

# Homophobia and Hate Speech in Serbian Public Discourse: How Nationalist Myths and Stereotypes Influence Prejudices against the LGBT Minority

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## 1. Introduction

In June 2001, almost a year after the downfall of Slobodan Milošević's authoritarian regime, Serbia's first ever Pride Parade was abandoned half-way through due to violent attacks by members of Serbian ultranationalist groups. Eight years later, in March 2009, the Serbian Parliament adopted the first comprehensive anti-discrimination law – Law on the Prohibition of Discrimination 2009 (the Anti-Discrimination Law), prohibiting discrimination on a number of grounds, including sexual orientation. Encouraged by the adoption of this law, the Serbian LGBT community announced plans to organise the second Pride Parade on 20 September 2009 in Belgrade. However, the 2009 Parade organisers were met with strong opposition, not only from far-right groups, but also from some political parties and the Serbian Orthodox Church. After a long anti-Pride campaign, the 2009 Parade was finally called off due to lack of security assurances. The police announced that they could not guarantee the safety of the marchers and urged the organisers to change venue from the main Belgrade streets to another location. The organisers found that proposal unacceptable. The cancellation, or rather banning,<sup>2</sup> of the 2009 Pride Parade was strongly criticised by both domestic

human rights NGOs and the international community, and it became evident that Serbia would not be able to make any further progress in European integration without substantial changes to its LGBT rights policy.<sup>3</sup> Therefore, when the LGBT activists announced a new attempt to hold a parade in October 2010, the Serbian political elite showed a considerably changed attitude towards LGBT issues, and a much stronger commitment to providing the necessary security. The 2010 Parade was finally held on 10 October 2010. However, during the Parade, thousands of police officers sealed off the parade venues, repeatedly clashing with far-right extremists who tried to burst through the security cordons, while chanting "Death to fags!"<sup>4</sup> Although the Serbian police managed to protect the 2010 Parade participants from the extremists' attacks, the battle between the police and the right-wing groups, in which dozens were injured, provides a strong indication of how deeply ingrained homophobia is in Serbian society.

Serbia is a party to the various international and regional human rights conventions which prohibit discrimination against minorities, and has enacted anti-discrimination and hate speech laws in accordance with its

international obligations. However, in today's Serbia, discrimination and violence against LGBT people still present a serious problem. This raises the question as to the relationship between homophobia and the general political culture, which is largely dominated by nationalist ideas.

This article responds to that question, by:

(1) analysing the portrayal of the LGBT minority in Serbian public discourse, and determining whether and how Serbian nationalist myths and stereotypes influence homophobia;<sup>5</sup>

(2) identifying whether any elements of the Serbian public discourse constitute hate speech; and

(3) examining the ways in which the presence of homophobic hate speech in public discourse represents a violation of Serbia's human rights obligations.

The analysis focuses on three mainstream public discourses: (i) the discourse of the political elite; (ii) the discourse of the Church; and (iii) the media discourse – with the aim of demonstrating that homophobia is not a characteristic of the far-right alone, but also permeates the voices that represent the majority in Serbian society in a manner which must be addressed in order for Serbia to fulfil its human rights obligations.

## 2. Conceptual Framework

Before embarking on an analysis of the particular situation in Serbia, this section provides an overview of the international legal framework for the protection of LGBT rights, and the different approaches to the conceptualisation of hate speech. It also sets out Serbia's legal obligations in this regard.

### 2.1. International Legal Framework for LGBT Rights: Right to Equality and Non-Discrimination

The rights of LGBT people have been defended from two distinct human rights positions. The first position is based on the right to privacy, guaranteed by Article 17 of the International Covenant on Civil and Political Rights (ICCPR), while the second position is grounded in the right to equality and non-discrimination, and, as such, reflects the principle that all human beings are entitled to equal protection of human rights regardless of, *inter alia*, their sexual orientation. Article 2(1) and Article 26 of the ICCPR require state parties to ensure equal enjoyment of human rights for all people regardless of their "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".<sup>6</sup> Similar protection is afforded by Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Although neither sexual orientation nor gender identity are explicitly mentioned as prohibited grounds of discrimination in the above-mentioned legal provisions, UN bodies and international human rights experts are in consensus on the need to interpret these provisions as including sexual orientation and gender identity. In the landmark decision in *Toonen v Australia*, the UN Human Rights Committee – the treaty body which has the authority to interpret the ICCPR – affirmed that sexual orientation was implicated by the treaty's anti-discrimination provisions as a protected status.<sup>7</sup> Despite the fact that this decision focuses on the State Party's violation of the right to privacy, its finding that sexual orientation is a protected ground of discrimination is of exceptional importance. Moreover, the UN Committee on Economic, Social and Cultural Rights (CESCR) –

the body authorised to interpret the ICESCR – has expressed concern over discrimination on the grounds of sexual orientation and, even more importantly, has established that Article 2(2) of the ICESCR should be interpreted as including sexual orientation.<sup>8</sup>

Serbia is also bound by obligations under the regional human rights instruments of the Council of Europe. Article 14 of the European Convention on Human Rights (ECHR) prohibits discrimination “on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.<sup>9</sup> The formulation “other status” allows the European Court of Human Rights (the Court) to extend the protection under Article 14 to other grounds not specifically mentioned in the Convention. Thus, in its decision in *Salgueiro Da Silva Mouta v Portugal*, the Court stated that “sexual orientation [is] a concept which is undoubtedly covered by Article 14 of the Convention”<sup>10</sup> and, consequently, a difference in treatment based on sexual orientation represented a violation of ECHR. Further, in *Alekseyev v Russia*, the Court reiterated that sexual orientation was implicated by Article 14 as a prohibited ground of discrimination, and also stated that the margin of appreciation afforded to member states in this regard was narrow.<sup>11</sup>

In its General Comment No. 20, CESCR has expressed its view that state obligations in respect of the right to be free from discrimination include not only the adoption of anti-discrimination laws, but also an active approach to eliminating discriminatory practices. In that sense, the CESCR has established that:

“Tackling [systemic] discrimination will usually require a comprehensive ap-

proach with a range of laws, policies and programmes, including temporary special measures. States parties should consider using incentives to encourage public and private actors to change their attitudes and behaviour in relation to individuals and groups of individuals facing systemic discrimination, or penalize them in case of non-compliance (...) Given the persistent hostility towards some groups, particular attention will need to be given to ensuring that laws and policies are implemented by officials and others in practice.”<sup>12</sup>

While these recommendations were given in relation to the protection of economic, social and cultural rights, they should be understood as a reflection of state obligations under the right to be free from discrimination as it appears elsewhere.

Moreover, the Yogyakarta Principles emphasise that the obligations of states extend beyond the legislative function, encompassing the adoption of not only anti-discrimination laws, but also various policy measures, administrative procedures and programmes of education that will secure an adequate advancement of persons affected by discrimination.<sup>13</sup> The Yogyakarta Principles elaborate on how a broad range of human rights standards apply in relation to LGBT persons. Although the Principles as such are not legally binding, they reflect the provisions of international treaties and, in that way, affirm the already existing obligation of states to protect human rights.

In a similar manner, the Declaration of Principles on Equality, while not legally binding, reflects a moral and professional consensus on the right to equality, and sets out the positive obligation of states to ensure full enjoyment of the right to equality.<sup>14</sup> The Declaration also affirms that “[s]tates have a duty to

raise public awareness about equality, and to ensure that all educational establishments (...) provide suitable education on equality as a fundamental right.”<sup>15</sup>

## 2.2. Hate Speech

Hate speech, the prohibition of which is a limitation of freedom of expression, is an issue highly relevant to LGBT rights in Serbia since it is one of the fundamental ways in which LGBT rights are being violated. Freedom of expression is guaranteed by all major international, regional and national human rights legal instruments. As affirmed by the Court in *Handyside v The United Kingdom*, freedom of expression “constitutes one of the essential foundations of a [democratic] society, one of the basic conditions for its progress and for the development of every man”.<sup>16</sup> On the other hand, freedom of speech can be limited to the extent necessary to protect other important values, such as human dignity and non-discrimination.<sup>17</sup> There is, however, no universal agreement on the need for limiting freedom of speech, or on the scope of the potential limitations.

