

The EU Enlargement and Gay Politics

The Impact of Eastern
Enlargement on Rights,
Activism and Prejudice



GENDER AND POLITICS

Edited by
Koen Sloomaeckers,
Heleen Touquet,
Peter Vermeersch



Gender and Politics

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Koen Slootmaeckers • Heleen Touquet • Peter Vermeersch
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The EU Enlargement and Gay Politics

The Impact of Eastern Enlargement on Rights,
Activism and Prejudice

palgrave
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PREFACE AND ACKNOWLEDGEMENTS

The idea for this book emerged from a conversation between its editors at the University of Leuven, Belgium, back in 2013. Heleen Touquet, who had been studying social movements and post-ethnic mobilizations in the Western Balkans, and Koen Sootmaeckers, who had begun to work on sexualities and LGBT issues, were joined in their discussions by Peter Vermeersch, a specialist in Eastern European affairs and Europeanization. We asked ourselves a series of questions we thought were becoming increasingly urgent but which could not fully explore on our own: Why and how have LGBT rights become such a controversial topic in international politics in Central and Eastern Europe and the Western Balkans? What is the role of the EU within this larger context? What can be expected from the external transformative power of the EU on an issue like that of LGBT rights, at a time when the EU itself is so evidently grappling with an internal crisis on so many other fields? What does this mean for LGBT rights in the Western Balkans? And what was the situation of LGBT rights in 2004 when the CEE countries acceded? What changed?

In this book, with the aid of our contributors, we seek to provide some answers. Rather than tackling these rather substantial questions head-on, the volume brings together case studies from several layers of politics around LGBT issues in and around the EU. It looks specifically at the role of the EU in the promotion of LGBT rights throughout the enlargement process, but also considers diverse responses (and non-responses) to it in selected member and candidate member states.

We brought together a group of authors who not only were doing excellent research on these and related questions, but were also keen to

share their findings with fellow researchers in our group and to write about their work for the common enterprise that this book has become. The end result is a series of broad, nuanced and diverse explorations that are nevertheless tied together by a common conceptual thread, that of EU enlargement and Europeanization.

Of course, no book bringing different research streams together can cover everything, and this one is no exception. From the outset, we thought it important that our topic should be addressed from different perspectives and should cover a variety of dimensions. But we very soon came to realize that there are too many dimensions to this topic to cover it in its entirety in one volume. The book therefore should not be seen as a reflection of our aspiration to be exhaustive; rather, it shows our ambition to be diverse and to highlight particular studies that we found crucial in particular subareas of the larger question. We have put these together in the context of the introductory and opening chapters, which introduce the broader theme and address mostly the EU side of the matter.

In addition, to some extent, the book seeks to bridge academia and activism. We have included not only research of established academic authors in the field; we also offer here insight into some of the practical knowledge of both young and experienced researchers from international civil society. In particular, we have solicited the input of ILGA-Europe—the European section of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), an international non-governmental umbrella organization bringing together 422 organizations from 45 European countries.

We want to thank all the authors who have enthusiastically contributed to this volume. We have learned a great deal from their work, and we hope they have also benefited from the discussions and exchanges we have organized with them.

This book is also part of a conversation with people who were not contributors—with a wider group of academic researchers, activists and policymakers. In preparation for the ultimate selection of papers, we participated in several international meetings and initiated a number of meetings ourselves. In April 2014, we organized a panel on “EU enlargement and LGBT rights in Central Eastern Europe and the post-Yugoslav space” at the conference of the British Association for Slavonic and East European Studies (BASEES) in Cambridge, and in that same month we brought together a panel with the same title at the 19th Annual Association for the Study of Nationalities (ASN) World Convention, Columbia University, New York. In February 2015, we held a special two-day conference in

