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In Europe’s Closet: the rights of sexual minorities in the Czech Republic and Slovakia

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Abstract
This article explores the mechanisms of accommodation and backlash against a new identity group in the Czech Republic and Slovakia—LGBT. Minority demands spark political backlash because societal consensus lags behind the actual accommodation of sexual minorities. The legal framework of the European Union and international pressure groups further accelerate the process of accommodation and polarisation. Yesterday’s accommodation in Western Europe is today’s demand in Eastern Europe. The common European framework erodes the grip of domestic elites on minority rights and contributes to backlash by social conservative forces.

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Introduction
In the summer of 2019, the backlash against the Lesbian, Gay, Bisexual, and Transgender (LGBT) rights escalated both in Poland and the Czech Republic. The Archbishop of Prague adopted the term “rainbow plague”, coined by the Cardinal of Cracow, and used it to criticise the Prague Magistrate’s use of the rainbow flag:

Still, to support the so-called “rainbow activities” by the capital [Prague] and others: I would expect at least the same support to multi-child families. They raise and care for their offspring, who will also be future taxpayers, without whom the future of the nation will not exist, and Europe will indeed be depopulated, as was the case with the plague.

The universalism of sexual rights, the diffusion of LGBT accommodation in Europe, and EU legislation (e.g. a ban on workplace discrimination), the domestic demands of sexual minority groups have begun to make defenders of the status quo feel threatened (cf. Vasilev 2016). The current status quo excludes same-sex couples from legalised cohabitation, traditional marriage, and adoption rights, but is being contested. The proponents of expanding LGBT rights are emboldened to seek accommodation by looking “across the fence” to Western European countries, where policies such as marriage equality and full adoption rights have been successfully adopted. The opponents of accommodation are looking across the same fence with horror, realising that it may soon be no longer socially or legally acceptable to discriminate against citizens based on sexual orientation.
After thirty years of rebuilding democracy, minority grievances stemming from cultural and religious divisions, still haunt Central and Eastern Europe (CEE; Hroch 1993; Jasiewicz 2007; Hanley and Vachudova 2018; Bustikova 2019; Kolev 2020; Vachudova 2019). The transformation of the polity actually escalated identity politics when new democracies re-defined “the people” and accommodated the most vocal minorities (Pytlas 2016; Bustikova 2019). Simultaneously, emboldened political actors exploited identity politics (Appel and Gould 2000). The institutions of liberal democracy empowered minorities and facilitated the emergence of advocacy groups within a vibrant civil society.

Democratisation emboldened sexual minorities to seek an expansion of their rights (e.g. registered partnership, marriage, and adoption). With the help of the European Union (EU) anti-discrimination framework and LGBT advocacy groups, sexual minorities were empowered to seek channels of accommodation in the new democracies of Eastern Europe (Pavlik 2006; Guasti 2016, 2019; Vasilev 2016; O’Dwyer 2018a, 2018b).

This article explores new identity politics in Eastern Europe. The demands of sexual minorities – legal protection against discrimination, same-sex marriage, adoption of children – are universal and LGBT advocacy groups across Europe demand the same type of rights for the same type of actors. Whereas the demands of ethnic groups are diverse, the demands of sexual minorities are more or less uniform. In sum, the difference between the demands of ethnic and sexual minorities is the universalism of LGBT rights and the particularism of ethnic demands.

The European framework of anti-discrimination provided an excellent opportunity for LGBT groups to expand LGBT rights. Sexual minorities often seized these windows of opportunity. The result has been that issues related to gender and sexual conduct are increasingly politicised in Eastern Europe, and this new identity frontier has, in some countries, largely replaced the politics of ethnic accommodation (Brubaker 2013).

The existing literature on LGBT rights in Western Europe mostly approaches it “through the lens of transnational activism, and how the EU and other multilateral institutions have aided local LGBT activists in articulating human rights claims” (Kollman and Waites 2009). The research on the politicisation of LGBT rights in Central and Eastern Europe is comparatively limited (Mole 2011; Pelz 2014; Cunik 2015; Gould and Moe 2015; Gould 2016; O’Dwyer 2018a, 2018b; Weaver 2020), and mostly focuses on the role of the EU, the impact of Europeanization on domestic supporters of rights (Jacobsson and Saxonberg 2015) and the framing of the LGBT issues by advocacy groups (Cunik 2015).

Over the past 30 years, the LGBT advocates across the Central East European (CEE) region have achieved one demand – the introduction of registered partnership for same-sex couples in the Czech Republic and Slovenia (2006), Hungary (2009), Croatia (2014) and in Estonia (2016). The remaining CEE countries offer limited recognition of same-sex partnership. Thus in most Eastern Europe, LGBT accommodation is slow and limited at best. At the same time, 16 of the 28 member states of the European Union have permitted marriage and adoption to same-sex couples.

Sexual minorities have shallow political backing and seek international allies. When doing so, they highlight the accommodation of demands and expansion of rights in Western Europe. Since the demands are novel to the CEE, it is easier to link the discomfort with the minority accommodation of new groups to an alien ruler: the European Union (Hechter 2013, on sovereignty, see: Siroky and Sigwart 2014). Newly politicised identity groups with “alien” demand trigger hostility and generate backlash.
Opposition to the expansion of LGBT rights is partially fuelled by the post-communism legacy and its conservative social values. For most post-communist citizens, the thought that sexual minorities should be allowed to adopt and raise children is unpopular (Takács, Szalma, and Bartus 2016). Quite often, LGBT demands have triggered a backlash similar to the backlash against the demands of the ethnic groups (cf. Bustikova 2019). To showcase these new sources of polarisation on identity politics, we focus on the LGBT minority. We focus on the politicisation of rights in the context of the transnational legal framework and diffusion of LGBT accommodation across the EU.