One of the most prominent classical defences of freedom of speech is given by J. S. Mill in his treatise *On Liberty* in which Mill argues that the government has no right to “prescribe opinions to its citizens, and to determine what doctrines or what arguments they shall be allowed to hear”.<sup>18</sup> On the other hand, Mill introduces the so-called “harm principle”, according to which people have the right to do anything they like, but only as long as it does not cause harm to the rights of others. However, the notion of harm itself has been subject to various interpretations and, consequently, it does not provide a solid base for determining the scope of freedom of expression. Mill’s liberalism has influenced a number of 20th century authors. For in-

stance, Noam Chomsky, in his defence of the French academic Robert Faurisson, who was prosecuted and fined for Holocaust denial, argues that genuine support for free speech implies the support for free expression of the views one disagrees with and finds offensive.<sup>19</sup> Chomsky approaches freedom of speech as a value *per se*, detached and entirely independent from the actual content of speech. Thus, by employing a formalist approach, he neglects the fact that the field of human rights and social sciences, in general, cannot be seen as content-neutral. By pointing out that freedom of speech ought not to be dependent on individual preference and taste, Chomsky fails to acknowledge that there are values – such as human dignity – which should be given priority over individual preference, and which therefore deserve universal respect.

As stated in Article 19(3) of the ICCPR, freedom of expression carries with it special duties and responsibilities and, therefore, may be subject to those restrictions which are provided by law and are necessary: “(a) For respect of the rights or reputations of others; and (b) For the protection of national security or of public order, or of public health or morals”.<sup>20</sup> Further, Article 20 of the ICCPR prohibits any propaganda of war, as well as any advocacy of national, racial or religious hatred.<sup>21</sup> The ECHR also emphasises that the exercise of freedom of expression carries with it duties and responsibilities, and therefore might be subject to certain restrictions which are necessary for, *inter alia*, “the protection of the reputation or rights of others”.<sup>22</sup>

Although many states have adopted legislation prohibiting hate speech, there is no universally accepted definition of the term “hate speech”.<sup>23</sup> According to the Council of Europe’s Committee of Ministers, hate speech

covers “all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance”.<sup>24</sup> Although the Court has never given a precise definition of hate speech, in order to determine if an expression constitutes hate speech, the Court will examine: (i) the purpose pursued by the speaker; (ii) the content of the expression, and (iii) the context in which it was disseminated.<sup>25</sup> When considering the first criterion, the question the Court asks is whether the speaker’s intention is to disseminate racist or other superiority ideas, or to inform the public on a public interest matter. Further, with regards to the second criterion which addresses the content of the speech, the Court insists on the distinction between statements of facts and value judgements. For instance, in *Garaudy v France*, the Court found that the denial of the Holocaust, as a clearly established historical fact, was not supported by historical and factual research and, consequently, was not protected by the ECHR.<sup>26</sup> Finally, regarding the context of the expression, the Court takes into account a variety of factors, namely: (i) the social status of the speaker; (ii) the status of the targeted person; (iii) the potential impact of the speech; and (iv) the (dis)proportionality of the interference to the freedom of expression.<sup>27</sup>

Martha Zingo focuses particularly on hate speech against LGBT people, who she describes as “sex/gender outsiders”.<sup>28</sup> She refers to the legal practice of the US Supreme Court, which has historically taken a restrictive view of hate speech, and discusses two different tests employed in freedom of expression cases. The first one is the “clear and present danger” test, according to which the government is allowed to limit freedom of expression only in cases when speech represents an immediate danger of substantive

evil, e.g. the danger of riots or any other kind of violence.<sup>29</sup> The second test – the “bad tendency” test – no longer requires danger to be imminent. The government is permitted to set limitations on free speech “if its *natural tendency and probable effect* was to bring about the substantive evil”.<sup>30</sup> Hence, the focus shifted from the effect of speech to its intended consequences.<sup>31</sup>

The targets of hate speech are individuals or groups who are considered by the speaker to be inferior on the basis of some characteristic that is constitutive to their identity and, generally, innate (e.g. race, ethnicity, sexual orientation etc.). Therefore, by being based on such characteristics, hate speech represents a specific form of discrimination. Katharine Gelber draws upon Jürgen Habermas’ “validity claims” model in order to demonstrate the force of hate speech. In Habermas’ theory of communicative action, “validity claims” are claims made by speakers, and they represent “the rules by which agreement may be reached on the meaning of a communication”.<sup>32</sup> In every utterance, three “validity claims” are simultaneously raised: (i) the claim to truth; (ii) the claim to rightness of norms and values; and (iii) the claim to the speaker’s sincerity. In hate speech, these three “validity claims” appear as: (i) the claim to inequality in the objective world; (ii) the claim to the rightness of discrimination against certain groups; and (iii) the claim of a sincere hater towards the targeted group.<sup>33</sup> Pointing out the “systemic power asymmetry” which favours the hate-speaker, Gelber concludes that a hate-speech-act is a discursive act of discrimination which propagates and perpetuates inequalities.<sup>34</sup>

Having established the legal and conceptual framework relating to the issue, the following section proceeds with an analysis of the specific characteristics of the Serbian context

– including the national legal framework, dominant political myths, and the prevalent approach to gender and homosexuality.

### 3. The Serbian Context

More than a decade after the fall of the authoritarian regime of Slobodan Milošević, Serbia is still struggling to define its political orientation and alignment. Heavily burdened by the legacy of its recent ethno-nationalist past combined with unfavourable economic circumstances, the Serbian Government is endeavouring to balance its commitment to EU integration, on the one hand, and pro-nationalist politics, on the other. In 2009, faced with the country's economic collapse and the global crisis, the Government adopted a series of legislative and policy measures that represented a step forward in the process of European integration.<sup>35</sup> However, at the same time, the anti-European block comprising nationalist parties, the Church, various right-wing groupings, a part of the scholarly elite and some media was growing stronger and gaining new supporters.<sup>36</sup>

The next three sections will seek to analyse the situation in present-day Serbia, in terms of the legal framework for LGBT rights, the political myths which dominate public discourse and, finally, the gender order and homophobia.

#### 3.1. The Prohibition of Discrimination and Hate Speech – Legal Framework for LGBT Rights

Serbia is a party to the key international and regional human rights treaties referred to above: ICCPR, ICESCR and ECHR. Therefore, Serbia has an international legal obligation to protect LGBT persons from discrimination. This obligation requires the Government to: (i) adopt legislation which incorporates

the right to equality and non-discrimination; (ii) ensure effective implementation of that legislation; and (iii) take positive measures to restrict practices which are incompatible with the right to equality (e.g. hate speech). Article 21 of the Serbian Constitution guarantees equality before the law and prohibits both direct and indirect discrimination on numerous grounds. Although the Constitution does not explicitly prohibit discrimination on the basis of sexual orientation and gender identity, the list of prohibited grounds in Article 21 is left open. Article 21 establishes, *inter alia*, that “all direct or indirect discrimination based **on any grounds**, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited”. (Emphasis added.) The inclusion of the wording “on any grounds” in Article 21 suggests that the list of prohibited grounds is not exhaustive, and that the protection could be extended to other grounds not specifically mentioned in the Constitution. The test set out in Principle 5 of the Declaration of Principles on Equality provides a solid basis for the conclusion that Article 21 of the Constitution should be interpreted as including sexual orientation, as it is a characteristic that has historically resulted in discrimination against LGBT persons which:

“(i) [C]auses or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to [the other listed grounds of] discrimination”.<sup>37</sup>

After years of preparation, in March 2009, the Ministry of Labour and Social Policy introduced the draft of the first comprehensive anti-discrimination law in Serbia, which sought to build upon the protections



provided in the Constitution. However, the draft was withdrawn from the parliamentary procedure in response to the objections raised by the Church and other religious denominations to several of its provisions including the prohibition of discrimination based on sexual orientation and gender identity. The withdrawal of the draft law sparked strong criticism by numerous national and international human rights NGOs, as well as EU representatives. Due to the fact that the adoption of a comprehensive anti-discrimination law was a necessary condition for further advancement in European integration, the Anti-Discrimination Law was finally adopted – however, not without changes to the disputed provisions. Gender identity as a prohibited ground of discrimination was omitted, and Article 21 of the Anti-Discrimination Law was adopted with the following wording:

*“Discrimination on the grounds of sexual orientation: Sexual orientation shall be a private matter, and no one may be called to publicly declare his/her sexual orientation. Everyone shall have the right to declare his/her sexual orientation, and discriminatory treatment on account of such a declaration shall be forbidden.”*<sup>38</sup>

Regarding hate speech regulations, Article 49 of the Serbian Constitution prohibits “any inciting of racial, ethnic, religious or other inequality or hatred”.<sup>39</sup> Further, Article 387 of the Criminal Code establishes that violations of human rights based on racial and other discrimination are criminal offences.<sup>40</sup> Finally, according to Article 38 of the Serbian Public Information Law of 2003:

“It is prohibited to publish ideas, information and opinions that incite discrimination, hatred or violence against a person or a group of persons on the basis of their

belonging or not belonging to a certain race, religion, nation, ethnic group, gender, or on the basis of their sexual orientation, regardless of whether the publication at stake constitutes a criminal offence or not.”<sup>41</sup>

Hence, Serbia clearly belongs to the group of countries that have thoroughly regulated hate speech. Nevertheless, hate messages in public narratives are frequent, and, as is evident in the lack of response from the authorities to the discourses discussed in section 4 below, the chances that offenders will be prosecuted are slim. It should be noted that targets of hate speech in Serbia are numerous, and sexual minorities are only one of them.

