Same Same, but Different: Domestic Conditions of Illiberal Backlash Against Universal Rights in the Czech Republic and Slovakia

Petra Guasti

1 INTRODUCTION

Across Central Europe, the ‘refugee crisis’, which dominated the media between 2015 and 2018, led to an increased mobilisation along the cultural dimension (Bušítková and Guasti 2017; Guasti and Bušítková 2020). The cultural dimensions can take on different forms: confessional versus secular (Poland), or cosmopolitan cities versus the more socially conservative and sometimes nationalistic countryside (Hungary, but to a lesser degree, most of the ECE region). Cultural conflicts can also revolve around ethnic minority issues (Roma, language rights—Romania, Hungary, but again to a lesser degree, across the region) and new minorities (LGBT, gender equality) (Jasiewicz 2007; Bušítková 2014, 2017, 2019; Guasti 2019, 2020; Guasti and Bušítková 2020).

P. Guasti (✉)
Goethe University Frankfurt, Frankfurt, Germany
e-mail: guasti@soz.uni-frankfurt.de

Even countries where the cultural dimension was dormant are experiencing its resurgence (Jasiewicz 2007, 2009; Brokl and Mansfeldova 1999; Guasti and Buščíková 2020; Norocel 2018). Conservative groups, the Catholic Church and the radical right, as well as radicalised mainstream politicians, are increasingly adopting the populist majoritarian anti-LGBT and anti-‘gender ideology’ rhetoric. Beyond the rhetoric, these actors are also blocking pro-universal rights legislation (marriage for all in the Czech Republic) and running political campaigns on the rollback of universal rights (restriction on abortion in Slovakia). These dynamics are an integral part of the illiberal backlash.

The illiberal backlash centres around the notion of sovereignty. It rejects demands for universal rights as foreign—forced on the country by the European Union or the Council of Europe (CoE). In this view, ‘members of “non-minorities” are discriminated against and deprived of basic civic freedoms’ (Normal Man Manifesto 2017¹). The ongoing backlash against the CoE Convention on preventing and combatting violence against women and domestic violence, the so-called Istanbul Convention, exemplifies how opponents are raging against the alleged spread of ‘gender ideology’ at the expense of sovereignty, traditions and customs. The European Union has been vilified for triggering an illiberal backlash in East Central Europe (ECE) because it has pushed the new member states to accommodate minority demands (Agarin 2020; Bochsler and Juon 2020; Kolev 2020).

However, using historical institutionalism for a comparison of domestic processes around minority rights in the Czech Republic and Slovakia, the present chapter will show that the European Union’s effect on the conflicts over minority rights is much weaker than suspected. While the EU and the Council of Europe provide a framework of LGBT rights and gender equality, the mechanics of the member states’ backlash against minority accommodation can be mainly attributed to the domestic clashes between progressive and conservative forces aided by their transnational allies. As a result of different domestic configurations, some European norms take root, while in other cases, domestic actors seek not only to prevent accommodation but increasingly to roll back rights. The 2006 registered partnership law and the law against domestic violence in the Czech Republic (2006) are examples of the former—the Slovak 2015

¹<https://www.normalman.cz/hamplproc>.

anti-LGBT referendum, the 2020 proposals of limiting abortion rights in Slovakia and the withdrawal from the Istanbul Convention in February 2020 of the latter.

In order to trace back the mechanisms leading to these diverging patterns of illiberalism and anti-EU politics, two case studies are conducted for the legislative handling of LGBT rights and the Istanbul Convention in both Czechia and Slovakia. They show that strong advocacy groups help to mobilise support for legal change. At the same time, the legal status quo persists if the political costs of minority accommodation become too high for domestic political actors and if a strong normative commitment and societal consensus is lacking. To demonstrate this, the chapter first theorises institutional change and describes institutions and the European legal framework regarding minority rights. Next, the case studies on LGBT legislation and the non-ratification of the Istanbul Convention are presented. A concluding chapter summarises the main results.

2 INSTITUTIONS AND THE EUROPEAN LEGAL FRAMEWORK

An institutionalist approach enables us to frame the dynamics between the European legal (and normative) framework and domestic actors (Mahoney and Thelen 2009; Hall and Thelen 2009; Streeck and Thelen 2009). It explains not only why change happens, but also why institutional inertia (i.e. lack of change) persists (cf. Guasti and Bušítková 2019). The key factor in change is the cost of changing the status quo, which determines the willingness of domestic actors. Sanctions are an important form of incentive. These might include the formal sanctions (Hall and Thelen 2009) of the European Union and Council of Europe.

The EU sanctions include anti-discrimination rulings by domestic Constitutional Courts and the Court of Justice of the European Union (CJEU), whereas the Council of Europe sanctions include rulings of the European Court of Human Rights (ECtHR). Both types of ruling are against states (Guasti 2017; Guasti et al. 2017; Guasti and Bušítková 2019). Sanctions by the EU and the CoE can help us to understand the behaviour of states, but they will not be as helpful in explaining the variation in behaviour of domestic actors.

While states are bound by European legal framework to eliminate discrimination, it is in their discretion to grant rights to LGBT citizens (registered partnership, marriage, adoptions). Institutional inertia persists if it ‘serves’ the dominant actors (Hall 2005). In political competition, this means that (vote-seeking) mainstream catch-all parties will be incentivised to adapt their behaviour according to the prevailing public opinion. If public opinion indicates that a population is split on granting adoption rights, or introducing gender education in schools, mainstream parties will refrain from engaging in this agenda to avoid injecting additional polarising cultural issues into the party competition.