We explore the mechanisms of minority backlash against sexual minorities in former Czechoslovakia. The Czech Republic and Slovakia both experienced a backlash against the expansion of the rights of sexual minorities. Nevertheless, the Czech Republic and Slovakia represent two divergent approaches to LGBT accommodation in Eastern Europe; the former pursued legalisation of LGBT rights and the latter sought only limited accommodation. The Czech Republic (together with Slovenia) was the first Eastern European country to legalise registered partnerships. Conversely, Slovakia is a country where LGBT accommodation is limited more or less to the minimum required by EU law and the European Court of Justice (ECJ).

Since the Czech Republic and Slovakia belonged to the same federation until 1993 and shared the same legal framework, we can more readily identify the sources of policy divergence. To understand policy divergence after the breakup of Czechoslovakia, we focus on successful and failed institutional change – in the parliamentary arena (the Czech Republic, Slovakia) and a referendum (Slovakia). We investigate both pro- and anti-LGBT groups and their political allies. We pay particular attention to the role of the EU, given its importance in facilitating accommodation. Although the European Union generates a legal framework that protects the LGBT minority from discrimination, it is ultimately up to the domestic actors to push the framework forward or to push back against the expansion of minority rights to the extent legally allowed.

In short, this article traces the mechanisms of accommodation and backlash against LGBT. We find that although previous accommodation represents one path to backlash (Bustikova 2017, 2019), backlash can also ensue following “mere demands” for accommodation, without subsequent objective, policy-related accommodation. Whereas previous literature (Pirro 2014; Minkenberg 2015; Pytlas 2015; Bustikova 2019) explored the politicisation of ethnic group rights and its implication for political polarisation, this research focuses predominantly on traditional groups (Roma, Jews, various ethnic minorities) and domestic dynamics. We build on this literature by shifting the focus to a new groups as new sources of polarisation (Bustikova 2014, 2017, 2019; Bustikova et al. 2019). Furthermore, we incorporate the potential effects of the transnational legal framework in shaping the dynamics of domestic party competition (Guasti 2017, 2018, 2019; Guasti, Siroky, and Stockemer 2017). In doing so, the study advanced the state of the art and provide novel insights into the evolving politics of minority rights.

**Theoretical and legislative framework**

In order to account for the constraining effect of the European legislative and normative framework on domestic friends and foes of the rights of sexual minorities, we rely on the institutionalist approach (Hall and Thelen 2009; Mahoney and Thelen 2009; Thelen 2009).
We define institutions as “sets of regularized practices with a rule-like quality in the sense that the actors expect the practices to be observed; and which, in some but not all, cases are supported by formal sanctions” (Hall and Thelen 2009, 9). We focus on the domestic legal framework that grants same-sex couples the right to the registered partnership, marriage, and adoptions. The majority of EU member states currently provide their LGBT citizens with full rights (i.e. marriage and adoption available in 16 EU MSs as of 2019). Formal sanctions include anti-discrimination rulings by domestic Constitutional Courts and the European Court of Justice (ECJ). Furthermore, citizens might also seek redress at the European Court of Human Rights (ECtHR; Guasti 2017; Guasti, Siroky, and Stockemer 2017).

Institutional inertia leads to stability, since rational actors have an incentive to maintain the status quo as long as it “serves” the dominant actors (Hall 2005). For example, if public opinion regarding same-sex marriage is stable, and splits the population down the middle, mainstream catch-all parties will refrain from engaging in LGBT minority accommodation, since such an institutional change could polarise their electorate.

Nonetheless, institutions do evolve. The impetus for change comes from actors, such as friends and foes, in this case, of LGBT rights. Via their agency, actors can initiate a process of change (Hall and Thelen 2009, 15). The change in the institutional framework has essential spillover effects, and the expansion of LGBT rights around the significant world contributes to the impetus for accommodation. In this way, the diffusion of rights of sexual minorities in Europe significantly alters (narrows) the domestic opportunity structures.

Diffusion stems from the EU anti-discrimination legislation, which evolved from provisions to combat discrimination on the grounds of sexual orientation, Citizens’ Rights Directive, Employment Equality Framework Directive, and the European Court of Justice case law. Because there is freedom of movement, all EU member states must ensure that, where same-sex marriage is not possible, employees in a civil partnership must be granted the same benefits as their married colleagues and be treated equally. Furthermore, EU member states have to recognise the same-sex marriage of EU citizens from other EU member-states for granting residency (Coman and Hamilton versus Romania, 2018).

When it comes to cohabitation, over the past decade, the case-law of the European Court of Human Rights (ECtHR) evolved from recognising the right of same-sex couples to family life. Yet it did not grant them entitlement to registered partnership or marriage (2010, Schalk and Kopf versus Austria). The ruling also banned the exclusion of same-sex couples from legal form of partnership, where those exist for opposite-sex couples (2013, Vallianatos and others v Greece). It set a precedent by establishing a legal obligation for states to provide legal recognition for same-sex couples (2015, Oliari and others v Italy), and confirmed that denial of marriage for same-sex couples does not violate the ECtHR (2016, Chapin and Charpentier versus France).

The sanction mechanisms to enforce the implementation of ECtHR judgments are significantly less potent than those following the failure to implement ECJ case law (Guasti, Siroky, and Stockemer 2017). However, most of the ECtHR judgments resulted in the expansion of LGBT rights. For example, as of 2019, Austria and France allow same-sex marriage, while both Greece and Italy provide same-sex couples the opportunity to enter into a registered partnership.

The EU legislation, the ECJ case law, and to a lesser degree, the ECtHR case-law represent important stimuli for institutional change in the EU and European Council (EC)
member states. Transnational legislation constrains the legal options of domestic actors that oppose the expansion of LGBT rights. Domestic actors that oppose change to the status quo perceive this legislation as a clear threat to their autonomy.