### **3.2. Serbian Politics and Nationalist Myths**

Despite legislative reform which represents a strong move towards the implementation of European human rights standards, Serbian society is still deeply imbued with nationalist ideas, most obviously expressed in various political myths. One of the most dominant national myths in contemporary Serbia is the “Kosovo myth”. As Darko Gavrilović and Ana Ljubojević argue, the “Kosovo myth” is a myth about borders and sacrifice.<sup>42</sup> According to this myth, the Kosovo battle of 1389 between the Serbian and Ottoman armies was a sacrifice made by the Serbian people for the benefit of the entire Christian civilisation. Hence, the “Kosovo myth” has established Serbs as “the keepers of the gates of the civilised world”.<sup>43</sup> Further, this myth has enforced the belief that Serbs have never been rightfully rewarded for the sacrifice they made in 1389. Consequently, as Gavrilović and Ljubojević point out, the “Serbs harboured a growing feeling of injustice and bitterness towards the West, while the nationalists once again found themselves inspired by topics from ancient history”.<sup>44</sup>

Three years after the declaration of Kosovo independence, the great majority of Serbian political actors, including the ruling Democratic Party, still refuse to accept the fact that Kosovo is not a part of Serbia anymore, and commonly refer to it as the violation of Serbian sovereignty and territorial integrity. At the same time, human rights, and particularly LGBT rights, are perceived by the majority in Serbian society as something “imported” from the West and forcefully imposed on the Serbian people contrary to their tradition and cultural values. The “Kosovo myth” is, therefore, successfully used as a tool of mobilisation around the idea of Western conspiracy against Serbia, as well as the idea of the superiority and the great merit of the Serbian nation.

Captivated by the myths about the heroic past, and determined to persist in denying Kosovo independence, the Serbian political establishment needed an ally. With the rise of the EU, and Russia’s willing distance from the West,<sup>45</sup> it is perhaps not surprising that the ally was found in the government of the Russian Federation. According to Vjekoslav Perica, the Serbo-Russian “post-communist romance” signifies a revival of the once powerful “pan-Slavic myth” – the myth about the common descent of all Slavonic peoples, underlying the idea of a pan-Slavic kingdom.<sup>46</sup> However, in its new Serbo-Russian version, the “pan-Slavic myth” has been reduced to the idea of pan-Orthodoxy, i.e. to the concept of brotherhood of all Orthodox Slavs. This fact highlights a very important feature of the “special relationship between Serbia and Russia”: it was largely based on religion. Consequently, the influence of the Church has drastically increased, not only in terms of cultural domination, but also in terms of institutional and political significance, as well as economic power. Analysing the intertwining of nationalism, state politics and

religion in Serbia, Rada Drezgic points out that the “instrumental pious nationalism” of the 1990s (in which religion was a mere instrument of state politics) was replaced by a model of “religious nationalism” after 2000, characterised by the symbiotic relationship between political institutions and the Church.<sup>47</sup> Therefore, imitating the Russian model, Orthodox Christianity has in effect become the state religion, and the secularity of Serbian politics has become highly questionable in numerous instances, some of which will be discussed below.<sup>48</sup>

The myth that substantially builds on the Kosovo myth is the myth about Serbs as a warrior nation. The recent ethno-nationalist conflict in the former Yugoslavia has only fuelled the belief that constant war is Serbia’s destiny, while the subsequent trials before the International Criminal Tribunal for the former Yugoslavia (ICTY) strengthened the perception of the accused political leaders as war heroes and great martyrs.<sup>49</sup> As Ljubojević argues, “[t]he ‘swan song’ of once active national leaders, later ICTY detainees, is incentivizing new forms of nationalism practiced by young generations that never experienced the war”.<sup>50</sup> Thus, in the absence of a “real” war enemy, the new generations inspired by warrior myths and eager to affirm their patriotism started looking for the enemies of the nation in all those who do not conform to their perception of normality.

### 3.3 Gender Order and Homophobia in Serbia

Serbian society, as an unstable transitional democracy balancing between so-called “Europeanisation” and pro-nationalist politics, is still a male-dominated society which adopts a patriarchal, traditional and conservative approach to gender order. While acknowledging that religion is not inherently op-



pressive towards women, Drezgić points out that Orthodox Christianity, like other monotheistic religions, promotes a strict division between gender roles, in which the public realm is reserved for men and the private realm for women.<sup>51</sup> Similarly, Žarana Papić argues that the patriarchal system of values in Serbian society has been driven by a particularly militant type of nationalism which glorified men as warriors and heroes, whilst putting women into the submissive role of mothers and wives.<sup>52</sup>

Although same-sex sexual activity was decriminalised in Serbia in 1994, Serbian society is still deeply homophobic, and non-heterosexual orientations are socially unacceptable and treated as degeneration and sickness.<sup>53</sup> The attitude of Serbian society towards homosexuality is best illustrated by the research carried out in 2010 by the Gay Straight Alliance, a Serbian LGBT organisation, in cooperation with the Centre for Free Elections and Democracy, a Serbian NGO concerned with election monitoring and social research. According to that study, 67% of the respondents believe that homosexuality is an illness, while 53% think that the Government should take measures to combat homosexuality.<sup>54</sup> Further, 56% of the respondents see homosexuality as very dangerous to society, while 64% support the Church in its condemnation of LGBT people. Only 15% of respondents believe that LGBT people in Serbia are a vulnerable group, and only 12% think of Gay Pride Parades as legitimate means for advancing the rights of sexual minorities.<sup>55</sup> As a consequence of such a high level of homophobia, LGBT people in Serbia live in isolation, social exclusion, fear, and in a situation in which guilt and shame are constantly imposed on them.<sup>56</sup> Moreover, sexual minorities are exposed to all forms of violence, ranging from psychological and verbal violence, such

as rejection by family and friends, to institutional violence in the form of expulsion from work and harassment by superiors, to condemnations, threats and intimidation, finally resulting in physical violence.<sup>57</sup>

#### **4. Discourse Analysis**

While the previous section identified key characteristics of the Serbian context which are most relevant for this study, this section highlights three prominent public discourses in Serbia through which attitudes towards homosexuality can be more specifically examined. The section focuses on the discourses that emerged in relation to three major events, namely: (i) the adoption of the Anti-Discrimination Law in March 2009; (ii) the cancellation of the 2009 Parade in September 2009; and (iii) the 2010 Parade held in Belgrade in October 2010 – and seeks to identify developments and changes in the three prominent discourses.