The calculus of mainstream parties significantly differs from niche parties, especially the radical right. Unlike mainstream parties, radical right parties mobilise mainly on cultural cleavage. Salience of cultural issues and increased polarisation along the cultural cleavage is beneficial for niche parties. The case of public opinion on the Istanbul Convention shows that even if the majority (two-thirds in the case of the Czech Republic in 2019) of the population has no opinion and the polarisation between proponents and opponents remains limited to about a third of the population, mainstream political actors will avoid action, and the radical right will push back against any new form of accommodation, maintaining status quo.

Institutions and practices do evolve and change. The impetus for change comes from actors, proponents and opponents of change (Hall and Thelen 2009, p. 15). The change in the institutional framework of other countries has essential spillover effects on domestic actors. The expansion of LGBT rights in numerous countries in Europe provides strong impetus for proponents of change. It also alarms its opponents (see Guasti and Bušítková 2020). An international treaty such as the Istanbul Convention, which came into force in August 2014, is yet another example of how change can be triggered—driven by international organisations. The diffusion of rights of sexual minorities and gender equality in Europe significantly alters the domestic opportunity structures for domestic change agents.

For East Central Europe, EU accession became a strong incentive to modify, or even to resolve the relationship between the majority and the established ‘old’ minority groups. The EU anchored the rule of law and civil liberties in the EU anti-discrimination framework (Vachudova 2005). The EU pressure to adopt anti-discrimination legislation was crucial, as the commitment of domestic elites to minority rights was lacklustre

(Agarin and Brossig 2016; Nancheva 2016; Rechel 2009; Börzel et al. 2015).

Minority accommodation evolved into a bargaining process, because the EU lacked common minority standards or a minority rights regime, and pre-accession funding that would directly target minority issues. The EU pressure to resolve majority–minority issues prior to accession evolved into a controversial double standard for the member states and the accession countries (Börzel et al. 2015; Nancheva 2016). To cope with the EU pressure, the East Central European countries adapted to the requirements of the EU oversight, adopting primary legislation, establishing institutions dealing with minority issues, building task forces and drafting action plans. Actual implementation of reforms addressing minority issues was not top of the agenda (Rechel 2009).

The strategy generally worked. When issues emerged, the EU selectively applied leverage to enforce compliance and resolve these issues. To illustrate, in 1998, the city of Ústí nad Labem erected a wall separating the majority population from the Roma minority. What started as a dispute of neighbours over trash collection and real estate values, escalated into a small ethnic conflict that captured international headlines. The issue was resolved in 1999. The wall was removed after the EU made clear that, as long as the embarrassing wall stands, the EU accession process will halt (cf. Mudde 2005, p. 41).

It is the agency of the domestic actors which accounts for the differences in the scope of minority accommodation across countries (cf. Börzel et al. 2015). Beyond protecting minorities from worse forms of discrimination (such as the case of spatial segregation in Ústí nad Labem), the EU conditionality also impacted minorities indirectly by empowering domestic actors. Civil society and liberal politicians were able to find allies—transnational as well as domestic—to implement reforms, and to demand that established anti-discrimination bodies actually pursue their agenda (Kelley 2004; Vachudova 2005).

After the accession, the EU leverage has decreased significantly, and the role of domestic actors further increased. The European Union continues to play an essential role in creating a legal framework of anti-discrimination. While the EU prescribes non-discrimination—the European Charter of Human Rights, adopted in 2000, gave the principle of minority non-discrimination a constitutional status—it does not provide guidelines for accommodation (Galbreath and McEvoy 2011; O'Dwyer 2018, p. 900).

The sanction mechanisms of the Court of Justice of the European Union and the European Court of Human Rights play an essential legal role by providing avenues for legal redress of minority rights violations. However, domestic actors ultimately enable and enforce the minority rights regime (cf. Guasti et al. 2017; Guasti and Siroky 2019). Minority accommodation is now entirely under the control of domestic actors—the courts (especially the Constitutional Court) and political actors. How this relates to the European level is now illustrated in the examples of LGBT rights and gender equality.

The EU anti-discrimination legislation concerning LGBT rights evolved from provisions to combat discrimination on the grounds of sexual orientation (Article 10 and 19 of the Amsterdam Treaty, Article 21 of the Charter of Fundamental Rights, in effect since 2009), Citizens' Rights Directive, Employment Equality Framework Directive and the European Court of Justice case law. Because of the 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 (equal treatment, ECJ 2008 case *Tadao Maruko v. Versorgungsanstalt der Deutschen Bühnen*; and 2013 CJEU case *Frédéric Hay v. Crédit Agricole mutual*, C-267/12). Furthermore, EU member states have to recognise same-sex marriage to EU citizens from other EU member states for granting residency (*Coman and Hamilton versus Romania* 2018).

Furthermore, over the past decade, the case law of the ECtHR evolved from recognising the right of same-sex couples to family life, but not their entitlement to registered partnership or marriage (2010 *Schalk and Kopf versus Austria*). The ruling also banned the exclusion of same-sex couples from a 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 reconfirmed 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 the ECtHR judgements are significantly less potent than those following the failure to implement the CJEU case law (Guasti et al. 2017). However, most of the ECtHR judgements 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.