The expansion of LGBT rights takes place because of key proponents (friends) of accommodation; the outcome depends on their ability to find political allies. The agency of a pro- and anti-LGBT advocacy groups is significantly affected by two factors—resources and political party strategies—since the expansion of LGBT rights requires coordination between pro-LGBT advocacy groups and liberal political parties. Political actors weight the cost of their action, and also consider other actors – political competitors and the agency of advocacy groups to sway public opinion. However, the introduction and evolution of transnational legislative framework and the EU anti-discrimination legislation shape the degree of accommodation and backlash.

Two strategies/processes are crucial in institutional change – defection and re-interpretation (Hall and Thelen 2009). Defection refers to a behavioural change among actors, such as a strategic shift among Czech and Slovak pro-LGBT advocacy groups to engage in public outreach to the general population. The focus turned from lobbying parliamentarians to shifting public opinion. Re-interpretation is a strategy in which “the actors associated with an institution gradually change the interpretation of its rules, and thus its practices, without defecting from or dismantling the formal institution itself” (Hall and Thelen 2009, 19). Re-interpretation is the shift of Czech pro-LGBT advocates to separate the issue of adoption, which resulted in a significant increase in support for adoption of partner’s children – as opposed to adoption in general (cf. Streeck and Thelen 2005).

To summarise, we suggest that two factors are critical in explaining the process of accommodation. The first factor is exogenous - the EU anti-discrimination legislation, as well as ECJ and ECtHR case law. The second factor is endogenous - the agency of LGBT friends and foes. The expansion of rights depends on the agency of friends and foes – their ability to engage with the public to shift mass opinion and with political parties that can pass key legislation.

The role of the European Union in minority accommodation

Although domestic factors are crucial to understanding institutional change, Central Europe did not expand minority rights in a vacuum. EU accession was a strong incentive to modify, even to resolve the relationship between the majority and minority groups. EU pressure to adopt anti-discrimination legislation was crucial, for the commitment of domestic elites to minority rights was lackluster (Rechel 2009; Börzel, Soyaltin, and Yilmaz 2015; Agarin and Brosig 2016; Nancheva 2016). The European Union anchored the rule of law and civil liberties in the EU anti-discrimination framework (Vachudova 2005).

In seeking to address unresolved majority-minority issues, and entrench minority rights among the fundamental democratic rights, the EU pursued a controversial double standard for the member states and the accession countries (Börzel, Soyaltin, and Yilmaz 2015; Nancheva 2016). The European Union anchored the rule of law and civil liberties in the EU anti-discrimination framework (Vachudova 2005).

In seeking to address unresolved majority-minority issues, and entrench minority rights among the fundamental democratic rights, the EU pursued a controversial double standard for the member states and the accession countries (Börzel, Soyaltin, and Yilmaz 2015; Nancheva 2016). The Central European countries adopted all EU primary legislation on non-discrimination and established institutions dealing with minority issues. However, the CEE countries were more apt in establishing task forces and preparing action plans than actually implementing reforms addressing minority issues (Malova and Vilagi 2006; Rechel 2009).
EU conditionality influenced minorities indirectly by empowering domestic actors. This helped them to find allies, to overcome foes, and to implement reforms (Kelley 2004; Vachudova 2005; Sasse 2008). Notwithstanding the importance of changes in the legal and institutional framework, it is the agency of domestic actors, which accounts for differences in the scope of minority accommodation across countries (cf. Börzel, Soyaltin, and Yilmaz 2015). However, compared to the CEE countries, the EU and its (Western European) member states had significantly more progressive attitudes towards LGBT issues. This mismatch significantly increased the mobilisation potential of emerging minority groups and prepared the backlash against their accommodation.

After the accession, EU leverage decreased significantly, but the European Union continues to play an essential role in creating a legal framework of anti-discrimination. In 2000, the European Charter of Human Rights, gave constitutional status to the principle of minority non-discrimination (O’Dwyer 2018a, 900). While the EU prescribes non-discrimination, it does not provide guidelines for accommodation (Galbreath and McEvoy 2012). Minority accommodation is now entirely under the control of domestic actors—the courts (especially Constitutional Courts) and political actors. For example, the Czech Republic and Slovakia comply with the rulings of the European Court of Justice, but resist “soft” (non-legally binding) pressures of the European Commission and the European Parliament (Guasti 2017).

In contrast with the expansion of ethnic rights, the expansion of the rights of sexual minorities is universalistic and represents an even greater threat to the domestic status quo. For example, if Slovaks grant expansion of Hungarian language rights, or if Austria gives legal refugees access to public housing, the particularism of ethnic groups does not create a general threat (cf. Bustikova 2014, 2019). However, same-sex marriage in Germany (2017) and Austria (2019) is an identical demand that domestic LGBT groups are bringing to the table. The universalistic character of the demand and the increasingly comprehensive legal framework of the European Union threaten domestic foes of LGBT rights.

The European Union’s assertive push for minority rights maps onto domestic divisions (cf. Malova and Vilagi 2006; Börzel, Soyaltin, and Yilmaz 2015). The politicisation of the European Union minority agenda is channelled through political entrepreneurs and is sustained through the dynamic of accommodation and backlash. This contentious dynamic of cooperation and conflict between friends and foes of minority accommodation is at the root of the politics of backlash against the liberal democratic principles of the European Union and the commitment of the new EU states to minority protection. We provide a systematic comparison of the strategic logic of backlash against LGBT minorities in the context of the European legislative framework in the next sections.