Brussels on “EU enlargement, democracy and the politics of sexual orientation and gender identity,” which we were so lucky to be able to organize on the premises of the European Parliament (EP) and the Royal Flemish Academy of Belgium for Science and the Arts. We want to thank the co-organizers of this event: the European Parliament (the LGBTI Intergroup, Evert Jacobsen, Tanko Jure), ILGA-Europe and Queen Mary University of London. And we want to thank all the people who have generously participated in our panels and conferences with smaller or larger contributions—first, the authors whose work appears in this volume, but also the people who discussed and helped shape this work through their participation: in particular, Phillip Ayoub (Drexel University), Emina Bošnjak (Sarajevo Open Center), Tanya Domi (Columbia University), Adam Fagan (Queen Mary University of London), Vjosa Musliu (Ghent University), David Patternotte (Université libre de Bruxelles), Łukasz Szulc (University of Antwerp) and Lien Verpoest (University of Leuven). We also want to extend our thanks to the MEPs who have given their support to the initiative and also participated in the conference with their own contributions, in particular Tanya Fajon (head of the Slovenian delegation within the political group the Progressive Alliance of Socialists and Democrats, and a vice-president of the Social Democrats) and Ulrike Lunacek (head of delegation of the Austrian Greens, vice-president and foreign affairs spokesperson of the Greens/EFA group in the European Parliament, Kosovo-Rapporteur and co-president of the Intergroup on LGBT Rights).

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CONTENTS

1	Introduction: EU Enlargement and LGBT Rights—Beyond Symbolism?	1
	<i>Koen Slootmaeckers, Heleen Touquet, and Peter Vermeersch</i>	
	Part I The Broader Picture: LGBT Issues in the EU	17
2	The Co-evolution of EU's Eastern Enlargement and LGBT Politics: An Ever Gayer Union?	19
	<i>Koen Slootmaeckers and Heleen Touquet</i>	
3	European Integration and LGBTI Activism: Partners in Realising Change?	45
	<i>Mattias Kristoffersson, Björn van Roozendaal, and Lilit Poghosyan</i>	
4	Federalizing Legal Opportunities for LGBT Movements in the Growing EU	69
	<i>Uladzislau Belavusau and Dmitry Kochenov</i>	

Part II	Zooming in: Central and Eastern Europe	97
5	Nationalism and Homophobia in Central and Eastern Europe <i>Richard C.M. Mole</i>	99
6	From Pride to Politics: Niche-Party Politics and LGBT Rights in Poland <i>Conor O'Dwyer and Peter Vermeersch</i>	123
7	Same-Sex Partnership Debate in Slovenia: Between Declarative Support and Lack of Political Will <i>Roman Kuhar and Metka Mencin Čeplak</i>	147
Part III	Close-ups of the Western Balkans	173
8	The Struggle for Visibility and Equality: Bosnian LGBT Rights <i>Safia Swimelar</i>	175
9	Whose Pride? LGBT 'Community' and the Organization of Pride Parades in Serbia <i>Bojan Bilić</i>	203
10	The Curious Case of Macedonia: A Personal Insight of a Former Head of the EU Delegation in Macedonia <i>Erwan Fouéré</i>	221
	Index	233

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LIST OF ABBREVIATIONS

CEE	Central and Eastern Europe
CFF	Campaign for All Families
CIFRC	Civil Initiative for the Family and the Rights of Children
CoE	Council of Europe
COHOM	Council Working Group on Human Rights
DPA	Dayton Peace Agreement
DUI	Albanian Democratic Union for Integration
EC	European Community
ECHR	European Court of Human Rights
ECJ	European Court of Justice
EEC	European Economic Community
EP	European Parliament
EU	European Union
EUSR	EU Special Representative
FREMP	Council Working Group on Fundamental Rights and Freedom of Movement
ICTY	International Tribunal for the Former Yugoslavia
IGO	Inter-Governmental Organization
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
IPA	Instruments for Pre-accession Assistance
KPH	<i>Kampania Przeciw Homofobii</i> (Campaign Against Homophobia)
LDS	Liberal Democracy of Slovenia
LGBT	Lesbian, Gay, Bisexual, Transgender
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
LPR	League of Polish Families