In this way, the EU legislation, the CJEU case law and, to a lesser degree, the ECtHR case law represent an essential impulse for institutional change in the EU and Council of Europe member states. Transnational legislation constrains the legal options of domestic actors that oppose the expansion of LGBT rights. At the same time, their existence also enhances the perceived threat from the attempts of LGBT advocates and their allies to change the status quo.

Actors, such as pro- and anti-LGBT advocacy groups and political parties, are key players to institutional change. The expansion of LGBT rights takes place because of the varying degree of agency of proponents and opponents of accommodation and their ability to find political allies. The agency of a pro- and anti-LGBT advocacy groups is significantly affected by two factors: resources (including international financial support) and calculation of political parties (costs and benefits of accommodation in terms of electoral support). Institutional change (the expansion of LGBT rights) requires the coordination between pro-LGBT advocacy groups and liberal political parties.

As regards gender equality legislation, the equal pay policy of the EU was launched in the Treaty of Rome (1957; Article 119) and evolved mainly in the 1980s and 1990s into the instrument of mainstreaming (Treaty of Amsterdam, Article 3). The focus was on eliminating existing inequalities between men and women in working life by adopting positive discrimination measures (Article 22). Since their onset, the gender equality-related policies of the EU were an instrument of the market—focused on economic recovery (EC) and increasing competitiveness (EU) (cf. Muehlenhoff 2017; Kantola 2010). The human rights aspect of gender equality gained momentum in the 1990s. Gender equality became part of the Copenhagen Criteria (1993) and the normative ‘self-image’ of the EU (Bal 2019). Via the Copenhagen criteria, commitment to gender equality became a condition of membership. The EU’s commitment to gender equality rooted in the EU law also became part of norm diffusion via international conventions, funding and other measures such as guidelines and policy recommendations (Fagan and Rubery 2018; Haastrup et al. 2019).

The EU legislation has been summarised by Fagan and Rubery (2018). It includes hard law (directives and CJEU case law), namely directives on equal pay (75/117/EEC), equal treatment in

employment (976/207/EEC, amended in 2002 and 2006), social security (79/7/EEC, 86/378/EEC amended in 1996 and 2006), self-employment including agriculture (86/613/EEC, amended in 2010), access to goods and services (2004/113/EC), maternity leave (92/85/EEC), parental leave (96/34/EEC repealed by 2010/18/EU), equal treatment of part-time workers (97/81/EC), working time (2003/88/EC) and a 2012 proposed directive on gender quotas for corporate boards (EC, 2012-COM[2012]614).

The EU soft law includes the European Employment Strategy (EES, launched in 1997), the open method of coordination, targets, guidelines and good practices. The key steps were the introduction of gender mainstreaming into the EES and national action plans with country-specific recommendations to meet EES objectives. The 2000 Lisbon Strategy set the female employment target to 60% by 2010, and 2002 saw the replacement of four EES pillars with ten guidelines, one of which is gender equality. In 2003, EES was integrated with the Broad Economic Guidelines European Pact (2011–2020) for equality between women and men annexed to Council conclusions (7166/11). The Pact reaffirms the EU's commitment to closing gender gaps in employment, social protection, providing better work-life balance to women and men, and combatting violence against women.

Good practice policy exchange mechanisms and guidelines include pay transparency (2014), work-life balance (2008), sexual harassment (2004) and reversing the burden of proof (1997, 2015). In order to support these measures, the EU includes gender equality among the funding criteria for European Social Fund and research funding Horizons 2020 and collects data across all relevant areas (employment, social conditions, political representation, research and innovation).

Combatting gender-based violence has been an integral part of the Council of Europe's agenda since the 1990s. The Council of Europe has launched several initiatives (2005 CoE Recommendation on the protection of women against violence), resolutions (2008 Vienna Declaration), recommendations (1817/2007) and Europe-wide campaigns (2006–2008, campaign to combat violence against women). Numerous national reports, studies and surveys highlighted the magnitude of the issue, the variation in domestic responses within different member states and the need for harmonised legal standards. In December 2008, the Committee of Ministers set up an expert group to prepare the draft Convention. The process included significant consultation with member states and civil

society and was concluded in December 2010 when the final draft of the convention was produced.

The Istanbul Convention (Convention on preventing and combatting violence against women and domestic violence) was adopted in April 2011 and opened for signature in May 2011. It came into force after being ratified by ten states (eight of which were CoE member states). As of February 2020, it was signed by 46 states. In June 2017, EU Commissioner Vera Jourova signed on behalf of the EU. The majority of the countries where ratification is pending are in ECE (and the UK). In 2018, the Bulgarian parliament ratified the Istanbul Convention, but later that year, the Bulgarian Constitutional Court found the Convention in breach of the Bulgarian constitution. In February 2020, the Slovak parliament voted to withdraw the country's signature from the treaty. As of March 2020, the Istanbul Convention has 45 signatories (CoE and non-CoE states such as Mexico, Canada and the USA, plus the EU), and in seven CoE countries, the ratification is pending. Among the Council of Europe member states, only Russia and Slovakia are not part of the Convention.

3 DOMESTIC DYNAMICS OF ACCOMMODATION AND BACKLASH²

This transnational legal context (EU and CoE) influences domestic opportunity structures, but it cannot guarantee its self-enforcement and particular effects. As for the equal pay policy, notwithstanding the EU legal measures, the gender pay gap in the EU remains at 16% (EU 28 average in 2019), with both the Czech Republic and Slovakia below the EU average with 21.1 and 19.8%, respectively. Overall, the Czech Republic currently occupies 78th place and Slovakia 63rd place in the Global Gender Gap Index (a 0.035 and 0.043 improvement from 2006, respectively) (World Economic Forum 2019). The strength in both countries is educational attainment and health, while economic participation, opportunity and political empowerment remain low. In both the Czech Republic and Slovakia, most criteria improved very slightly between 2006 and 2020, but not at the speed of other countries (causing a drop in ranking). The persistence of the gender pay gap and deterioration in the

²See also Guasti and Bušíková (2020).