Comparing LGBT accommodation and backlash in the Czech Republic and Slovakia

In this section, we focus on the dynamics of LGBT accommodation and backlash in the Czech Republic and Slovakia. Radical right parties and prominent populist leaders in the Czech Republic (PM Babiš) and Slovakia (ex-PM Fico) all oppose accommodation of
sexual minorities, but differ in the degree to which they emphasize sovereignty and to extent to which they fight institutional change. Whereas identity-based cleavages have been prominent in Slovak politics (Bustikova et al. 2019), the exclusionary approach to ethnic and social minorities has been much less important in the Czech Republic (Bustikova and Guasti 2018; Hanley and Vachudova 2018).

The Czech Republic

Czech public opinion is increasingly supportive of expanding LGBT rights, but political entrepreneurs have prevented shifts in public opinion from becoming policy by politicising the issue. Opponents have mobilised to defend the status quo. The former Presidents Václav Klaus and the current President Miloš Zeman both utilise the LGBT issue as a symbol of the conservative opposition, “discriminating the majority,” and as the main challenge to the “traditional way of life”. For the foes of LGBT rights, full equality represents a threat. In the last several years, the Czech Catholic Church, and especially Archbishop Dominik Duka, have emerged as crucial voices in the anti-LGBT camp. Duka’s conservative rhetoric, inspired and often directly inspired by the Polish clergy, is extremely divisive, both within the Church and in the public domain.

While homophobia is present in today’s Czech Republic (cf. O’Dwyer 2018a), there is broad public support for the expansion of LGBT rights that goes beyond the existing law, which allows for registered partnership between LGBT couples. In short, polarisation on LGBT accommodation is significantly stronger in the Czech parliament than among the Czech public (for more details, see Figure 2).

Passing the bill on registered partnership

Changes in the legal framework concerning the 2005–2006 Law on registered partnership illustrate the turbulent dynamic between friends and foes of accommodation. The bill on registered partnership was submitted to the Czech Parliament four times: in 1998, 1999, 2001 and 2005. After a cross-party group of MPs sponsored the bill, and as a result of intense advocacy by LGBT groups, it reached the floor in 2005. However, the political coalition of “friends collapsed when the social democratic PM Paroubek claimed issue ownership just before the December 2005 parliamentary plenary debate”. Immediately afterward, the coalition of friends unravelled when some opposition MPs withdrew their support for the bill.

What went wrong? The analysis of the 2005 roll-call data indicates that an ad hoc single-issue coalition of “friends” pushed the bill forward, but the Social Democrats, the ruling party at that time, were profoundly split on the issue. More than 30% of the social-democratic MPs abstained from the vote. Still, none of the Social Democratic MPs were willing to defy the party leadership by voting no, and instead opted for abstention as a way to balance party loyalty and their moral conscience.

Finally, in December 2005, the bill was adopted by a simple majority of 86 out of 200 votes (see Figure 1). The President vetoed the bill, however, and the subsequent vote in March 2006 was very dramatic. The bill needed a qualified majority (101 of 200 votes) to overrule the Presidential veto. To demonstrate his ability to get things done, PM Paroubek imposed party discipline. After considerable effort, the bill on registered partnership
was finally adopted in the Czech parliament (March 2006) by a coalition of social democrats, communists, and the liberal Freedom Union.⁶

**Adoption**

After this seminal victory for the LGBT advocates, the next demand of the LGBT community was to pass a law that would legally allow for adoption by gay and lesbian couples. This issue was debated in the parliament in 2016, prior to the summer recess and was not resumed. No vote took place before the end of the parliamentary term (2017), and even today registered same-sex couples still cannot legally adopt children in the Czech Republic.

LGBT advocates use “salami tactics” by creating different categories of children for adoption: children who already had an LGBT parent and children in institutional care. For example, the 2016 debate on “adoptions of children of partners” was an amendment to the 2006 law on registered partnership and excluded adoptions of children from institutional care.

The debate on adoptions cut across party lines more so than the 2005–2006 debate on registered partnership. The authors of the bill (a Social Democratic Minister and ANO MP) highlighted their personal experience and the difficulties encountered by “rainbow families.” The foes attacked the bill and accused its authors of “making laws for their friends” and of “conceding their electorate at the expense of ‘normal’ families.”

Christian Democrats and TOP 09, two conservative parties, opposed the bill.⁷ Opposition to LGBT accommodation became the centre of the feud for issue ownership over the “who are the ‘real’ defenders of the traditional family?”⁸ The foes claimed that the law represented interests of LGBT adults at the expense of the children. They rejected the further advancement of LGBT rights as legislative overreach.

The 2016 debate revealed deep divisions between the parties.⁹ It also revealed the power of foes. Just as friends almost accomplished all their demands, the foes mobilised...
and successfully pushed back against further accommodation. Somewhat unanticipated was that several members of the radical right party, Úsvit (Dawn of Direct Democracy), not only supported the law but were members of the 25-member team that sponsored the bill. Unlike in the 2005–2006 debate, the Social Democrats were significantly less active in the plenary and were internally polarised on the issue. The bill on the adoption of children by same-sex couples never materialised.

**Same-sex marriage**

In the new parliamentary term (2017–today), LGBT advocates seek to move beyond registered partnerships to marriage. However, the 2018 parliamentary debate on the same-sex-marriage was highly polarised. Similar to the 2016 debate on adoption, it was inconclusive, interrupted without vote, and never resumed (as of December 2019).

Polarisation was a strategic choice by the foes of LGBT rights – combining the debates on same-sex marriage AND an amendment to the Bill of Rights on marriage being between a man and a woman, was a recipe for the perfect storm. Given the slight (2%) drop in support for same-sex marriage in the polls between 2017 and 2018 (from 52% to 50%), and futile efforts by ANO to court liberal voters, the governing ANO, which also controls the parliament, understood that same-sex marriage is no longer a winning issue in party competition and with the exception of three ANO MPs, disengaged.