LSYS	The League of Socialist Youth of Slovenia
MEP	Member of European Parliament
MP	Member of Parliament
ODIHR	Office for Democratic Institutions and Human Rights
OHR	Office of the High Representative
OSCE	Organisation for Security and Cooperation in Europe
PiS	<i>Prawo i Sprawiedliwość</i> (Law and Justice)
PO	<i>Platforma Obywatelska</i> (Civic Platform)
RCC	Roman Catholic Church
RS	Republika Srpska
SAA	Stabilisation and Association Agreement
SDP	<i>Socijaldemokratska partija Hrvatske</i> (Social Democratic Party Croatia)
SDS	<i>Srpska Demokratska Stranka</i> (Serbian Democratic Party)
SDSM	<i>Socijaldemokratski Sojuz na Makedonija</i> (Social Democratic Union of Macedonia)
SEE	Southeast Europe
SFRY	Socialist Federal Republic of Yugoslavia
SLD	<i>Sojusz Lewicy Demokratycznej</i> (Democratic Left Alliance)
SOC	Sarajevo Open Center
TEC	Treaty establishing the European Community
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TR	<i>Twój Ruch</i> (Your Movement)
VMRO-DPMNE	Internal Revolutionary Organisation –Democratic Party for Macedonian National Unity

Introduction: EU Enlargement and LGBT Rights—Beyond Symbolism?

Koen Slootmaeckers, Heleen Touquet, and Peter Vermeersch

Over the last decade, the rights of lesbian, gay, bisexual, and transgender (LGBT)¹ people have become an ever more salient and controversial topic in international politics. LGBT rights are increasingly considered a litmus test for a country's broader human rights record. As Kenneth Roth, executive director of Human Rights Watch, so eloquently articulated:

The status of the LGBT community is a good litmus test for the status of human rights in society more broadly, precisely because it is such a vulnerable minority—similar to the proverbial canary in the coal mine. Where the rights of LGBT people are undermined, you can be sure that the rights of other minorities and critical members of civil society will soon also be in jeopardy.²

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The monitoring of these rights has become not only a powerful tool for leverage in the hands of international advocacy groups, but also a topic of direct political contestation, both within and among countries. In international relations, politicians have increasingly referred to the subject of LGBT rights in their criticism of other countries. One of the most visible examples was the speech by President Barack Obama on July 25, 2015, in Kenya (see Holmes and Scott 2015). Obama said:

With respect the rights of gays and lesbians, I have been consistent all across Africa on this. I believe in the principle of treating people equally under the law [...] and that the state should not discriminate against people based on their sexual orientation. [...] When you start treating people differently not because of any harm they are doing to anybody, but because they are different, that's the path whereby freedoms begin to erode, and bad things happen.

While Obama's address was applauded by international LGBT non-governmental organizations (NGOs), it was strongly condemned by Kenyan president Uhuru Kenyatta. He replied by relegating LGBT rights to the realm of culture:

The fact of the matter is Kenya and the United States share so many values: common love for democracy, entrepreneurship, value for families—these are some things that we share. [...] But there are some things that we must admit we don't share—our culture, our societies don't accept. It is very difficult for us to be able to impose on people that which they themselves do not accept. This is why I repeatedly say for Kenyans today the issue of gay rights is really a non-issue.

Kenyatta's response to Obama is an interesting example of what some authors have called resistance to 'homonationalism'. Jasbir Puar (2007, 2013), who coined the term, defines homonationalism as 'a facet of modernity and a historical shift marked by the entrance of (some) homosexual bodies as worthy of protection by nation-states, a constitutive and fundamental reorientation of the relationship between the state, capitalism, and sexuality' (Puar 2013, p. 337). Homonationalism thus describes a historical moment in which states can advance their exceptionalism or modernization by demonstrating their tolerance of homosexuality, which is contrasted with 'homophobic others'. Furthermore, there is no way to opt out from homonationalism; like modernity, Puar (2013) argues, it can only be resisted or re-signified. In other words, homonationalism structures global politics, as gay-friendliness becomes a key factor in assessing a

country's modernity which cannot be escaped—a country will be judged on its gay-friendliness regardless of whether it believes in LGBT rights. Opponents can resist this historical moment only by depicting LGBT rights as a Western, non-universal concept, or they can attempt to re-signify it by linking the meaning of modernity to so-called traditional values.