Global Gender Gap Index indicates the limits of Europeanisation (cf. Chiva 2009; Lomazzi and Crespi 2019).

The majority of EU member states currently provide LGBT citizens full rights (i.e. marriage and adoption available in 16 EU member states as of 2019) and adopted the Istanbul Convention (34 countries across Europe and the EU ratified the Istanbul Convention as of 2020). The transnational legislation (EU, CoE) has to be implemented domestically, and effective sanction mechanisms exist (CJEU, ECtHR). Consequently, domestic opportunity structures for the opponents of LGBT rights and 'gender ideology' are getting narrower (Guasti and Bušítková 2019; Sekerák 2020).

Political actors weigh the cost of their actions and also consider other actors—political competitors and the agency of advocacy groups to sway public opinion. The key actors are mainstream parties resistant to accommodation due to fear of polarisation (the Czech Republic) or radicalising to fend off radical right challengers (Slovakia). Depending on the agency of proponents and opponents of universal rights, the sway of public opinion can go in both directions.

Two factors are critical in explaining the changes in minority rights accommodation. The first, exogenous factor is the EU anti-discrimination legislation, international treaties, as well as CJEU and ECtHR case law. The second, endogenous factor is the agency of progressive and conservative actors. The agency includes the ability to engage with the public (to shift public opinion) and political parties (that pass legislation).

As will be shown in the following, two strategies/processes are crucial in institutional change—defection and reinterpretation. Defection refers to a behavioural change of actors such as a strategic shift among Czech and Slovak women's rights NGOs and pro-LGBT advocacy groups to engage in public outreach to the general population. The focus turns from lobbying parliamentarians to shifting public opinion—to create pressure on political actors to act. Reinterpretation 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, p. 19). Reinterpretation is the success of niche radical right parties in Slovakia to reinterpret the Istanbul Convention as a danger to Slovak families (later pragmatically adopted by the governing SMER before the 2020 elections). In February 2020, in a significant U-turn, Slovakia withdrew its signature from the Istanbul Convention.

4 LGBT RIGHTS

Although the European Union provides a unified framework of anti-discrimination regarding LGBT, the shifts in policies are driven by domestic dynamics between progressive and conservative forces. While opponents and proponents used similar arguments, the cases differed. In the Czech case, public advocacy by the proponents of LGBT rights and increased media exposure to the everyday grievances facing ‘rainbow families’ resulted in the ever-increasing support for the rights of sexual minorities.³ In the more conservative Slovakia, the domestic conditions differed with the effect of a frozen institutional status quo (cf. Froese 2005).

Similarly to Slovakia, Czech political entrepreneurs strive to increase political divisions along the cultural dimension. The foes of the LGBT rights, such as the former President Václav Klaus and current President Miloš Zeman, utilise the LGBT issue as a symbol of conservative opposition to changes to the ‘traditional way of life’ and ‘discrimination of the majority’. For them, full equality of the LGBT minority represents a threat. In their view, sexual minorities do not belong to the ‘people’s sovereign’, the Czech nation. Nevertheless, Czech public opinion is increasingly supporting the expansion of LGBT rights.

The bill on registered partnership for same-sex couples was submitted to the Czech parliament four times: in 1998, 1999, 2001 and 2005. The cross-party support transcending not only party lines, but also government and opposition parties was crucial in enabling the bill to reach the floor of the parliament. The painstakingly built coalition in support of the bill was a result of intense advocacy by LGBT groups. It unravelled when the Social Democratic Prime Minister Jiří Paroubek claimed issue ownership just before the December 2005 parliamentary plenary debate. In the aftermath, some opposition MPs withdrew their support for the bill.

The analysis of the 2005 roll-call data provides important inference on the nature of the coalition (*ad hoc*, single-issue) and the dynamics between and within parties. While the PM cast himself as ‘a friend’, the Social Democrats experienced internal discord and opposition. No

³The LGBT advocacy adopted an effective strategy—shifting the discourse from a debate about “adoption in general” to the differentiation between adoptions of a partner’s child/children from institutional care. The shift positively resonates with the Czech public opinion (Guasti 2019).

Social Democratic MP was willing to defy the party leadership by voting no. Instead, 30% of the Social Democratic MPs opted for abstention—a way to balance party loyalty and their moral consciousness. The bill was adopted by a simple majority of 86 out of 200 votes in December 2005 (see Fig. 1). Then-President Klaus vetoed the bill, and the subsequent vote, which required a qualified majority (101 of 200 votes) to overrule the presidential veto, was dramatic. The bill was adopted in March 2006 due to cross-party support (social democrats, communists and liberals) and the imposition of strong party discipline among social democrats (almost no abstention).

This was a significant success for LGBT advocacy. For some within the community, mainly the male activists, this was the achievement of a goal. For many, mostly female activists, this was only the first step. The next was legal adoption, both adoption of a partner's child and open adoption. Furthermore, the adoption legislation, which allows single citizens and married couples, but not registered partners to foster children, led many lesbian couples to skip registered partnerships (Guasti 2019).