##### **4.1. The Discourse of the Serbian Political Parties<sup>58</sup>**

During the parliamentary debate on the Anti-Discrimination Law in 2009, its most vocal opponents were not only the opposition parties, but also one of the parties from the ruling coalition, United Serbia. This is a right-wing populist party relying heavily on the charisma of its president, Dragan Marković Palma, who, in his public appearances, never misses the opportunity to highlight his commitment to traditional Serbian values. Explaining the reasons for being against the adoption of the Anti-Discrimination law, he pointed out: “I have nothing against homosexuals, but I will never vote for something that is sick”.<sup>59</sup> He also stated that he “could not stand” gays, and that he was disgusted by their effeminate appearance.<sup>60</sup> Further, a representative of the largest opposition party –

the Serbian Progressive Party (SNS) – made the following statement:

“The affirmation and promotion of the so-called ‘personal preferences’ under the slogan of equality and freedom is not acceptable. This will, undoubtedly, lead to a situation in which sodomy and paedophilia will be protected as personal preferences.”<sup>61</sup>

A senior official of the right-wing Serbian Radical Party (SRS) also compared homosexuality with paedophilia, stressing that the law which prohibits discrimination against LGBT people would eventually open the door for legalising paedophilia. He also pointed out that the Anti-Discrimination Law was imposed upon the Government by the powerful Western states, and was aimed at destroying the Serbian nation.<sup>62</sup> Finally, the conservative and pro-Christian Democratic Party of Serbia (DSS) argued that the law was not acceptable as it did not have the approval of the Church.<sup>63</sup>

The discourse of those Serbian parties which voted against the adoption of the Anti-Discrimination Law exemplifies the existence of strong stereotypes (and countertypes) in Serbian politics. The stereotype that represents normality is marked by Serbdom, Orthodox Christianity, tradition and unalterable gender roles, while the countertype – signifying degeneration – encompasses the pro-European orientation, secularism, equality between man and woman and, finally, homosexuality and LGBT rights. These stereotypes correspond to the ideal of manliness and its antithesis. As George Mosse argues, although the masculine stereotype is not a characteristic of right-wing ideologies alone, it is nationalism that links manliness with patriotism, traditional values and religion.<sup>64</sup> Therefore, the analysis of the stereotypes existing in the Serbian political discourse indicates

that homophobia in Serbian politics correlates with the general right-wing attitudes.

As discussed above, the European Court of Human Rights, in order to determine if an expression constitutes hate speech, examines (i) the purpose pursued by the speaker; (ii) the content of the expression; and (iii) the context in which it was disseminated. An assessment of the above statements of Serbian politicians based on these criteria demonstrates that the primary purpose of these statements has not been to inform the public on important matters, but to establish homosexuals as physically and morally inferior to heterosexuals, thereby strengthening already anchored prejudices against the LGBT minority. Regarding the content of the expression, the Court has established that “a distinction needs to be made between statements of fact and value judgments”, adding that “even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it”.<sup>65</sup> The above-mentioned statements of Serbian politicians do not represent statements of facts, nor are they supported by facts. On the contrary, the statements are in opposition to the fact that homosexuality is not a disease – established by the World Health Organisation and thus internationally recognised as scientific truth. Finally, regarding the context of the expression and the respective positions of the speaker and the targeted group, it is clear that the Serbian context is characterised by significant power asymmetry between the political class and the LGBT minority, in favor of the former. Further, the Court asserted in *Erbakan v Turkey* that “it is crucially important that politicians avoid disseminating comments in their public speeches which are likely to foster intolerance”.<sup>66</sup> It could therefore be concluded that the above discussed statements of Serbian politicians pass the test employed by the Court and, therefore, amount to hate speech.

During the preparations for the 2009 Parade, the opposition parties, as well as United Serbia, maintained the same attitude towards homosexuality, arguing that the parade would be a public demonstration of sickness and abnormality. The members of the ruling coalition, on the other hand, pointed out that the LGBT community does have the right to hold the parade; however, none of the Government officials explicitly supported the Parade, claiming that they had already demonstrated their attitude by voting in favour of the Anti-Discrimination Law adopted in March that year.<sup>67</sup> One of the most vocal opponents of the 2009 Parade from the ruling coalition was Dragan Đilas, the mayor of Belgrade, the city in which the 2009 Parade was due to take place. Đilas stated that he, personally, was against the 2009 Parade,<sup>68</sup> arguing that sexual orientation is an exclusively private matter and, therefore, there is no reason for disclosing it.<sup>69</sup> On the other hand, he also stated that he was against violence of any kind, condemning on that occasion the far-right organisations who threatened to attack the marchers and pointing out that their threats adversely affected the image of the city of Belgrade.<sup>70</sup> The fact that Đilas condemned the violence against the marchers and did not explicitly define LGBT people as morally or in any other way inferior suggests that he was only practising the freedom to publicly express his views. On this basis, his statements could arguably not be defined as hate speech. Nevertheless, the comments of the Belgrade mayor are indeed deeply homophobic, and indicate a lack of understanding of the basic human rights principles set forth in the major international conventions and affirmed by Serbian laws. Đilas failed to recognise that the 2009 Parade was intended to be a political protest against discrimination, rather than a mere demonstration of sexuality. By stating that there is no need for such an event, he implied that discrimination on

the basis of sexual orientation and gender identity is either irrelevant or non-existent. Further, the wording that Đilas used, as well as the sequence of his statements, suggests that he was equally against the violence as he was against the parade itself. Finally, by being more concerned about the image of the city than the marchers' lives and security, Đilas demonstrated his disregard for the protection of human rights. It could, therefore, be concluded that the views of the Belgrade mayor exemplify implicit hostility against homosexuals and, as such, perpetuate homophobia as a mainstream attitude.

The cancellation of the 2009 Parade prompted harsh criticism by the international community, primarily by EU officials, which consequently led to a shift in the discourse of the Serbian political elite regarding the Parade. When Serbian LGBT activists announced a new attempt to hold a parade in October 2010, the biggest opposition party, SNS, was eager to demonstrate its allegedly pro-European orientation and entirely changed its attitude towards LGBT issues. During the meeting with the Parade organisers, a senior SNS official, Aleksandar Vučić, pointed out that violence and discrimination against those who are different from the majority were unacceptable.<sup>71</sup> Even SRS – although refusing to support the 2010 Parade itself – condemned discrimination of any kind.<sup>72</sup> Government officials became more explicit in their support for the LGBT minority, and demonstrated a stronger commitment to securing the 2010 Parade.<sup>73</sup> The 2010 Parade was finally held and the police managed to prevent the far-right extremists from attacking the marchers, which, in itself, represented a step forward. However, the Serbian political discourse is still conspicuously lacking an explicit acceptance of LGBT people as non-degenerate and entirely equal with heterosexuals, as well as

an unequivocal condemnation of all those opposing their rights.

#### 4.2. The Discourse of the Serbian Orthodox Church

Over the past two decades, Serbian society has gone through a process of rapid de-secularisation.<sup>74</sup> From a society in which the Church was marginalised and thoroughly subordinated to the state, Serbia has turned into a society with high rates of religious identification and in which the popularity of the dominant religious institution, the Serbian Orthodox Church, has drastically increased.<sup>75</sup> As Drezgić argues, throughout modern history, the Church developed its authority as a national, rather than a religious, institution, which in itself indicates its political aspirations.<sup>76</sup> Despite the guarantee of secularity in Article 11 of the Constitution, the power of the Church in Serbian society is indisputable. Religious views have entered public discourse and created a new reality, imposing new perceptions of social phenomena.

The Church considers that “all uses of the human sex organs for purposes other than those ordained by creation runs contrary to the nature of things as decreed by God, interfering with the *normal* development of societal patterns”.<sup>77</sup> (Emphasis added.) Furthermore, according to Orthodox views, there appear to be two types of homosexuality – one representing a medical disorder, and the other resulting from a moral failure. In both cases, correction is called for, primarily in terms of medical and psychiatric treatment.<sup>78</sup> The general attitude of the Church towards homosexuality expressed in the above statement exemplifies the way in which a powerful actor, through discursive practice, is able to establish the notion of normality. As Michel Foucault has shown, the notion

of normality does not have a universal and unalterable meaning; on the contrary, the actual content of this notion varies widely, according to the values of those in power.<sup>79</sup> In the case of Serbia, Christianity sets the parameters for defining the scope of normality and, consequently, all those who do not live in accordance with Christian values are outside the “normal”. Thus, the above statement contradicts the right of every individual to choose their own religion or to choose not to have religion, and discriminates against those with views which differ from those of the Christian Orthodox Church.

