil servant, 30 May 2016.

²¹ Interview with an international civil servant, 30 May 2016.

conceptualize their claims and governments to select legislative options. The enlargement process, in turn, gave them visibility, and the pressure from the European Commission resulted in passing the laws.²² While the work on the ground is important, the example of current EU countries, some of which are lagging behind candidate states in terms of legislative frameworks, shows that the EU pressure, particularly in the context of a broader reform, was crucial.

Conclusions

The goal of this of this paper is to provide a possible explanation for the fact that Western Balkan states, despite having some of the highest levels of intolerance in Europe, have recently passed some of the most progressive laws proscribing anti-LGBT violence on the continent. Using a mix of primary and secondary sources, this study analyses how transnational advocacy networks urge WB governments to respond to violence targeting LGBT people. This work is conducted in the light of new EU accession policy ('fundamentals first'), which emphasizes respect for LGBT rights. In practice, this means that the EU expects aspiring countries to pass anti-LGBT hate crime laws. Failure to comply may impede the integration process and delay benefits stemming from EU membership. The external EU pressure, coupled with the mobilization of advocacy networks, results in the passage of modern hate crime laws. Nevertheless, while the legal norm is adopted, the values which it is supposed to express are not internalized, and limited efforts are put into enforcement. As a result, new laws are rarely used in action.

In the advocacy network, activists on the ground evidence the problem, while transnational allies provide expertise and funding. The OSCE has a special role here. While active in the field for over 15 years, the OSCE has attracted surprisingly little academic attention, even though it is through this organization that the 'hate crime model', offering the description and solutions for bias-motivated violence, started to permeate WB states' legal systems [34]. But it is not only the effects, but also methods: OSCE bodies, such as the Office for Democratic Institutions and Human Rights, active in 57 states, are 'quasi-activists,' involved in work on the ground, but benefitting from international credentials and specific tools, giving them more leverage. The OSCE can not only make hate crime policy recommendations, but can also help to implement them. Such bodies did not play a part in passing hate crime laws in the West. In the WB, they are key players in deciding how governments respond to the problem of homophobia.

The above findings are in line with Europeanization theory, which is a framework commonly used to explain norm adoption in Europe, but new to hate crime scholarship. This discipline, over-focused on the West, usually explains the passage of hate crime laws through social movements theories. In the WB, however, on its own, social movements framework falls short, as it does not account for external EU influence.

This research is focused on WB with limited references to other jurisdictions. A broader study using a similar framework should be conducted in the future to explain patterns of diffusion of anti-LGBT hate crime laws across Europe. Such a study should

²² I would like to thank dr. Koen Slootmaeckers for helping me develop this argument.

include a range of social and political, intra- and inter-state factors. It could explain ‘anomalies’ on the map of Europe, such as the fact that Ireland, which recognizes same-sex marriage, does not have hate crime laws. It could also explain the different results of LGBT mobilization in countries subjected to different ‘democratic packages’, e.g. Lithuania and Croatia, or show if there is a ‘learning curve’ and time affects adoption. It could also explore whether countries such as Serbia or Montenegro, frustrated over the dwindling prospect of joining the EU membership [68], are continuing to improving their hate crime frameworks, or the reforms have stalled.

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