Adoption and same-sex marriage returned to the parliamentary agenda in 2016, as an amendment of the 2006 law on registered partnership. The authors of the bill were members of the governing coalition (a Social Democratic Minister and an ANO MP). The proposal excluded adoptions of children from institutional care but included adoptions of children

Fig. 1 Voting on same-sex registered partnership in the Czech Republic 2005 and 2006 (*Source* Roll-call analysis by the author)

of partners. In their opening address, the authors of the amendment highlighted their personal experience with the difficulties encountered by ‘rainbow families’—in education, health care and dealing with state bureaucracy (Guasti 2019). This approach, aiming at generating empathy for the rainbow families, backfired. It provided the conservative force an additional line of attack. Conservatives and especially the radical right attacked not only the bill but also its authors as ‘making laws for their friends’ and ‘conceding their electorate at the expense of ‘normal’ families’ (Guasti 2019).

Unlike in 2006, in 2016, the conservative forces mobilised and successfully pushed back against further accommodation. The bill failed to pass the first stage, and the 2016 debate revealed internal discord within parties and a lack of willingness to work across party lines. It also revealed new ad hoc configurations of friends and foes (Guasti 2019; Guasti and Bušítková 2019). Conservative forces, strongly supported by the President (Zeman), focused on maintaining institutional inertia. The President’s opposition to any form of LGBT accommodation signalled the need for a qualified majority. Given the composition of the Czech parliament after the 2017 election, this would only be possible with the support of the mainstream party. However, for ANO, which after 2017 was no longer courting liberal voters, the cost of support became too high.

The evolution of public support reflects the dynamics outlined above. In 2006, when the law on the registered partnership was passed, 61% of Czechs supported the registered partnership. However, only 38% of Czechs supported same-sex marriage, and only 19% supported adoption rights for same-sex couples. Over time, as the issue became increasingly debated (also because many countries expanded LGBT rights), the support for LGBT rights increased significantly. In 2019, 75% of Czechs supported registered partnership, and 47% supported same-sex marriage (in 2017, 51% supported same-sex marriage; the four per cent decrease is due to increased polarisation and success of the conservative campaigns against LGBT accommodation). Figure 2 shows the evolution of public opinion on LGBT rights in the Czech Republic over time.

On adoption, the LGBT activists changed their advocacy strategy around 2012–2013. In order to address acute issues facing rainbow families, the advocacy refocused on the adoption of the partner’s child. This was an effective strategy; by 2019, 60% of respondents supported the

Fig. 2 Evolution of public opinion on LGBT rights in the Czech Republic (1998–2019) (*Source* Data compiled from the press releases of the Centre for Public Opinion Research by the author)

adoption of the child of the same-sex partner. The support for the adoption of children in institutional care by same-sex couples also increased (47%). As with same-sex marriage, the support for both forms of adoption decreased between 2017 and 2019.

Notwithstanding the recent drop in public support, the Czech Republic is on a path of expansion regarding the rights of sexual minorities. The LGBT accommodation in Slovakia is more contentious and challenging (cf. Sekerák 2017). Slovakia is socially more conservative and religious than the Czech Republic (Guasti and Bušítková 2020). Furthermore, the contestation of the rights of sexual minorities politicised the Slovak Catholic Church. This is reflected in the lack of expansion of LGBT rights beyond the EU anti-discrimination legislation.⁴ As a result of the interplay between transnational and domestic dynamics, Slovakia recognises same-sex marriages of foreign citizens with residency permits in Slovakia. However, it does not grant these rights to its own citizens (since 2018).⁵

⁴ Slovakia adopted the anti-discrimination law in employment in 2004, the provision of goods and services in 2008, and the protection from hate speech in 2016.

⁵ In June 2018, the Court of Justice of the European Union ruled that EU member states have to recognise a same-sex marriage from member states that legalised same-sex marriage for a residency permit. The decision applies if at least one partner is an EU

Similar to the Czech Republic, bills to recognise same-sex partnerships were introduced in the Slovak parliament repeatedly (1997, 2000, 2012, and 2018). Unlike in the Czech Republic, where the registered partnership was adopted in 2006, all of the Slovak bills were rejected. The only (minor) concession was archived in 2017, allowing recognition of unregistered cohabitation. While same-sex couples use this regulation, it was not explicitly designed as LGBT accommodation.

LGBT advocacy in Slovakia is concentrated under the LGBT umbrella organisation *Otherness Initiative* (Iniciativa Jinakost'). The advocacy by Otherness Initiative focuses both towards lobbying parliamentarians and raising awareness of discrimination and issues facing the LGBT community. Unlike in the Czech Republic, the Slovak LGBT activists were not able to secure the support of mainstream parties. On the contrary, as the politicisation along the cultural cleavage grew, the mainstream ruling party SMER repeatedly traded support for the status quo and backlash with conservative parties in exchange for concessions on other legislation.

Smaller liberal parties continue to support the expansion of LGBT rights. The two most recent attempts (2012, 2018) to pass the bill on registered partnership were spearheaded by the liberal and libertarian Freedom and Solidarity (SaS) party. In 2012, the draft legislation was rejected by the ruling SMER. It also produced strong backlash by the conservative forces. In an attempt to both maintain liberal credentials and not polarise voters, SMER established a committee to address the demands of the LGBT community as a forum for public debate in October 2012. This was straight from the pre-accession playbook. Nevertheless, even this feckless attempt generated backlash by the Christian Democrats and by the Slovak Conference of Bishops (Santa 2012).