The debate marked interesting shifts in positions (TOP 09 shifted from opposition to support); hedging (Christian democrats tried not to be associated with fellow opponents from the radical right); party unity (Pirates and Communist among proponents; Christian Democrats and SPD among the opponents) and party divisions (ANO and ODS). Both ANO and ODS dealt with rogue MPs – ANO with Karla Slechtova, a vocal proponent of the legislation, and ODS with Vaclav Klaus jr. an opponent willing to use the radical right rhetoric. Unlike in 2016, no single MP emerged as a key figure. As Social Democrats in 2016, ANO lost issue ownership due to internal divisions in 2018. The baton of LGBT friends has now passed to the Pirates. The parliamentary debate ended without outcome or vote, and LGBT couples have the legal option to register their partnership, but they still have no legal right to adopt children as a couple or to marry.

**Backlash**

The foes of LGBT rights mobilised and campaigned against LGBT rights. For example, in January 2019, President Miloš Zeman publicly announced his opposition to same-sex marriage and said he would veto any LGBT friendly legislation to protect the traditional family. He also voiced strong support for a Catholic priest Petr Pit’ha, who, in his September 2018 sermon in the St. Vitus Cathedral, summarised the opposition to the Czech Catholic church to the minority accommodation as follows:

> We are now supposed to succumb to the pressures of a powerful pressure group of gender activists and homosexuals and to make non-freedom law. Your families will be torn apart and destroyed. … Homosexuals will be proclaimed to be a superior ruling class. You will become a part of an inferior auxiliary class, and you will be forced to work according to the orders of powerful elites, which will be determining what can and what cannot be said in public.¹⁰
Public opinion on LGBT rights has shifted over time as a result of advocacy. In 2006, when the bill on registered partnership was passed, the public support for the LGBT rights was relatively high, but not uniform across policies: 61% Czechs supported the registered partnership, but only 38% Czechs supported same-sex marriage. Only 19% supported adoption rights for same-sex couples. Over time, as the issue became politicised and debated, support for LGBT rights grew significantly. By 2018, 74% of Czechs supported the registered partnership, and 50% supported same-sex marriage.

Attitudes towards adoptions shifted as well. By 2018, 64% of respondents supported the adoption of the child of the same-sex partner and 48% adoptions of children in institutional care. Figure 2 shows this continuous increase in support for LGBT rights over time, with a slight (2%) drop in 2018 on all categories. The public increasingly supports the adoption of the partner’s child by the couple.

Although the European Union provides a unified framework of anti-discrimination, shifts in policies are driven by the agency and success of friends and foes who seek to secure political allies and to sway the public. Support for the rights of sexual minorities in the Czech Republic is a result of successful public advocacy by the proponents of LGBT rights and the increased media exposure to the everyday grievances facing “rainbow families”, which positively resonated with both the public as well as with politicians.11

Between accommodation and backlash
The rights of sexual minorities in the Czech Republic now include registered partnership. In 2016, however, further demands to allow the adoption by same-sex couples triggered a

Figure 2. Support for LGBT rights in the Czech Republic over time (1998–2018). Source: Data compiled from the press releases of the Centre for Public Opinion Research by the authors.
backlash, and re-opened the debate about the extent to which LGBT minorities should be afforded the rights of heterosexual couples. In the 2005–2006 registered partnership debates, the competition took place between mainstream parties along the liberal/conservative cleavage. In 2013 and 2017, the Czech political landscape experienced significant fragmentation (see Bustikova and Guasti 2019) and two disruptions – the arrival of mainstream populists and the radical right (ANO and Dawn in 2013) and radical anti-establishment (Pirates in 2017). The strategies of both proponents and opponents of LGBT accommodation changed. Insurgents (ANO in 2016, SPD, and Pirates in 2018) challenged mainstream parties (Social Democrats in 2016 and ANO in 2018) and lost issue ownership of the LGBT issue.

Issue ownership aside, the presence of the radical right (Dawn in 2016, SPD, and emerging Tricolour in 2018) represented a challenge for mainstream parties and the right. For the mainstream parties adopting a catch-all strategy (ANO, ODS) presents the danger of losing voters both to the radical right (opponents of the expansion of LGBT rights) and to the liberal opposition (proponents of the expansion of the LGBT rights). In this situation, mainstream parties have little to gain and voters to lose. Stalling becomes the best strategy for cutting (potential) losses. For the mainstream right, radical right represents a two-fold challenge – from within (ODS) and in framing (Christian Democrats). The challenge from within comes from radicalised elements within the party – which can lead to splinter groups (Václav Klaus jr. and his Tricolour established in 2019).

The challenge for the mainstream right is how to distinguish itself from the radical right when their issue position on the expansion of LGBT rights is identical. The answer is in framing – Christian democrats staunchly refuse to be anti-LGBT. They “just” want to be pro-family. Given the changing nature of public support and alliances, the Czech LGBT community is set on a path toward full equality, but LGBT foes are mobilising as well. Adoption and same-sex marriage constitute the last frontiers of LGBT rights in the Czech Republic. At a legislative level, however, the support of a mainstream party is essential for any legislative change.

**Slovakia**

While the Czech Republic has significantly expanded rights to sexual minorities, the position of the LGBT community in Slovakia is more precarious (Gould 2016) and the LGBT community does not have public opinion on its side. Slovakia is socially more conservative and religious than the Czech Republic. According to Froese, “Czechs emerged from communism as one of the most secularised countries in Eastern Europe.” Only 6% of Czechs attended church every week compared to 33% of Slovaks, and 65% of Poles (Froese 2005, 269). The rights of sexual minorities politicised the Slovak Catholic church that supports a traditional view of marriage and sexual liaisons.