Similar instances of homonationalism and resistance to it can be found in geographical areas closer to the European Union (EU). Take, for example, the recent developments in Russia and Ukraine. Since 2012, Russia has engaged in 'a conscious and consolidated effort to build a "sexual sovereignty" of the nation' (Makarychev and Medvedev 2015, p. 51), which has had strong implications for the politics around LGBT issues not only in Russia, but also in countries in its sphere of influence. In 2013, President Vladimir Putin signed into law a bill prohibiting 'homosexual propaganda'. With this and other laws, Russia aims to reenter the world stage by providing an alternative political and cultural model against the Western EU- and US-led model (Ayoub and Paternotte 2014). In this alternative model, Russia promotes 'traditional values' and seeks to defend 'authentic' national cultures, whilst resisting democratic and 'modern' values imposed from abroad. LGBT rights in this model are a powerful symbol. The clash between the two opposing models was highly visible in Ukraine when the country was about to sign an association agreement with the EU in 2013. In the run-up to this event, posters were put up in the streets of Kiev with the slogan 'Association with the EU means same-sex marriage'. In his *Ukraine Diaries*, the Ukrainian writer Andrey Kurkov (2014, p. 17) noted, 'In Kiev, this propaganda campaign is considered laughable, but I am afraid that in the east and in the provinces, people will naively believe that universal conversion to homosexuality is the condition imposed by Europe on Ukraine for the signature of the treaty'. Alexey Pushkov, the chair of the Duma's foreign affairs committee, tweeted that signing the association agreement would mean that Pride parades would be held instead of parades for Victory Day (in Birnbaum 2015).

The events in Ukraine show that LGBT rights have become increasingly salient in the relations between the EU and the countries in its close proximity, and have provided a fulcrum for political contestation. Association with the EU is often equated with support of same-sex marriage by opponents, and the EU similarly gauges countries' modernization by examining their stance on LGBT rights. For example, (former) EU Commissioner Füle (2014) called the 2014 Pride in Belgrade a 'milestone in the modern history of democratic Serbia'. And Member of the European Parliament (MEP) Tanja Fajon said, 'After three last-minute

bans over the last three years, this year, the Serbian government will have the opportunity to right these wrongs. The values of tolerance and diversity that will be highlighted this Sunday are European, and Serbia fully belongs in Europe'.³

These examples are striking, in that they clearly demonstrate that LGBT rights have acquired important symbolic value in EU politics and discourse—e.g. Pride parades, for example, can now serve to illustrate a candidate country's endorsement of European norms—yet such symbolic politics stands in stark contrast to the amount of actual EU power and EU legislation in this field. The EU's *acquis* on LGBT rights is rather limited.

The aim of this book, therefore, is to disentangle the symbolism from the actual advances on the ground and to more precisely determine the influence of the EU on LGBT rights in former or current 'enlargement countries'. Specifically, we ask the question: what is the impact of the EU enlargement on the political and legal contexts in which these LGBT people live and claim rights? Today, a little over a decade since the first Eastern EU enlargement, we believe it is high time to analyze the impact of this process in the newer member states in Central Europe, as well as to take stock of the lessons learned for the Western Balkans.