The conservative forces perceived the lack of support by the mainstream SMER as an opportunity to strengthen the status quo and prevent future expansion of LGBT rights. The backlash intensified and peaked in 2014. The conservative group *Alliance for Family*, with the backing of the Conference of Slovak Bishops, collected 400,000 signatures for a petition against the progressive agenda. The petition included demands for a constitutional ban on same-sex marriage and registered partnership, adoption and raising of children by same-sex couples. It advocated for the

citizen, and the marriage took place in the EU. Slovak authorities were forced to bend to the ruling, and Slovakia complied with the CJEU ruling on recognition of same-sex marriage for granting residency permits.

rights of parents to prevent their children from receiving sex education in schools. The petition aimed to trigger a referendum on all four issues. Upon the intervention of the (independent) President Andrej Kiska, in the Slovak Constitutional Court removed the registered partnership ban from the referenda.

Simultaneously, Christian Democrats initiated an amendment to the Slovak Constitution banning same-sex marriage in the parliament. The ban succeeded after Prime Minister Robert Fico, the leader of SMER, offered Christian Democrats a deal. In essence, SMER would support the same-sex marriage ban; in exchange, Christian Democrats would support his reform of the judicial system. In June 2014, the deal was sealed (102 MPs voted for, 18 against), and 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’. This was a significant victory for the conservative forces (Burcik 2014).

The referendum took place in February 2015. Moreover, Slovakia became a conservative battleground. Both the progressives and the conservatives received support from international groups. International conservative groups from Europe and the United States (US Evangelical donors, Alliance Defending Freedom) financially supported the Slovak conservatives. The progressives were smaller and less organised than their conservative Christian counterparts but indirectly supported by European LGBT advocacy groups (ILGA).

During the campaign, progressives criticised the involvement of foreign religious groups as well as SMER’s ‘pandering to the populist religious homophobia’ as a distraction from economic issues. While the conservatives campaigned to win and freeze the progressive agenda for a considerable time, the progressives chose another strategy. It was evident that the support for the progressive agenda was smaller than the support for the conservative agenda. The strategy of the progressives, therefore, was to campaign for abstention in order for the referendum to fail the legal obligation of the minimum 50% turnout to be binding. This strategy was successful. The turnout was 21.4%, and the referendum failed. However, among the 945,000 citizens who voted in the referendum, 94.5% supported the ban on same-sex marriage, 92.4% the ban on adoption by a same-sex couple and 90% the sex education choice (Statistical office of the Slovak Republic). The evolution of public opinion on LGBT rights is displayed in Fig. 3.

Fig. 3 Evolution of public opinion on LGBT rights in Slovakia (2008–2017)
(Source Inakost Initiative, Pew Research Center)

In 2018, progressives resubmitted the registered partnership bill. While the bill was defeated again, this time, Freedom and Solidarity MPs were joined by other smaller parties, including the Hungarian minority party, Most-Híd (Bridge). Without the support of the mainstream party SMER, both progressives and conservatives succeeded in preventing each other from achieving their goal. Until the 2020 elections, SMER was the leading political player. However, the Slovak 2020 elections dramatically changed the party landscape in Slovakia.

In the 2020 elections, the openly homophobic radical right (Kotleba's People's Party—Our Slovakia) and conservatives campaigned on the roll-back of liberal rights, including restricting access to abortion, but failed to make significant gains. The governing SMER again strategically shifted to the right by adopting some of the radical right rhetoric on cultural issues (on the withdrawal of Slovakia from the Istanbul Convention in the next section) but paid the price for its recent corruption scandals. Ethnic Hungarian party Most-Híd did not cross the 5% threshold, and the liberal parties weakened at the expense of the *Party of the Ordinary People and Independent Personalities* (OL'aNO). The Leader of OL'aNO, Igor Matovič, who ran on an anti-corruption platform, reiterated commitment to the conservative status quo and excluded any further accommodation of the LGBT rights. He also rejected the rollback on existing rights. Unlike in the Czech Republic, the Slovak conservative forces are stronger than the progressives.

5 ISTANBUL CONVENTION

The Istanbul Convention faces strong opponents in both the Czech Republic and Slovakia. The Czech Republic signed the Istanbul Convention on May 12, 2016, but until today (March 2020), it has not been ratified. The lack of ratification is the result of a lack of broad domestic support. Women and human rights organisations support the ratification, while conservative groups and the Catholic Church are vocal opponents. The same was true in Slovakia. While the European Union has, in the meantime, accessed the convention as a signatory, both countries (as two out of 28 EU member states) oppose the EU being part of the Istanbul Convention.

For the Czech proponents, the Istanbul Convention is a step towards fighting gender stereotypes and improving prevention mechanisms. For the opponents, it is a symbol of ‘gender ideology’. The issue is very salient, and the media attention contributed to improving information levels about domestic violence (such as that in the majority of rape cases the victim and the perpetrator know each other), the increase in the reporting of rape cases (in 2019 by approximately 20%; Hroch 2019) and the thematisation of persistent stereotypes (such as that a woman under the influence of alcohol/drugs, or ‘dressed provocatively’ shares the guilt for her rape (*sic!*)).⁶

For the opponents—mainstream Christian parties, Catholic Church, socially conservative and reactionary fringe groups—the Istanbul Convention represents a symbol of changes and triggers competition for the role of the real ‘defender of the traditional order’ and the status quo. Mainstream political opponents are led by Christian Democratic ex-Ministers Pavel Bělobrádek and Marian Jurečka. For them, the Czech Republic does not need the Istanbul Convention, because its legislation is satisfactory. Furthermore, for Bělobrádek and Jurečka, the Istanbul Convention represents an ‘attack on traditional family’ and a ‘social engineering attempt to eliminate the traditional roles of men and women’ (Hroch 2019). The pushback against these statements came from the Social Democratic Minister of Labor and Welfare Affairs, Michaela Marksová (before her political career, Marksová led a large women’s NGO).