Both the friends and foes of sexual minorities understand that they need public opinion on their side. LGBT advocacy groups in Slovakia lobby both the general public and the state authorities. Since 2007, the umbrella organisation for LGBT rights Otherness Initiative (Iniciatíva Inakost) has been organising a film festival and (since 2013) an annual Pride Parade in Bratislava. The main aim of the public advocacy is to convince the general public that LGBT people are “living the same lives as those of the majority, but facing issues based on their lack of recognition and equal status.” In 2017, LGBT advocates launched a large-
scale awareness campaign for trans-rights named: “What you do not notice,” for the first time with the direct government involvement (ILGA 2018).

However, the majority of Slovaks do not support same-sex registered partnerships and strongly oppose same-sex marriage. Figure 3 displays the evolution of public opinion on LGBT rights. Over one decade (2008–2018), support for registered partnership is lackluster and never exceeded fifty percent.13

**Disproportional backlash**

The lack of public enthusiasm for the plight of sexual minorities resulted in minimal expansion of LGBT rights beyond the EU anti-discrimination legislation. Slovakia adopted the antidiscrimination law in employment in 2004, the provision of goods and services in 2008, and the protection from hate speech in 2016. The adherence to the EU legislation, therefore, creates a paradox regarding same-sex marriage because it alerts to long-term incompatibilities with the (heteronormative) domestic legal environment. Although in general the public lacks the appetite for expanding rights, European legislature is undermining the power of national legislatures to regulate majority-minority relations. This alarms the foes.

Observing advocacy efforts in nearby countries (Germany, Austria, the Czech Republic), friends and foes accelerated their fight for Slovak hearts and minds. For example, on July 30, 2016, the capital city of Bratislava witnessed three simultaneous parades: a rainbow pride parade of 1,000 participants organised by LGBT advocates, a counter-parade of the far-right LSNS party of Marian Kotleba called “The Protest against the March of Perverts in Bratislava” and a counter-parade of a civic initiative “Proud of Family.”14 The parade of foes was supported by both catholic and protestant churches with traditional interpretations of families.15

The reactive logic of backlash against accommodation, driven by friend-foe dynamics, applies well to Kotleba’s LSNS party, a significant adversary to the expansion of minority rights (Kissová 2018; Bustikova 2019; Harris 2019; Kazharski 2019). In 2015, Kotleba was one of the supporters of a failed referendum on same-sex marriage. Later, his party drafted several laws that would protect “traditional” families.16 None of these laws were

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**Figure 3.** Support for LGBT rights in Slovakia over time (2008–2017). Source: Inakost’ Initiative, Pew Research.
implemented. All were rhetorical posturing, but they mark the transition in Slovak politics away from the traditional Slovak-Hungarian cleavage towards new issues associated with sexual conduct. It also politicised the Slovak Catholic Church, since eighteen Catholic priests signed a petition to back the quest of L’SNS to restrict abortion (Topky 2018). Until then, the Catholic Church never so openly embraced such a deeply polarising, controversial issue in Slovak politics. These “new” identities have come to polarise Slovak politics.

An uphill battle for registered partnership
The expansion of LGBT rights cannot happen due to pressure from below unless the public opinion dramatically shifts. The agency of friends and foes determines the process of shifting and defending the status quo. The LGBT community and their political allies, including political parties and civic advocates, have been working diligently to expand rights. Bills to recognise same-sex partnerships were introduced in the Slovak parliament four times: in 1997, 2000, 2012, and 2018. Regardless of these efforts, all of them were rejected. A minor change was achieved in 2017. Since then, the unregistered cohabitation of couples is legally recognised and utilised by same-sex couples (although it is not explicitly designed for same-sex couples). Unlike in the Czech Republic, where some mainstream parties actively support the rights of the LGBT community, the major mainstream parties in Slovakia were reluctant to embrace the expansion of LGBT rights until 2012.

In 2012, the liberal and libertarian Freedom and Solidarity (SaS) party announced that it would submit a draft of the law on registered partnership to the Parliament. In August 2012, the draft was submitted to the parliament, only to be rejected by the ruling social democratic party SMER. The proponents of the bill, the Freedom and Solidarity party, argued that the state should recognise the commitment of LGBT citizens to their partners. The foes, mostly the Christian Democrats, argued that the law would “crash the entire legal system … and change the face of the country.” As a concession to the LGBT community and to save face, Prime Minister Fico (from SMER) established a committee to address the demands of the LGBT community as a forum for public debate in October 2012. The committee drafted action plans with no real intention to enact them. This was an effort to window-dress a contentious issue and to placate the European Union. Similar smoke and mirrors strategies were well-rehearsed in the pre-accession period.

However, the issue did not go away. LGBT “friends” remained committed to their cause. The Freedom and Solidarity Party reiterated its commitment to the LGBT rights by resubmitting the registered partnership draft to the parliament in July 2018. In September 2018, the bill was defeated again. However, this time, the political coalition of “friends” was expanded. The Freedom and Solidarity MPs were joined by MPs from other smaller parties, including the Hungarian minority party, Most-Híd. The new political alliance supporting registered partnerships suggests a possibility that the advocacy coalition can be expanded even further in the future.

Failed referendum against LGBT accommodation in 2015
As expected, the contestation of rights mobilised the opposition. The backlash against the attempt to expand LBGT rights peaked in 2014. The conservative group, Alliance for Family (Aliancia za rodinu) with the support of the Conference of Slovak Bishops, collected 400,000 signatures to support a law on banning same-sex marriage in 2014. The petition
also opposed the adoption and raising of children by same-sex couples. It also advocated for the rights of parents to prevent their children from receiving sex education in schools. The Constitutional Court removed a fourth question, which proposed banning registered partnership, after President Andrej Kiska intervened.