The general attitude of the Church towards homosexuality has been expressed on numerous occasions, particularly during the past couple of years in which LGBT rights in Serbia have become a topic of increased debate. As mentioned above, the draft of the first comprehensive anti-discrimination law in Serbia was withdrawn from the parliamentary procedure in 2009 in response to the objections raised by the Church and other religious denominations. Although the objections were directed towards more than one provision of the draft law, the major stumbling block was Article 21, which, *inter alia*, expressly prohibited discrimination on the basis of sexual orientation and gender identity. In its appeal to the President of the Serbian Parliament, the Holy Assembly of Bishops of the Church pointed out that “there is no scientific evidence that sexual orientation is an inborn trait”, further adding that “a number of eminent scientists deem transsexuality to be a mental disorder”.<sup>80</sup> The appeal also asserted that the affirmation of gender identity and sexual orientation as prohibited grounds of discrimination would endanger religious freedom as well as freedom of conscience.<sup>81</sup> This statement established homosexuality and transsexuality as mental diseases threatening the societal order

which comprises a set of norms and values that in the Serbian context has a prominent religious dimension. While appealing to freedom of religion and freedom of conscience, the Holy Assembly of Bishops demonstrated hostility to sexual minorities and a complete disregard for their human rights.

During the preparations for the 2009 Parade, the Church was vocal in condemning homosexuality. Metropolitan Amfilohije Radović, at the time acting in the capacity of Patriarch, argued that the 2009 Parade would actually be a “parade of shame”, quoting the Serbian popular saying that “what the mad are proud of, ashames the smart”.<sup>82</sup> Moreover, he referred to the event as the parade of “Sodom and Gomorrah”, further adding that “the tree that does not bear fruits is to be cut and thrown into fire”.<sup>83</sup> The statements of Metropolitan Amfilohije Radović violated the dignity of the LGBT minority members in more than one way. First, he declared homosexuality to be a disgrace, which implied that LGBT people – as those unable to resist “shameful impulses” – were inferior to those who lived in accordance with the Christian morality. Secondly, the above statements expressed the view that homosexuals were not only mentally ill (“insane”), but also physically degenerate and barren, as they do not use their bodies for the purposes decreed by God. Finally, the “tree metaphor” used by Metropolitan Amfilohije represents a rather explicit call for a violent intervention, although the Serbian prelates pointed out on several occasions that the Church was against violence of any kind.

As none of the prelates who publicly condemned homosexuality and called for the cancellation of the 2009 Parade was prosecuted for either incitement to violence or hate speech, the preparations for the 2010 Parade in autumn 2010 were met with the

same attitude of the Church. The Holy Assembly of Bishops, in its official announcement before the Parade, stated that the Church was strongly against the Parade, referring on that occasion to the LGBT population as the “*so-called* sexual minorities” and to their interests as “frivolous”.<sup>84</sup> Furthermore, the announcement argued that Gay Pride Parades violate the right to family life and insult the dignity of believers.<sup>85</sup> The Church therefore denied LGBT people the status of minority, and declared them a threat to the “normal” order of things, i.e. the “family life” in accordance with Christian values. One day after the 2010 Parade, Metropolitan Amfilohije Radović gave the following statement:

“Yesterday we watched the stench poisoning and polluting the capital of Serbia, scarier than uranium.<sup>86</sup> That was the biggest stench of Sodom that the modern civilisation raised to the pedestal of the deity. You see, the violence of wrongheaded infidels caused more violence. Now they are wondering whose fault it was, and they are calling our children hooligans.”<sup>87</sup>

Metropolitan Amfilohije Radović therefore equated LGBT people with a dangerous weapon and accused them of being responsible for the violence that occurred in the streets of Belgrade during the 2010 Parade. Further, he explicitly linked homosexuality with “modern civilisation”, defining it as something imposed by modernity and invoking, in that way, the myth about a Western conspiracy against Serbia.<sup>88</sup> Finally, by implying that it is wrong to call the attackers of the 2010 Parade “hooligans”, Metropolitan Amfilohije openly sided with them, providing, therefore, a legitimation for the violence against the LGBT minority. Clearly, the above-cited statement constitutes hate speech as: (i) it is directed towards a minority group that is – in the speaker’s view – infe-

rior; (ii) it offends the human dignity of LGBT people; and (iii) its “natural tendency and probable effect” is to incite violence and/or discriminatory treatment against the targeted group.<sup>89</sup> A couple of months after the 2010 Parade, the Serbian Equality Protection Commissioner instructed Metropolitan Amfilohije Radović to publicly apologise to the participants of the Parade for hate speech. However, Metropolitan Amfilohije Radović said he “had no intention of apologising”, confirming once again his views on homosexuality.<sup>90</sup> Metropolitan Amfilohije Radović has never been indicted for hate speech. The Equality Protection Commissioner, shortly after the initial warning, asserted that the Government had “no capacity” for initiating judicial proceedings against Amfilohije Radović.<sup>91</sup>

### 4.3. The Discourse of the Serbian Media<sup>92</sup>

Despite the fact that Article 38 of the Serbian Public Information Law explicitly lists sexual orientation as one of the prohibited basis of hate propaganda, anti-gay messages frequently appear in the Serbian media, while the offenders go unpunished. The controversy surrounding the adoption of the Anti-Discrimination Law in March 2009 was given significant coverage in the Serbian media. While some of the Serbian daily newspapers were explicitly advocating for the adoption of the law and condemning its withdrawal from the parliamentary procedure, others, more or less openly, supported the views of the Church. For instance, *Večernje Novosti*, the daily newspaper which is known for its collaboration with the regime of Slobodan Milošević, published an interview with the bishop of the eparchy of Bačka, Irinej Bulović, with the title “The Church is Only Defending Morality”.<sup>93</sup> In a similar manner, *Kurir* claimed that the Government had deceived the Church by returning the law to

the parliamentary procedure. Under the title “Fraud”, *Kurir* stated the following:

“The Serbian Government deceived the dignitaries of the Church, after days of the negotiations on the amendments to the anti-discrimination law. At today’s session of the Government, the new draft of the law will be adopted, after only cosmetic changes.”<sup>94</sup>

Clearly, these newspapers saw the Church’s interference in the legislative process as perfectly acceptable, legitimate and “normal”. Hence, the discourse of the above-mentioned media reflects the process of de-secularisation of Serbian society which Drezgić and Perica analyse in their work. As Drezgić argues, the relationship between the political institutions and the Church, as a result of which, during the 1990s, religion was used primarily as an instrument of aggressive nationalist politics, has transformed after 2000 into a much tighter relationship in which the Church gained more power and influence.<sup>95</sup> Similarly, Perica points out that, during the government of Vojislav Koštunica (from 2004 to 2008), Orthodox Christianity practically became the state religion, and after the elections of 2008 which brought to power the current Serbian president Boris Tadić, the relationship between the Government and the Church remained unchanged.<sup>96</sup> Both Drezgić and Perica illustrate their arguments by pointing to the Church’s various attempts to influence the legislation. Therefore, although the Anti-Discrimination Law has finally been adopted, the controversy that it had provoked confirms the ability of the Church to interfere in matters of state politics and to stall reform processes.

*Politika*, the oldest daily newspaper in the Balkans which is partially owned by the Government, immediately after the adoption of the Anti-Discrimination Law published a col-



umn written by Slobodan Antonić, a Serbian political analyst who is known for his rightist views. In the column, Antonić explicitly supported the Church in its struggle against the Anti-Discrimination law, suggesting that the Church is a legitimate representative of the great majority of Serbian society.<sup>97</sup> Further, he expressed deep concern about the provision prohibiting the discrimination on the basis of sexual orientation and its potential consequences. Antonić wrote:

“As a next step, anti-discrimination will not be enough anymore. They<sup>98</sup> will require equality (...) After the legal equality is obtained, they will go further and request the recognition of social equivalence (...) And in a few years we will be required to officially declare homosexuality to have the equal value as heterosexual orientation.”<sup>99</sup>

It is clear from the above statement that Antonić considers homosexual orientation to be of less worth than heterosexual. Although he did not openly claim that LGBT *people* are worth less than others, his position rather implies that homosexuals could not be equal in rights with heterosexuals. Such a view strongly contradicts Article 1 of the Universal Declaration of Human Rights which proclaims the equality of all human beings and therefore entails the prohibition of discrimination in the enjoyment of human rights. Further, by openly opposing the equal rights of all human beings, Antonić implied that: (i) the inequality is an objective fact; (ii) discrimination against the LGBT minority is legitimate; and (iii) such discrimination is justified by the superiority of heterosexual over homosexual orientation. In light of the hate speech criteria employed by the Court: (i) Antonić was advocating the idea of the superiority of heterosexual people over LGBT people; (ii) his views were not supported by facts; and (iii) his social position imposed

upon him the duty not to incite intolerance and discrimination – a duty which Antonić did not respect and fulfil. The above analysis confirms his statement as hate speech against LGBT people.