⁶In a 2015 FOCUS survey, one-third of the respondents agreed with this statement (Geržová 2015).

Among the Church opponents, the Catholic Church led by the Archbishop of Prague, Dominik Duka and the Czech Conference of Bishops is the key actors. However, except for the Evangelical Church of Czech Brethren, the majority of evangelical churches and smaller Christian denominations also oppose the adoption of the Istanbul Convention, which they perceive as detrimental to the ‘natural order’ and a threat to the family. The May 2018 mass in the St. Vitus Cathedral by Monsignor Petr Pit’ha provided the following highlights:

This is to be enacted under the Istanbul Convention in the name of a powerful pressure group of genderists and homosexuals. Your families will be torn and dispersed. They will take your children and keep you from where they went, where they sold them, where they are imprisoned.

In a reaction to this sermon, women’s NGO Czech Women’s Lobby made a criminal complaint about the deliberate dissemination of an alarming message against Pit’ha. Pit’ha received backing and support from the Archbishop Duka and the Czech Conference of Bishops. In May 2018, the Czech Conference of Bishops published a pastoral directly attacking the Istanbul Convention:

We believe that the so-called Istanbul Convention puts men and women in a fundamental opposition and wants to see all behaviour towards women only in the light of the historically unequal balance of power between men and women. This international convention, the ratification of which will soon be discussed in the Parliament of the Czech Republic, as well as in other European countries, has a broad concept of gender identity, which is not rooted in the natural order and thus creates a space for questioning basic social conditions. We do not agree with this trend and do not want the ratification of the Istanbul Convention to be a threat to the life of the state and its institutions, especially schools, but also to the lives of families and individuals. (Tomek 2018)

Among the socially conservative groups, the *Union of Family Advocates* criticised some measures of the convention, which is interpreted as a danger to the privileged attorney-client relationship. The opponents often used misinterpretations or claims of faulty translation of the convention to magnify the threat the convention in their eyes presented to the status quo—the heteronormative order and the male-dominated public and political spheres. Socially conservative and conspiratorial media such

as CounterStream (*ProtiProud*) warned against the new world order in which ‘lesbians will strip men of their masculinity, families will be broken by force and men enslaved’ (Břicháček 2018; Rjabičenkova 2018).

Under the mantle of balanced reporting, the public media at times provided space for the spread of disinformation, by encouraging discussions between the proponents and opponents focusing on conspiracies and misinformation. To prevent the spread of misinformation, which amounted to a coordinated campaign across Europe, the Czech government and the Council of Europe published information leaflets (in September and November 2018, respectively).

Notwithstanding the information measure, the majority of the Czech population remains uninformed about the Istanbul Convention (72% in 2018 and 68% in 2019). It has not formed any opinion regarding its ratification (69% in 2018 and 63% in 2019). Among those who have formed an opinion, the support for the ratification (18% in 2018 and 24% in 2019) outweighs its rejection (13% in both 2018 and 2019) (Centrum pro výzkum veřejného mínění 2019).

The coalitions of the proponents and the Istanbul Convention in Slovakia are, in no small degree, similar, like in the case of LGBT accommodation. In the political arena, the radical right, the mainstream right and the governing SMER compete for the role of ‘protectors of the traditional family’. Mainstream parties—both on the centre-right (Christian Democrats) and centre-left (SMER)—adopted some of the radical right rhetoric (Sekerák 2020). This includes backlash against LGBT and women’s groups and their political allies—liberal political parties.

The conservative forces, such as the *Alliance for Family*, portray the Istanbul Convention as a tool in a ‘cultural war’ waged against the ‘natural order’—i.e. the heteronormative status quo. The Istanbul Convention is portrayed as enforcing ‘gender ideology’ in areas such as legal framework and education; the former endangering the rights of parents and religious freedom, the latter ‘experimenting on children’ (Vasecka 2018 in Sekerák 2020).

The Slovak Catholic Church plays an essential role in the opposition to the Istanbul Convention. Similar to the Alliance for Family, it adopts the language of cultural war, waged by liberal forces against religion and tradition. The following is a quotation from a sermon by the Archbishop of the Slovak Greek Catholic Church, Mons. Cyril Vasil’, on 2 September 2018:

The new cultural war of the anti-religious liberal secularism of the modern West has not yet come to us in full strength, but only in some isolated peripheral expressions. Here and there, there is a shot, or rather a fad, but the actual fire and bombing are just about to happen. (Mikula 2020)

The Slovak Catholic Church equates contemporary development with the persecution of the Church during communism—Western liberalism is described as the ‘new totalitarianism’. It also portrays Central and Eastern Europe as the last bastion of defence of ‘real European values’ and calls for the return to the ‘natural and Christian roots’. In March 2019, the Slovak bishops and representatives of other denominations called on the government not only to reject ratification of the Istanbul Convention but also to withdraw the Slovak signature. In their argument, they portrayed the Istanbul Convention as a tool for the accommodation of ‘gender ideology’ and an attempt to further LGBT demands.