In 2014, the Christian Democrats initiated an amendment to the Slovak Constitution banning same-sex marriage. Prime Minister Fico (SMER) offered to support the ban in exchange for support for his reform of the judicial system. The law was overwhelmingly passed in June 2014 (102 MPs voted for, 18 against). This significant change was approved as a part of a judicial reform package. The following change of the Slovak Constitution was approved: “Marriage is a unique union between a man and a woman. The Slovak Republic fully protects marriage as it aids its wellbeing.” The proponents of the ban argued that “what is good for the family is good for the state” (quote: Jan Figel, the Chairman of the Christian Democratic Party). This was a significant victory for conservative forces in Slovakia.20

In 2014, the “friends” lost the battle in the parliament, but won a fight a year later in the public domain. The “friends” found a way to defeat the “foes” using a demobilisation strategy to lower participation in a referendum that would further curtail LGBT rights. The LGBT advocates campaigned for abstention in the referendum in order to lower turnout below the threshold for a binding outcome. This was a shrewd move. The abstention undermined the legal minimum 50% turnout for the referendum to be binding.

The referendum took place in February 2015. Conservatives mobilised their core supporters, but the turnout was not sufficient: only 945,000 citizens voted in the referendum. Although 94.5% of participants in the referendum supported the ban on same-sex marriage, 92.4% supported a ban on adoptions by a same-sex couple, and 90% supported a ban on sex education, the anti-LGBT groups failed to convince the public to participate and vote for the bans.21 The referendum failed because only 21.4% of the adult population participated in it. The “foes” lost.

International allies and funding
Both the foes and friends mobilised international allies.22 Conservative groups from Europe and the United States (such as the U.S. Evangelical donors and the Alliance Defending Freedom)23 publicly supported the constitutional amendment. Among the most avid supporters of the law was Pope Francis, who blessed and praised the efforts of conservatives to “defend the family as a vital cell of the society.” At the same time, the Pope wanted to avoid any conflicts and warned against the animosity towards the LGBT people.24

The friends of the LGBT groups were smaller and less organised than their conservative Christian counterparts, but were also supported from abroad, indirectly by the European LGBT advocacy groups. Despite having international backing themselves, the LGBT advocates criticised the involvement of foreign religious groups. At the domestic level, the “friends” also campaigned against the leading party SMER, and accused it “pandering to the populist religious homophobia” as a distraction from economic issues.

Cracks in the legal system and a road to the expansion of rights
The defenders of the status quo are at a considerable long-term disadvantage due to the legal framework of the European Union. In June 2018, the façade of state sovereignty over
same-sex couples’ rights cracked due to the European Court of Justice (ECJ) ruling. It stipulated that the EU member states have to recognise a same-sex marriage from member-states that legalised same-sex marriage for a residency permit. Slovak authorities were forced to comply with the ECJ ruling. This shift in the legal environment suggests that the demands of the LGBT minorities pose a serious long-term threat, for Slovakia might be forced to implement accommodation due to the European Union legislature and courts, despite lacking any political or a societal consensus to do so.

The friends and foes continue their struggle over LGBT rights in Slovakia. So far, the foes have prevented any expansion of LGBT rights for Slovak citizens. Unlike in the Czech Republic, the Slovak foes are strong. Conservative voices, supported by populists and the Catholic Church, dominate the political arena and block any attempts to accommodate sexual minorities. However, the abysmal turnout in the 2015 referendum and the 2019 election of the first female president, Zuzana Čaputová, signals that the ground has shifted.

Čaputová ran primarily on an anti-corruption platform, but she was also the only presidential candidate who openly embraced LGBT groups and same-sex adoptions. The democratic opposition united behind her, and she defeated her social conservative and populist contenders, winning the presidency in 2019. Čaputová has stated that she supports registered partnerships for same-sex couples, and educating the general public on LGBT relationships. In a discussion organised by SME Journal, she expressed her support for registered partnership and adoption for LGBT couples: “I prefer the child to have a biological mother and a biological father. If he were to grow up in institutional care, I think he’d be better off with two loving beings, even if they were of the same sex.” It is yet to be seen, however, if her presidency signals an erosion of the socially conservative status quo in Slovakia (cf. Kluknavska and Smolik 2016; Gyárfašová 2018; Gyárfašová and Henderson 2018).

Conclusion

Drawing on detailed evidence from the Czech Republic and Slovakia, the paper shows the dynamics of support and backlash against sexual minorities. The implementation of the EU anti-discrimination framework and current LGBT demands facilitates minority accommodation. It also threatens the status quo and has sparked opposition against minorities and their friends: the EU, advocacy groups, and civil society (cf. Cianetti, Dawson, and Hanley 2018; Kolev and Wang 2019; Agarin 2020; Bochsler and Juon 2020; Kolev 2020; Sata and Karolewski 2020). Domestic pro- and anti-LGBT advocacy groups have political allies, but the relationships are often instrumental. In both countries, pragmatic populists strategically align themselves with the winning side of the issue.

The mainstream political parties are rarely foes of minority accommodation. The extent to which they act as allies depends on their ideological orientation and political calculus. When the costs of minority accommodation are high, mainstream moderate parties shy away from pursuing a progressive agenda (Bustikova and Guasti 2017; cf. on CEE more broadly Pirro 2014).

In Slovakia, the mainstream party, SMER, traded support on the same-marriage ban for its proposed judicial reform. In the Czech Republic, Andrej Babiš’s ANO used the LGBT issue to strategically appeal to the liberal voters. However, by 2018, ANO saw
no reason to court liberal voters, and the marriage-equality legislation, sponsored initially by ANO, ended up caught in procedural delays. The aim of ANO is now to preserve the status quo, and to prevent the liberal and illiberal opposition from gaining more electoral support.