CONCEPTUAL BACKGROUND OF THE BOOK

In this book, we strive to offer a balanced, thorough, well-investigated, and accessible picture of the state of affairs in LGBT rights and activism in Central Europe and the Western Balkans by providing not only thoughtful reflections, but also a wealth of new empirical findings—arising from legal and policy analysis, large-scale sociological investigations, and country case studies. The authors use different theoretical concepts from institutional analysis, the study of social movements, law, and Europeanization literature. In their chapters, they analyze such issues as the tendency of nationalist movements to turn 'sexual others' into 'national others', the actions and rhetoric of church actors as powerful counter-mobilizers against LGBT rights, and the role of the domestic state on the receiving end of EU pressure in the field of fundamental rights. The chapters offer the reader insight into emerging Europe-wide activism (Have activists been able to utilize the new European opportunity structure arising from the EU enlargement process to buttress their activism?), into the politics of activism in domestic contexts, and into the complicated relationship between activism and the larger LGBT community (Do highly visible forms of activism such as pride parades manage to connect to and unite 'LGBT communities'?).

Although we did not ask the contributors to use a specific theoretical approach in their chapters, insights from the literature on ‘Europeanization via Enlargement’ are a central theme throughout the book.⁴ Europeanization’ is often conceptualized as

processes of (a) construction, (b) diffusion, and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing’, and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures, and public policies. (Radaelli 2003, p. 30)

More simply, it refers to the process of transferring the EU’s policies, institutions, rules, beliefs, and values to other countries (Bulmer 2007). Rational choice institutionalism (RCI) and sociological institutionalism (SI) (Börzel and Risse 2003; Grabbe 2006; Schimmelfennig and Sedelmeier 2005) explain why third countries comply with EU rules and norms. Both perspectives start from the premise that the EU has existing standards that third countries must adhere to. The RCI perspective argues that third countries comply with EU rules when the benefits outweigh the costs of domestic change. This is also the reasoning behind the *conditionality* principle of the EU, in which the advancement towards EU integration is conditioned upon compliance with EU rules and norms. The SI perspective focuses on the soft transfer of EU policies and norms (Vermeersch 2005). Compliance is seen as an outcome of third countries’ changing preferences, and EU rules are deemed appropriate. Here the notion of (international) socialization plays an important role, with the EU being the socializing agent, actively promoting its norms and values (Börzel and Risse 2012; see also Manners 2002). Both perspectives emphasize *vertical* processes of diffusion in which the EU is the initiator and third states the recipients of the EU’s norms and rules.

Europeanization is treated more broadly here, to encompass *horizontal* processes of diffusion as well (see e.g. Ayoub 2013; Kuhar 2011, 2012; Kuhar and Mencin Čepelak 2016). These horizontal processes emphasize transnational (activist) cooperation and policy transfer (or cross-loading) via state-to-state learning and informal policy networks (Börzel and Risse 2007; Kollman 2009). This horizontal diffusion is particularly important when there is no hard *acquis*, or when considering ‘soft law’. In terms of LGBT policies, Kollman (2009) and Paternotte and Kollman (2013) have studied the policy convergence of same-sex union legislation in the Western European countries, emphasizing the role of international norm diffusion and transnational networks (for an analysis of same-sex union

policies in two Central European countries, see the chapter by Kuhar and Mencin Čepлак 2016; or that by O'Dwyer and Vermeersch 2016).

The book also contributes to the emerging research agenda on LGBT rights in the enlargement process (see e.g. Ayoub 2014, 2015; Kahlina 2015; O'Dwyer 2010, 2012; O'Dwyer and Schwartz 2010), by analyzing the impact of the EU enlargement on the new member states from the different iterations of the Eastern enlargement, as well as on those countries currently in the EU's 'waiting room'. These contributions provide an analysis of the importance of the transnational network of LGBT activists (see e.g. the chapter by Kristofferson, Roozendaal and Poghosyan 2016) and the role of changes in domestic political configurations (see, e.g., the chapters by Kuhar and Mencin Čepлак 2016; and O'Dwyer and Vermeersch 2016), reveal the hurdle of (nationalist) opposition to the imposition of decadent foreign values (see the chapters by Mole 2016 and Swimelar 2016), and draw attention to some unintended consequences of EU pressure on LGBT activism (see the chapter by Bilić 2016). In doing so, the book corroborates the recent 'domestic turn' in Europeanization via enlargement (see Elbasani 2013), which 'bring[s] in more prominently domestic factors as the key to explaining successful rule transfer' (Elbasani 2013, p. 8). It also highlights state identity as an important factor in understanding the limited impact of Europeanization (Freyburg and Richter 2010; Subotic, 2010, 2011).