In March 2019, the Slovak parliament rejected the ratification of the Istanbul Convention, hinting at possible conflicts with the Slovak Constitution and the leader of SMER and former Prime Minister Fico claimed that the government could not adopt an international treaty that ‘does not respect the beliefs of the majority of Slovak citizens’ (Walker et al. 2019).

In November 2019, the European parliament called on all EU member states to speed up the ratification of the Istanbul Convention. On the same day, the Slovak parliament decided not to ratify the Istanbul Convention and asked the government to inform the European Union, which in the meantime became one of the signatories that Slovakia opposes to being part of the Istanbul Convention.

The Slovak vote was both a pushback against Brussels, but more so a reaction to the domestic pressure. The radical right politicised crimes against women to paint the government as weak on the ‘law and order’ agenda. In an attempt to adopt a strong stance, the (female) Minister of Interior called on women to be more considered and ‘socialise with greater prudence’ (on the similar performance of gender in other ECE countries cf. Norocel 2018). In a political struggle along the cultural dimension, victims of gender-violence are further victimised to score political points. The position of the Minister of Interior reflects Slovak public opinion, which views rape as justified under certain circumstances (in 2016, 40% of respondents agreed with this statement) (Gabrizova 2019).

In the campaign for Slovak parliamentary elections (29 February 2020), the radical right and socially conservative forces continued the politicisation of the Istanbul Convention. Christian Democrats proposed to restrict access to abortion. On the eve of the elections (25 February 2020), during an extraordinary session, the Slovak parliament rejected the Istanbul Convention with the simple majority of 93 of 122 votes.⁷ The majority of the governing SMER, Christian Democrats and the radical right voted against. Liberal parties and some members of the Party of Ordinary People and Independent personalities, which went on to win the elections, supported the convention (27 votes). The liberal President Zuzana Čaputová announced she would respect the decision of the parliament (Meuwissen 2020).

While the opposition of the Slovak conservative parties and the radical right to the Istanbul Convention is long term and ideologically driven, for the centre-left SMER, this was a strategy—a final attempt to win back conservative voters (cf. Malova and Vilagi 2006; Buščíková 2019; Buščíková et al. 2019; Kazharski 2019). The strategy of the radicalised mainstream failed—SMER lost the 2020 elections. On the night of his electoral victory, the leader of the populists' anti-establishment OĽaNO, Igor Matovič, who ran mainly on an anti-corruption agenda and avoided taking a stance on cultural issues, endorsed the status quo. He refused both the rollback abortion rights, but also the Istanbul Convention.

6 CONCLUSIONS

The present chapter has shown that the effect of the expansion of the universal rights spearheaded by the European Union and the Council of Europe is contingent upon the type of groups and on configurations of domestic actors that either align with the policies of accommodation or seek to reverse them. The accommodation of demands for universal rights, such as LGBT rights and gender equality, creates a strong reaction. If used strategically by political entrepreneurs, it has the potential to polarise the electorate. Since the new groups are 'alien' to domestic constituencies at first, it is easy to associate the European Union and the Council of Europe with the imposition of new cultural norms.

⁷ Analysis of the vote No. 15/2020 based on data of the Slovak National Council, <https://www.nrsr.sk/web/?sid=schodze/hlasovanie/schodze>.

Minority accommodation due to the implementation of the EU anti-discrimination framework, the CoE's Istanbul Convention and current demands by LGBT and women's advocates spark a backlash. While mobilisation around new issues can spike sovereignty anxieties, the lack of well-established divisions between the progressive and conservative forces and, in the case of the Istanbul Convention, lack of salience undermines the durability of the backlash. Political entrepreneurs are creative and quickly explore how new divisions can cohabitate with older, more established configurations of interests (fusing anti-LGBT and anti-gender equality voices against the Istanbul Convention).

The backlash against universal rights and their (perceived) allies—the EU, CoE, and civil society organisations—remain in the repertoire of the radical right (cf. Cianetti et al. 2018; Guasti and Bušíková 2020). The mainstream political parties are rarely foes of minority accommodation (Guasti 2019). The extent to which they act as allies or foes depends more on their political calculus than on their ideological orientation. When the costs of minority accommodation are high, mainstream parties shy away from pursuing the progressive agenda (ANO in the Czech Republic) or join the backlash (SMER in Slovakia).

In both countries, the European Union (and the Council of Europe) plays a secondary role in the process of LGBT accommodation and gender equality. It ensures anti-discrimination via hard and soft legislation and provides avenues for redress (litigation at the CJEU and ECtHR). The primary role belongs to the domestic politicians. Progressives find powerful allies—LGBT advocacy groups, women's groups and foes—against conservative groups and the Catholic Church.

In both countries, pragmatic populists strategically align themselves with what they perceived to be the winning side at a particular point in time (cf. Bušíková and Guasti 2017; Vachudova 2019; Guasti 2019). In Slovakia, the mainstream SMER traded support for the same-sex marriage ban for its proposed judicial reform, and the insurgent OL'aNO reiterated commitment to the conservative status quo. In the Czech Republic, Andrej Babiš's ANO used the LGBT issue to strategically appeal to the liberal voters and, therefore, to expand its voting coalition. When these efforts proved futile, it abandoned the LGBT agenda. The mainstream political actors are not driven by ideology, but by situational strategies. In both countries, the cultural cleavage is here to stay, and the pursuit of universal rights will be lengthy and continue to face illiberal backlash.

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