The European Union plays a role in the process of LGBT accommodation that is secondary to the domestic dynamics. However, from a long-term view, the EU threatens national sovereignty over LGBT rights. The European Union ensures anti-discrimination via legislation and the European Court of Justice judgments. Although Eastern European countries understood that minority protection was a core requirement to join the European Union, most citizens did not anticipate that the rights would be extended to sexual minorities any time soon. The public does not (yet) enthusiastically support same-sex marriage and same-sex couple adoption neither in Slovakia nor in the Czech Republic.27

While the European Union creates an essential legal framework that anchors minority accommodation, the contestation of minority issues is highly contingent on domestic configurations of friends and foes and their strategic considerations. Public opinion has been slowly shifting towards the expansion of LGBT rights in the past decade. However, the legal framework of the European Union might accelerate the process of the expansion of rights despite a limited domestic appetite to do so.

Eastern Europe has unexpectedly become a battleground for the social-conservative agenda and actors that support traditional families and limited access to abortion, oppose gender parity, same-sex marriage, and adoption of children by same-sex couples. It now attracts the attention of the Vatican, Russia, and Christian fundamentalists from the United States,28 eager to assist domestic opponents of LGBT accommodation in defending the status quo. The friends were always transnational, and now the foes have “internationalized” as well. As a result, Eastern Europe is now caught in between two significant currents - global cleavages that pitch liberal and illiberal global forces against each other.

Notes

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3. Most of these were adopted after the 2018 European Court of Justice ruling.

4. Article 10 and 19 of the Amsterdam Treaty, Article 21 of the Charter of Fundamental Rights, in effect since 2009,

5. Equal treatment, ECJ 2008 case Tadao Maruko v. Versorgungsanstalt der Deutschen Bühnen; and 2013 ECJ case Frédéric Hay v. Crédit Agricole mutual, (C-267/12)

6. Between 2006 and 2017, 2,818 couples entered into the registered partnership, 401 couples canceled their registration in the same period. Before the decision of the Czech Constitutional Court, which in 2016 enabled individuals living in registered partnerships to adopt children, men were significantly more likely to enter into the registered partnership. Since 2016 the number of women entering into registered partnership increased significantly.

7. Both parties are culturally conservative but differ on the economic dimension - Christian Democrats are more centrist and TOP 09 more liberal.
8. Their arguments were somewhat similar, as the two parties align on cultural issues (conservatives), but diverge on the economy (Christian Democrats are centrist, while TOP 09 right wing on the economic dimension of the LR cleavage).

9. The 2016 plenary debate was the first reading. In the vote after the first reading, the Parliament decided whether there will be a substantial debate both in the committees and subsequently in the plenary (second reading). Hence 2016 debate was more open (less bound by party positions).

10. Source: https://www.idnes.cz/zpravy/domaci/kazani-arcibiskupstvi-katedrala-svateho-vita-svaty-vaclav-petr-pitha-istanbulska-umluba.A181009_100435_domaci_lre Translation, the authors. The term "homosexuals" refers to the members of the LGBT community. The derogatory term "homosexualists" refers to the proponents of the expansion of LGBT rights.

11. The LGBT advocacy adopted an effective strategy - shifting the discourse from a debate about "adoption in general" to the differentiation between adoptions of partner’s child/children from institutional care. The shift positively resonates with the Czech, public opinion.

12. Source: inakost.sk.

13. The public view of LGBT, of course, affects their day-to-day lives. In 2018, Inakos’ (Otherness) surveyed more than 2,000 LGBT people. More than 80% of respondents considered prejudice as the most serious problem of their life. The Initiative Inakos’ also reported that half of LGBT people experienced verbal or physical attacks (ILGA 2018).

14. Aliancia za rodinu (Alliance for Families) is a civic initiative founded in 2013. It supports traditional marriage and the traditional family. Source: www.alianciazarodinu.sk. The Slovak Catholic Church and churches of other denominations are supportive of the Alliance for Families initiative.


16. In 2018, L’SNS proposed a law to restrict abortion, to extend maternity leave to three years and to increase child support conditional on “the desire of parents to work,” which was aimed at restricting child allowances to Roma (L’S – Naše Slovensko 2018).

17. An important argument was put forward by Conor O’Dwyer (2018a, 2018b), who argues that attacks on LGBT rights, in fact, strengthen the LGBT movement who “benefit from the backlash.” We do not dispute this argument but highlight that public support is not a sufficient condition for change and accommodation.

18. This act was sharply criticized by the Christian Democrats and by the Slovak Conference of Bishops. Source: https://www.reuters.com/article/us-slovakia-gay/slovakia-parliament-rejects-gay-partnership-law-idUSBRE8A50V520121106.


22. On long-term negative implications of public support of conservative policies, see Grzymała-Busse 2015.

23. Among others, these organizations are active in Eastern Europe and meddle into referenda on same-sex marriage and abortion policies. They financially support the advocates of traditional families. The Alliance for Freedom has tripled its budget between the years 2012–2016. It has been very active in Romania, where they attempted to influence a referendum on same-sex marriage. Another organization, The World Congress of Families, has ties to Russia and the United States. It actively and publicly opposed gay pride parades in Prague and Belgrade. Source: Lotto Persio 2019. On Serbia, view: Gould and Moe 2015.

24. Source: https://www.advocate.com/politics/religion/2015/02/05/pope-has-kind-words-backers-anti-equality-measures-slovakia

25. The ruling stated that at least one partner must be an EU citizen, and the marriage must have taken place in the EU in order for Slovakia to recognize same-sex marriage for couples, in which one is not a Slovak citizen.
27. Although the level of support for both in the Czech Republic is closer to Western Europe than the CEE, including Slovakia.
28. The investigative journalists from OpenDemocracy found that 12 ultra-conservative Christian organizations from the United States have spent at least 51 million dollars on campaigns against LGBT and abortions in Europe. Source: Lotto Persio 2019.

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