After Serbian LGBT activists had announced their plans to hold the 2009 Parade, a number of Serbian newspapers joined the anti-gay campaign that finally led to the cancellation of the parade. Some daily newspapers, such as *Kurir*, *Press*, *Alo!* and *Pravda* gave considerable space to right-wing extremists, without providing any critical review of, or comment on, their views.<sup>100</sup> Referring to the pro-fascist organisations as “patriotic groups”, “football supporters” or simply “youths”, the above-mentioned Serbian newspapers were continuously publishing their hate messages and calls for violence.<sup>101</sup> For example, *Kurir* published the following statement of Mladen Obradović,<sup>102</sup> leader of *Obraz* – one of the Serbian pro-fascist organisations:

“A huge number of people will come, from all the areas where Serbs live. Our message to faggots is clear: We are waiting for you.”<sup>103</sup>

Further, at the time, sensational headlines abounded, such as:

- (i) “Gay Parade represents the imposition of a new ideology on Serbia”<sup>104</sup> – a headline suggesting that homosexuality is an ideology, not just a sexual orientation, forced upon Serbia from outside; and
- (ii) “After faggots, sodomists and necrophiliacs will want to parade”<sup>105</sup> – a title that, once again, establishes homosexuality as a sickness and a degeneration.

One article published in *Kurir* was particularly indicative of this phenomenon. It was entitled “Faggot secedes Kosovo!” and was

about a prominent LGBT activist, Predrag Azdejković, who on his blog had started an internet campaign called “De-Kosovisation of Serbia” – a satirical critique of the Serbian politics related to Kosovo and the stubborn refusal of the Serbian politicians to accept Kosovo’s independence. *Kurir* called the campaign “offensive” and referred to homosexual men as “faggots”.<sup>106</sup> Two elements of the discourse present in the above article indicate the connection between homophobic and nationalist attitudes. First, as Gavrilović and Ljubojević argue, the “Kosovo myth” which still dominates a large part of the Serbian society, including the current Government, suggests that, because of the great sacrifice made by the Serbian people in the 14<sup>th</sup> century, Kosovo will always remain a part of Serbia.<sup>107</sup> Therefore the above article, by appealing to the patriotic feelings of the readers, seeks to represent LGBT people – particularly human rights activists – as the enemies of the Serbian nation. In Mosse’s view, the representation of countertypes – in this case homosexuals – as an active threat to societal order and national unity is a prominent characteristic of right-wing ideologies.<sup>108</sup> Second, Mosse points out that fascist and nationalist regimes tend to promote the idea of collaborations and plots between the different categories of outsiders.<sup>109</sup> As the “loss” of Kosovo is generally associated with the Western conspiracy against Serbia, the above article indicates that LGBT people collaborate with Western powers in order to destroy the “healthy” Serbian nation.

During the preparations for the 2010 Parade, the above-discussed Serbian newspapers continued the anti-gay campaign in a very similar manner. After the 2010 Parade was finally held – followed by the anti-gay riots – the general attitude prevailing in the discourse of the majority of the Serbian media was that the parade had been utterly unne-

cessary and that the damage caused by it<sup>110</sup> far outweighed the benefit. *Politika*, two days after the 2010 Parade, published a column by political analyst Đorđe Vukadinović, the editor in chief of the Serbian right-wing quarterly *New Serbian Political Thought (Nova Srpska Politička Misao)*, in which he argued that the 2010 Parade had been forced upon Serbia from the West, contrary to the “historical and political logic”.<sup>111</sup> He implied that there is a sharp contrast between Serbia and the West, and that the notion of LGBT rights is highly incompatible with Serbian history and politics. Further, Vukadinović compared the far-right extremists who intended to attack the 2010 Parade participants with the participants in the anti-Milošević demonstrations who used violence against the Milošević police – primarily as a response to the violence used by the police themselves. Hence, Vukadinović suggested that the far-right violence against minorities is essentially the same as the struggle against an authoritarian regime. As such, he implicitly justified the violence that occurred during the 2010 Parade. The article by Đorđe Vukadinović exemplifies a rather dangerous relativisation of human rights, suggesting that LGBT rights are not universal but entirely dependent on political and historical circumstances. Moreover, by practically equating an authoritarian regime with the LGBT minority, Vukadinović failed to acknowledge a very important difference between those violating human rights, on the one hand, and the victims of human rights violations, on the other.

The discourses of the Serbian political elite, the Church and the daily newspapers represent varying degrees of homophobia, ranging from explicit calls for violence to a rather concealed hatred against sexual minorities. While not all the discourses discussed above reach the level of hate speech, they still represent a breach of Serbia’s legal obli-

gations. As the discussion above has shown, the state's obligation to protect minorities and marginalised groups extends beyond the adoption of anti-discrimination and hate speech legislation, to include the taking of effective action to implement that legislation. More specifically, even where the speech in question does not reach the threshold of hate speech, the state is under the obligation to tackle a culture of homophobia, by carrying out various policy measures and programmes, such as awareness-raising and human rights mainstreaming. The culture of impunity that is still present in the Serbian public arena significantly impedes the efforts towards the effective implementation of the Anti-Discrimination Law, thus showing that Serbia does not fully meet its human rights obligations.

## 5. Conclusion

Despite the declared democratic and pro-European orientation of the Government and some positive legislative reforms in the recent years, Serbian society is still deeply imbued with nationalist myths that incite and support a culture of homophobia. The analysis of the discourses of Serbian politicians, the Church and the media has shown the following:

- (i) the LGBT minority is depicted through stereotypes that represent homosexuality as moral and/or physical degeneration constituting a threat to the normal societal order and the Serbian nationhood;
- (ii) the stereotyping of the LGBT minority is strongly supported by the national myths;
- (iii) as the above stereotypes are characteristic of right-wing ideologies and regimes, it is not surprising that homophobia is primarily (although not exclusively) a feature of the discourse of the pro-nationalist Serbi-

an parties and the media with a right-wing political alignment;

(iv) hatred against LGBT people in Serbian society has a pronounced religious dimension, which is enhanced by the fact that the Church has, over the course of the last two decades, gained a considerable political power and influence; and

(v) after the cancellation of the 2009 Parade, the discourses on homosexuality and LGBT rights have changed towards more tolerance and more respect for the rights of sexual minorities, which is primarily a consequence of the political pressure from the EU and the international community in general. Nevertheless, homophobia in Serbian public discourse is still present.

Further, the presence of hate speech in three prominent discourses undermines both the Anti-Discrimination Law and the legislation prohibiting hate speech, and reveals the failure of the Government to comply with its legal obligations. Firstly, the Government itself – i.e. certain members of the ruling coalition – violates the human rights of sexual minorities by publicly spreading hatred against homosexuals. Secondly, the Government is failing to protect LGBT people from the hate speech of private entities, such as the Church and the media, showing therefore that the right to equality is not being effectively implemented. Finally, the Government is not taking sufficient policy, administrative and educational measures to protect the rights of LGBT minority members and to tackle the culture of homophobia. It is therefore failing to fulfil its positive obligations under the international and national human rights instruments to which it is a party.

As indicated above, the gap between the legal obligations and actual practices of the

Serbian state agencies suggests that the reform processes in Serbia are yet to be completed. Despite the adoption of various “pro-European” laws, the effective enforcement of these remains elusive. The obstacles to law enforcement represent a complex issue that ought to be addressed at both the state level, and within civil society – particularly in human rights advocacy and in academia. In terms of human rights activism, the EU conditionality could be successfully used as a means of pressurising the Government to comply with its legal obligations.

Further, the analysis in this article has pointed to a concerningly prominent trend in contemporary Serbia – the trend of de-secularisation of the society and the extensive interference of the Church in state affairs. In that sense, it is of great importance to set the limits of the Church influence. The fact that the secularity of the state is guaranteed by Article 11 of the Serbian Constitution indicates that legal norms, once again, are not being adequately implemented. Government representatives and other politicians are primarily responsible for preserving the secularity of the Serbian state. They must remain independent from the Church and resist attempts by the Church to influence legislation and other state affairs.

