



## Duty to Protect: Nationalism and LGBTIQ+ Freedoms in Serbia and Bosnia-Herzegovina

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**Abstract** : A series of attempts to ban LGBTIQ+ events and content in Serbia and Bosnia-Herzegovina hinder freedoms of assembly and expression. Upholding democratic values of tolerance and inclusivity is vital to combat exclusionary politics and ensure equality for all.

Although until few years ago the so-called Russian '[gay propaganda law](#)' was an *unicum* in Europe, the freedom of expression and peaceful assembly of many LGBTIQ+ people has been increasingly limited or contested within the European Union (EU) itself, following a surge of right-wing parties that set the scene with their anti-LGBTIQ+ and conservative rhetoric.

In 2020, 100 municipalities of Poland, that is, one third of the country, declared themselves to be 'LGBT-ideology free zones' through a series of [resolutions](#). Similarly, in 2021, the Hungarian Parliament adopted the controversial [Act LXXIX](#) which includes dispositions prohibiting the portrayal of homosexuality and gender-reassignment to children and limiting their promotion in schools and on the media. Most recently, Romania started a [parliamentary debate](#) to consider the adoption of a gay propaganda law.

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A [negative trend](#) for LGBTIQ+ rights is also visible in Southeast Europe. Notably, recent developments in Serbia and Bosnia-Herzegovina (BiH) show how spreading anti-LGBTIQ+ sentiments can be easily instrumentalized to curtail fundamental freedoms. Although the two countries [made good progress](#) at the legislative level when it comes to LGBT discrimination, homophobic and transphobic [attitudes persist](#), often leading to a hostile environment for the LGBTIQ+ community and insufficient implementation of existing laws. Additionally, the intensification of political and religious elites' nationalist rhetoric in these countries represents a serious challenge for the advancement of LGBTIQ+ rights as its exclusionary and divisive nature often labels LGBTIQ+ identities as a [threat to the nation](#). Indeed, incumbents have periodically invoked the protection of the nation and their traditional values to impose limitations on LGBTIQ+ people's rights and in particular their freedom of expression and freedom of assembly.

### **Restricting fundamental freedoms in the name of the nation**

In September 2022 Belgrade hosted the first [EuroPride](#) in Southeast Europe. While the march eventually took place in a reduced capacity, the holding of the event was uncertain until the very last moment.

President of Serbia, Aleksandar Vučić, had announced one month prior to the march the [cancellation](#) of the event amid security threats by far-right extremists and the alleged risk of national instability due to the tensions with Kosovo. The subsequent [ban](#) on the march route by the Ministry of Interior gained strong support by the Serbian Orthodox Church who joined the counter-protests against the EuroPride. The patriarch of the Serbian Orthodox Church firmly [stated](#) that the event was contrary to the Serbian traditional values while the Bishop of Banat [incited to use weapons](#) against the participants.

Nonetheless, the organisers of the EuroPride [made clear](#) their intent to go ahead in defiance of the ban. On the day of the planned walk, the Government reverted its decision, allowing the event to be held on an alternative shorter route. While the safety of participants was ensured quite successfully, [minor incidents](#) took place and some police officers were attacked by extremists.

Similarly, a ban on an event organised in support of the sexual and gender minorities was imposed in neighbouring Bosnia-Herzegovina. In March 2023, the police of Banja Luka, the administrative centre of BiH entity Republika Srpska (RS), [barred](#) the planned activities of the LGBTQ+ activists, *de facto* availing the request of 13 local associations contrary to the rally.

The activists from Sarajevo and Banja Luka, who therefore opted to gather in a private space, were firstly urged to leave by the local police and then chased and physically [assaulted](#) by a group of hooligans once out in the streets. Allegedly, the attack happened in proximity of the police patrol who did not intervene.

Milorad Dodik, the President of RS, currently in the spotlight for his [separatist policies](#) and ethno-nationalist rhetoric, [commented](#) that he felt no remorse for what happened and accused the activists of disturbing others' freedoms.

Moreover, the mayor of Banja Luka had [stated](#) that the city protects the 'traditional patriarchal family values' of Bosnian Serbs.

Few days after the incident, Dodik [announced](#) a plan to ban LGBT content from school textbooks and the access of LGBTIQ+ activists to schools. According to

Dodik, this new law would be necessary to further protect children's rights and traditional family values.

### **A matter of democracy and human rights**

The mentioned bans constitute an interference with the freedom of assembly that under [article 11](#) of the European Convention on Human Rights (ECHR) entitles everyone, without discrimination, to hold peaceful gatherings. This implies that, unless sufficiently justified, the interference is a violation of this human right. Although restrictions on the freedom of assembly may be allowed in the interest of public safety and national security, they must also be '[necessary in a democratic society](#)'. As the European Courts of Human Rights (ECtHR) points out in [Alekseyev v. Russia](#), banning a demonstration of a minority that calls for equality, non-discrimination and the respect of human rights can hardly be necessary in a democratic society that, by definition, should promote tolerance and pluralism

Additionally, the Court recalls that dissenting views, even if controversial, are a fundamental part of a democratic society and that the sole risk of security threats by the hand of counter-demonstrators cannot justify the full prohibition of a demonstration. The consequences for minorities would be disproportionate. On the contrary, [human rights standards](#) prescribe positive obligations for the state to protect those legitimately exercising their freedom of assembly, minimise threats and prosecute those responsible of crimes. Demonstrators shall be able to hold a Pride march without having to fear that they will be subjected to physical violence by others.

When it comes to the ban on LGBTIQ+ content announced by Dodik, the case law of the ECtHR has already clarified that this kind of gay propaganda legislation, which usually brings criminal charges against activists, is prone to breach the freedom of expression of LGBTIQ+ people. In [Bayev and Other v. Russia](#), the Court dismantled the idea advanced by Russia that the spreading of LGBTIQ+ related information negatively affects 'traditional families'.

Indeed, the underpinning assumption that children exposed to ideas that promote respect toward LGBTIQ+ rights will consequently change their sexual orientation or gender identity cannot be supported by any scientific evidence. Moreover, the Court ascertained the biased nature of the provision as it failed to demonstrate how the reference to LGBTIQ+ issues in public spaces can endanger the rights of heterosexual families. The Court has also dismissed the moral argument whereby if the majority of the population does not approve certain ideas their diffusion in education should be blocked.

Alike article 11, [article 10](#) of the ECHR prescribes that limitations made in the interest of public morals still have to satisfy the principles of legality and democratic necessity. Such a law would rather perpetuate the prejudice that has stirred violence and can backfire on LGBTIQ+ children who would benefit from a more tolerant and pluralistic society.

Human rights prescribe a very limited margin of appreciation of the state when it comes to limiting the expression of individuals on the sole ground of their characteristics, opting instead for a [duty to protect](#) those exercising pacifically their freedoms.

Especially during times of crises, security and morality are often instrumentalized to curtail LGBTIQ+ freedoms. Incumbents in BiH and Serbia should refrain from

spreading exclusionary nationalism that seeks to preserve and promote the interests of specific groups at the expense of others. That tends to foster a climate of intolerance and discrimination towards marginalised groups, including LGBTIQ+ people. Rather, by promoting tolerance and respect for diversity, and by protecting the rights of all citizens, governments in the region can contribute to create a more inclusive and just society for everyone.