Critical scholars have argued that, ironically, the EU's enlargement has contributed to the reification of an East–West divide (Kulpa and Mizieleńska 2011), which has reinforced the notion of Western exceptionalism in LGBT rights. Ammaturo (2015) described this as the 'Pink Agenda', which creates and promotes a fault line between presumably LGBT-friendly and homophobic countries, and suggests that the EU is unique in its open-mindedness and tolerance of LGBT persons. According to critics, the EU enlargement has contributed to the advancement and popularization of this idea by subjecting candidate countries, through the use of conditionality, to what Kulpa (2014) has called a 'leveraged pedagogy' (Kulpa 2014; see also Kulpa and Mizieleńska 2011). Through this leveraged pedagogy, Western Europe condemns candidate countries as not sufficiently European or modern to merit full acceptance into the European fold, but European enough to be offered redemption and help in their attempts to Europeanize. Within this framework, old (Western) EU member states are cast as the 'knowledgeable teachers of democracy, liberalism, and tolerance' (Kahlina 2015, p. 74), whilst Central and Eastern

European countries are rendered as permanently in transition (i.e. not yet sufficiently liberal), post-communist, and—especially important for our discussion—homophobic (see Kulpa 2014; Kahlina 2015). The earlier-mentioned statements by both (former) Commissioner for Enlargement Štefan Füle and MEP Tanja Fajon on the 2014 Belgrade Pride (see *supra*) illustrate this tendency.

The contributors to this book have steered clear from reintroducing an East–West divide that unnecessarily simplifies the complexity of the issue at hand (see also Kulpa and Mizielińska 2011; Kulpa 2014; Ammaturo 2015), even though it is clear that LGBT rights can be, and often are, politicized as inherently European (see e.g. the chapters that address domestic opposition to LGBT rights in the new EU member states in Central Europe. Several of these chapters (Mole 2016; Kuhar and Mencin Čepiak 2016; O'Dwyer and Vermeersch 2016) show how politicians employ homophobic political rhetoric to oppose EU integration.⁵ In order to defend the ‘traditional’ culture of their country from Western (EU) influence, the political elite employ ‘political homophobia’ (Weiss and Bosia 2013, see also Currier 2010) as a ‘purposive strategy’ to depict LGBT people as the ultimate ‘other’. In Central European EU member states, the LGBT issue has been positioned onto the schism between pro- and anti-EU politics (Mole 2011). In Latvia, for example, the pressure for equal rights for LGBT persons is seen as a direct attack on the nation’s future by the so-called international gay lobby (Mole 2011). In Poland, the Kaczyński government declared that it needed to prevent the ‘aggressive promotion of homosexuality’ because it felt that ‘although Poland may have joined the EU, they will have none of the “loose” attitudes toward sex’ (Graff 2006, p. 436). In other words, LGBT rights may sit comfortably with the EU as part of its effort to abolish discrimination and promote human rights, and they may to a large extent have been accepted as such by a substantial segment of the population in many EU member states, but it may be precisely for this reason that opposition to such rights in the form of criticism of the EU resonates well with a number of politicians in the new EU member states, as well as with sizeable portions of their electorate.

To add further nuance to the topic of LGBT politics and EU enlargement, we need to acknowledge the ongoing debate on terminology. What we discuss in this book can be categorized under a variety of labels, a fact that is not without its consequences for the politics that relates to such categories. Whilst ‘gay and lesbian’, along with the acronym LGBT (and