Finally, changes at the level of popular consciousness about LGBT rights – and human rights in general – are needed. As the above analysis has shown, the legacy of the nationalist past is still very much alive in contemporary Serbia, and the national myths and stereotypes dominate society. Despite the fact that human rights language has gradually entered Serbian public discourse, general awareness of the meaning and content of human rights is low. Moreover, because of the prejudices and stereo-

types related to homosexuality, opposition to LGBT rights is even stronger than to the rights of other minorities. Therefore, human rights education – including the education on the rights of sexual minorities – is of crucial importance.<sup>112</sup> By reforming its education policies the Government would encourage different social actors to change their attitudes towards individuals and groups facing systemic discrimination. By doing this, the Government would better fulfil its positive legal obligations to realise the right to equality, as best articulated in General Comment No. 20 of CESCR, the Yogyakarta Principles, and the Declaration of Principles on Equality. Regarding LGBT rights, education policies ought to be based on several principles. First, that homosexuality is not an illness and it is neither illegal nor immoral; it is a part of personal identity that is equal in value to heterosexual orientation. Second, LGBT persons are equal in rights with other individuals and, consequently, discrimination on the basis of sexual orientation and gender identity represents a violation of human rights. Third, homosexuality does not represent a threat to the nation, and does not violate freedom of religion. Religious views and/or patriotic feelings must not be used as a justification for discrimination against LGBT people. Finally, while the EU conditionality could be a useful means for pressuring the Government to comply with its legal obligations, in the field of education, human rights must not be presented as something imported from the West and culturally alien to Serbia. On the contrary, it is important to stress that the recognition of the equal rights of all individuals, regardless of their sexual orientation or any other inborn trait, would benefit Serbian society and all its citizens. In other words, the implementation of hu-

man rights is not only a prerequisite for the European integration and a nuisance that must be endured for a better future in the EU, but also a prerequisite for societal development and the protection of the dignified life of all human beings.

<sup>1</sup> Isidora Stakić completed a six month internship with The Equal Rights Trust in July 2011. This article is based on the author's thesis for the Masters in Human Rights Practice at Roehampton University, UK, submitted in May 2011.

<sup>2</sup> Helsinki Committee for Human Rights in Serbia, *Annual Report on Human Rights: Serbia in 2009: Europeanization – Accomplishments and Limitations*, 2010, p. 276.

<sup>3</sup> According to the Copenhagen Criteria, established by the European Council at the Copenhagen European Council in 1993, a candidate country must achieve stability of institutions guaranteeing, *inter alia*, human rights and respect for and protection of minorities. The Copenhagen Criteria are available at: [http://ec.europa.eu/enlargement/enlargement\\_process/accession\\_process/criteria/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm).

<sup>4</sup> "Serbia Police Clash with Far-right Rioters at Gay Pride March", *guardian.co.uk*, 10 October 2010, available at: <http://www.guardian.co.uk/world/2010/oct/10/serbia-police-rioters-gay-pride>.

<sup>5</sup> See Weinberg, G., *Society and the Healthy Homosexual*, St. Martin's Press, 1972, cited in Fone, B., *Homophobia: A History*, Picador, 2000, p. 5. George Weinberg, the American psychologist who coined the term "homophobia" defined it as "the dread of being in close quarters with homosexuals". Although this definition, as well as the suffix "-phobia", suggests the irrational nature of the fear at stake, this article does not approach homophobia as an irrational fear, but primarily as a socially constructed set of prejudices against LGBT people.

<sup>6</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A (XXI) (1966), Articles 2(1) and 26. The right to non-discrimination is also enshrined in the International Covenant on Economic, Social and Cultural Rights (G.A. Res. 2200A (XXI) (1966), Article 2(2)) and the International Convention on the Rights of the Child (G.A. Res. 44/25 (1989), Article 2) as well as in the provisions of regional human rights instruments such as the European Convention of Human Rights, Article 14 and the African Charter on Human and Peoples' Rights, Article 2.

<sup>7</sup> UN Human Rights Committee, *Toonen v Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, 31 March 1994.

<sup>8</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para 2)*, UN Doc. E/C.12/GC/20, 2 July 2009, Para 27. See also UN Committee on the Rights of the Child, *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, UN Doc. CRC/GC/2003/4, 1 July 2003, Para 6; and UN Committee against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, UN Doc. CAT/C/GC/2, 24 January 2008, Para 21.

<sup>9</sup> European Convention on Human Rights and Fundamental Freedoms (ECHR), 1950, Article 14.

<sup>10</sup> *Salgueiro Da Silva Mouta v Portugal*, Appl. No. 33290/96, ECHR, 21 December 1999, Para 28.

<sup>11</sup> *Alekseyev v Russia*, Appl. Nos. 4916/07, 25924/08 and 14599/09, ECHR, 21 October 2010.

<sup>12</sup> UN Committee on Economic, Social and Cultural Rights, above note 8, Para 39.

<sup>13</sup> O'Flaherty, M. and Williams, G., *Jurisprudential Annotations to the Yogyakarta Principles*, University of Nottingham Human Rights Law Centre, 2007.

<sup>14</sup> The Equal Rights Trust, *Declaration of Principles on Equality*, London, 2008, Principle 3, available at: <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20principle.pdf>.

<sup>15</sup> *Ibid.*, Principle 17.

<sup>16</sup> Weber, A., *Manual on Hate Speech*, Council of Europe Publishing, 2009, p. 1.

<sup>17</sup> *Ibid.*, p. 2.

<sup>18</sup> Mill, J. S. (ed. Collini, S.), *On Liberty and Other Writings*, Cambridge, 1989, p.19.

<sup>19</sup> Chomsky, N., "Some Elementary Comments on the Right of Freedom of Expression", Preface to Faurisson, R., *Mémoire en défense*, 1980, available at: <http://www.chomsky.info/articles/19801011.htm>.

<sup>20</sup> ICCPR, above note 6, Article 19(3).

<sup>21</sup> *Ibid.*, Article 20.

<sup>22</sup> See above, note 9, Article 10.

<sup>23</sup> See above, note 16, p. 3.

<sup>24</sup> *Ibid.*, p. 3.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, p. 36.

<sup>27</sup> *Ibid.*

<sup>28</sup> Zingo, M. T., *Sex-Gender Outsiders, Hate Speech and Freedom of Expression: Can They Say That about Me?*, Praeger Publishers, 1998.

<sup>29</sup> *Ibid.*, p.18.

<sup>30</sup> *Ibid.* (Emphasis in original.)

<sup>31</sup> *Ibid.*

<sup>32</sup> Gelber, K., *Speaking Back: The Free Speech versus Hate Speech Debate*, John Benjamins Publishing Company, 2002, p. 61.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*, , p. 87.

<sup>35</sup> See above, note 2, p. 20.

<sup>36</sup> *Ibid.*, p. 20.

<sup>37</sup> See above, note 14, Principle 5.

<sup>38</sup> National Assembly of the Republic of Serbia, The Law on the Prohibition of Discrimination, 2009, Article 21 (unofficial translation by UNDP Serbia).

<sup>39</sup> National Assembly of the Republic of Serbia, Constitution of the Republic of Serbia, 2006, Article 49.

<sup>40</sup> National Assembly of the Republic of Serbia, Criminal Code, 2005, Article 387 (translated by the author).

<sup>41</sup> National Assembly of the Republic of Serbia, Public Information Law, 2003, Article 38 (translated by the author).

<sup>42</sup> Gavrilović, D. and Ljubojević, A., "Myths about Borders", in Gavrilović, D. and Perica, V. (eds.), *Political Myths in the Former Yugoslavia and Successor States: A Shared Narrative*, The Hague, The Institute for Historical Justice and Reconciliation, 2011.

<sup>43</sup> *Ibid.*, p.45.

<sup>44</sup> *Ibid.*, p. 46.

<sup>45</sup> Perica, V., "A Post-Communist Serbo-Russian Romance: Eastern Relic of the Pan-Slavic Myth", in Gavrilović, D. and Perica, V. (eds.), above note 42.

<sup>46</sup> *Ibid.*

<sup>47</sup> Drezgić, R., "Religion, Politics and Gender in the Context of Nation-State Formation: the Case of Serbia", *Third World Quarterly*, Vol. 31(6), 2010, pp. 955-970.

<sup>48</sup> See above, note 45.

<sup>49</sup> Ljubojević, A., "We Can Be Heroes – Rise and Fall of Yugoslav Leaders", Conference paper presented at *The Association for the Study of Ethnicity and Nationalism Conference*, April 2010, London School of Economics, available at: [http://www2.lse.ac.uk/researchAndExpertise/units/ASEN/Conference/conferencepapers2010/Ana\\_Ljubojevic.pdf](http://www2.lse.ac.uk/researchAndExpertise/units/ASEN/Conference/conferencepapers2010/Ana_Ljubojevic.pdf).

<sup>50</sup> *Ibid.*, p. 2.

<sup>51</sup> See above, note 47.

<sup>52</sup> Papić, Ž., "From State Socialism to State Nationalism: The Case of Serbia in Gender Perspective", *Refuge*, Vol. 14(3), 1994, pp. 10-14.

<sup>53</sup> See above, note 2.

<sup>54</sup> Gay Straight Alliance, *Predrasude na videlo: Homofobija u Srbiji 2010*, 2010.

<sup>55</sup> *Ibid.*



<sup>56</sup> Kurepa, T., "Parada ponosa ili prilagođavanje 'političke volje", *Ebart*, 2010, available at: <http://www.arhiv.rs/parada-ponosa/>.

<sup>57</sup> *Ibid.*

<sup>58</sup> This section focuses primarily on the narratives of the Serbian political parties which were expressly opposed to the Anti-Discrimination Law adopted in March 2009, the majority of which were (and still are) in opposition. However, it also seeks to identify subtle forms of homophobia that permeate the discourse of certain politicians from the ruling coalition and, therefore, open the door for more explicit anti-gay messages. It is important to note that the aim of this section is not to scrutinise the individual political parties and their agendas, but to demonstrate the general level of homophobia in the discourse of Serbian politics, as well as the correlation between homophobic and pro-nationalist attitudes.

<sup>59</sup> "SPC i verske zajednice protiv Ustava Srbije", *Danas*, 6 March 2009 (translated by the author).

<sup>60</sup> Jevremović, J., "Palma za Press: Znam ko su homiđi u skupštini Srbije!", *Press*, 17 March 2009 (translated by the author).

<sup>61</sup> "Opozicija brani stavove Crkve", *Večernje Novosti*, 16 March 2009 (translated by the author).

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> Mosse, G., *The Image of Man: The Creation of Modern Masculinity*, Oxford University Press, 1996.

<sup>65</sup> See above, note 16, p. 36.

<sup>66</sup> *Ibid.*, p. 37.

<sup>67</sup> See above, note 56.

<sup>68</sup> Simonović, G., "Gej parada je opasna po život! Intervju: Dragan Đilas, gradonačelnik Beograda", *Alo!*, 31 August 2009, available at: [http://www.alo.rs/politika/18767/Gej\\_parada\\_je\\_opasna\\_po\\_zivot](http://www.alo.rs/politika/18767/Gej_parada_je_opasna_po_zivot).

<sup>69</sup> Dežulović, B., "Dragan Đilas Palma na otoku sreće", *Peščanik*, 4 August 2009, available at: <http://www.pescanik.net/content/view/3499/165/> (translated by author).

<sup>70</sup> *Ibid.*

<sup>71</sup> See above, note 56.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> See above, notes 45 and 47.

<sup>75</sup> See above, note 47, p. 956.

<sup>76</sup> *Ibid.*

<sup>77</sup> Spencer-Dohner, M., *LGBT Minorities as Easy Targets: A Case Study of the Specificities and Commonalities with Other Neglected Endangered Groups in the Context of Nationalism-Dominated Societies*. Graz, HUMSEC, undated.

<sup>78</sup> *Ibid.*

<sup>79</sup> See, for example, Foucault, M., "Truth and Power", in Rabinow, P. (ed.), *The Foucault Reader*, Penguin Books, 1991; Foucault, M., *Discipline and Punish: The Birth of the Prison*, Penguin Books, 1991.

<sup>80</sup> See above, note 59.

<sup>81</sup> *Ibid.*

<sup>82</sup> "SPC: Protiv parade ali i nasilja", *Politika*, 17 September 2009, available at: <http://www.politika.rs/rubrike/vesti-dana/SPC-Protiv-parade-ali-i-nasilja.lt.html>.

<sup>83</sup> Bojić, B., "Skandalozno: Amfilohiju sude zbog gej parade?!", *Press*, 24 September 2009, available at: [http://www.pressonline.rs/sr/vesti/vesti\\_dana/story/80702/Skandalozno%3A+Amfilohiju+sude+zbog+gej+parade!.html](http://www.pressonline.rs/sr/vesti/vesti_dana/story/80702/Skandalozno%3A+Amfilohiju+sude+zbog+gej+parade!.html) (translated by the author).

<sup>84</sup> The Holy Assembly of Bishops, "Saopštenje Svetog Arhijerejskog Sinoda povodom najava gej parade u Beogradu", 3 October 2010, available at: [http://www.spc.rs/sr/saopstenje\\_svetog\\_arhijerejskog\\_sinoda\\_povodom\\_najava\\_gejparade\\_u\\_beogradu](http://www.spc.rs/sr/saopstenje_svetog_arhijerejskog_sinoda_povodom_najava_gejparade_u_beogradu).

<sup>85</sup> *Ibid.*

<sup>86</sup> Metropolitan Amfilohije Radović was referring to the depleted uranium allegedly used by NATO during the military intervention in Yugoslavia in 1999.

<sup>87</sup> “Govor mržnje: Parada kao uranijum”, *B92*, 14 October 2010, available at: [http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=10&dd=14&nav\\_id=465324](http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=10&dd=14&nav_id=465324) (translated by the author).

<sup>88</sup> In the Serbian public discourse the term “modern civilisation” is most commonly used to mean “Western civilisation”.

<sup>89</sup> See above, note 28, p. 18.

<sup>90</sup> “Amfilohije se neće izviniti”, *Balkan Human Rights*, 9 March 2011, available at: <http://balkanshumanrights.org/2011/03/09/amfilohije-se-neece-izviniti/> (translated by the author).

<sup>91</sup> Miladinović, Z. and Živanović, K., “Neće biti suđenja Amfilohiju”, *Danas*, undated, available at: [http://www.danas.rs/danasrs/drustvo/nece\\_biti\\_sudjenja\\_amfilohiju.55.html?news\\_id=211060](http://www.danas.rs/danasrs/drustvo/nece_biti_sudjenja_amfilohiju.55.html?news_id=211060) (translated by the author).

<sup>92</sup> This section analyses the discourse of the Serbian daily newspapers, with the focus on those with a high circulation and considerable political influence.

<sup>93</sup> “Crkva samo brani moral”, *Večernje novosti*, 6 March 2009 (translated by the author).

<sup>94</sup> “Prevara”, *Kurir*, 13 March 2009 (translated by the author).

<sup>95</sup> See above, note 47.

<sup>96</sup> See above, note 45.

<sup>97</sup> Antonić, S., “Tolerancija nije dovoljna”, *Politika*, 19 March 2009, available at: <http://www.politika.rs/pogledi/Slobodan-Antonic/TOLERANCIJA-NIJE-DOVOLJNA.lt.html>.

<sup>98</sup> Antonić was referring to LGBT people and the supporters of LGBT rights in general.

<sup>99</sup> See above, note 97.

<sup>100</sup> Labris, *Godišnji izveštaj o položaju LGBTIQ populacije u Srbiji, za 2009. Godinu, 2010.*

<sup>101</sup> *Ibid.*

<sup>102</sup> After the 2010 Parade, Obradović, well-known for anti-gay hate speech, was finally arrested and convicted for organising riots and violent attacks during the 2010 Parade.

<sup>103</sup> See above, note 100 (translation by the author).

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> “Peder odstranjuje Kosovo!”, *Kurir*, 14 July 2009, available at: <http://www.kurir-info.rs/vesti/peder-odstranjuje-kosovo-25339.php>.

<sup>107</sup> See above, note 42.

<sup>108</sup> See above, note 64.

<sup>109</sup> *Ibid.*

<sup>110</sup> Both the material damage caused by the rampage of the extremists, and the ruined image of Serbia as a result of the violence in the streets of Belgrade.

<sup>111</sup> Vukadinović, Đ., “Od parade do poraza”, *Politika*, 12 October 10, available at: <http://www.politika.rs/pogledi/Djordje-Vukadinovic/Od-parade-do-poraza.lt.html> (translated by author).

<sup>112</sup> The term education is used here in the widest sense, encompassing not only formal schooling, but also various forms of alternative education.