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“Unnatural Fornication” Cases Under State-Socialism: A Hungarian–Slovenian Comparative Social-Historical Approach

Judit Takács, PhD^a, Roman Kuhar, PhD^b, and Tamás P. Tóth, PhD^a

^aCentre for Social Sciences, Hungarian Academy of Sciences, Budapest, Hungary; ^bUniversity of Ljubljana, Ljubljana, Slovenia

ABSTRACT

This comparative social-historical study examines different versions of state-socialist body politics manifested in Hungary and Slovenia mainly during the 1950s by using archive material of “unnatural fornication” court cases. By analyzing the available Hungarian “*természet elleni fajtalanság*” and Slovenian “*nenaravno občevanje*” court cases, we can shed light on how the defendants were treated by the police and the judiciary. On the basis of these archive data that have never been examined before from these angles, we can construct an at least partial picture of the practices and consequences of state surveillance of same-sex-attracted men during state-socialism. The article explores the functioning of state-socialist social control mechanisms directed at nonnormative sexualities that had long-lasting consequences on the social representation of homosexuality in both countries.

KEYWORDS

Archive research; court cases; homosexuality; Hungary; Slovenia; state-socialism; unnatural fornication

The main aim of the present study is to highlight some practices and consequences of state surveillance of homosexuality during state-socialism in Hungary and Slovenia, being now two independent neighboring countries with the shared historical experience of the Austrian-Hungarian monarchy, and somewhat different versions of state-socialism. We want to closely examine certain aspects of same-sex attraction-related body politics manifested in Hungary and Slovenia from the end of the Second World War until decriminalization of homosexuality on the basis of archive material of “unnatural fornication” court cases.

We will apply a Foucauldian bio-power approach, while exploring the functioning of social control mechanisms of state-socialist oppression directed at nonnormative sexualities in a normalizing disciplinary social context. According to Foucault (1977, 1979), sexuality has been the most instrumentalized phenomenon in power relations in the Western world, characterized by new forms of political power to secure the human base for national

wealth: *bio-politics*, regulating whole populations, and *anatomo-politics*, focusing on the anatomical control or discipline of individual human bodies. The medicalization of (sexual) pleasure established a classificatory system through which sexual behavior could be controlled, stimulated, rewarded, and punished. It was through such a (discursive) system that the sexual pervert came into being to define its own opposite: the normal. The sexual pervert, the threat to society, and its biological existence had to be regulated and treated not only through medical but also through juridical mechanisms of control.

Even though Foucault has conceptualized the manifestations of bio-power in the context of Western (mainly European) capitalism, his approach can be applied without too much difficulty to Central Eastern European state-socialist contexts, too. During state-socialism, the sexual conduct of people could become a target for state intervention exactly because of the growing concern to suppress forms of sexuality not directly linked to procreation and “building state-socialism.” In this context, populations—that is, the sum of the individuals’ bodies—were seen as organic wholes or *social bodies* that could have pathological social problems in need of effective treatment in the form of policies and often policing.

In this article we want to suggest that the juridical mechanism together with police surveillance and the blackmailing potential in every citizen created a bio-political tool of state-socialism, which operated as a kind of “heteronormative panopticon” over homosexuality (Kuhar, 2011). The criminalization of homosexuality together with the social and political pressure of subordination to the newly introduced state-socialist regime, established an awareness of being permanently visible even in those instances when surveillance momentarily ceased. Awareness of the imprisonment in the heteronormative panopticon of the political regime could establish a certain level of self-control over one’s homosexual body, which could also be seen as a reflection of “double consciousness” generally characterizing minority-majority relations in Soviet type societies, developed by the “growing up with two personae, public and private, which are diametrically opposed in many ways” (Moss, 1995, p. 230). However, the examined court cases provided more evidence of decreased self-control and increased state control over homosexual bodies that were caught by the surveillance system.

Historical contextualization

Our starting point is that early 20th-century Hungarian and Yugoslavian legislation rendered homosexual activities illicit, and thus provided a sufficient basis for developing a state-run system of social control and surveillance of homosexual people or, more precisely, people who might be suspected of being homosexual or engaging in homosexual acts. The legal

persecution of homosexuals in both countries demonstrates that the European conceptualization of homosexuality followed a general—temporally ordered—sin-sickness-deviance pattern, even though a few (Central) European authors such as Karl Heinrich Ulrichs, Károly Kertbeny, or Magnus Hirschfeld raised their voice against the legal discrimination of homosexuals already in the second half of the 19th century (Kennedy, 2002), and some of these early antidiscriminatory arguments—especially those of Kertbeny, who coined the words *homosexual* and *heterosexual* in 1868–1869 (Takács, 2004)—emphasized in a very modern manner that the state should not intervene in the private lives of individuals. However, European legislation soon became dominated by a medicalized model of homosexuality.

Despite the fact that in Soviet Russia homosexual acts became at least temporarily decriminalized at the beginning of the 20th century, in Soviet-type societies homosexuality was often perceived as a manifestation of a “disreputable and illegal [form of] masculinity” (Healey, 2002, p. 166), a “product of the decadence of the exploiting classes,” which is not compatible with the state-socialist “healthy mores” (Kon, 2002, p. 224). In a very similar vein, the arguments of the German fascists described homosexuality as a manifestation of the “moral decadence of the bourgeoisie” (Kon, 2002, p. 224).

After the Second World War, homosexuality continued to be seen as a form of social pathology or deviance: in the socialist states homosexuals were considered “unreliable elements,” characterized by a high level of “black-mailability” (Moss, 1995, p. 230) and limited (reproductive) contributions to building state-socialism. Along a similar vein, in the 1950s U.S. Senator Joseph McCarthy wanted to purge communists as well as homosexuals, who “have infiltrated our government in recent years” (Rosario, 2002, p. 120); homosexuals were treated as moral and security threats, especially after the publication of the Hoey Report on the *Employment of Homosexuals and Other Sex Perverts in Government* in 1950 (Rosario, 2002, p. 126), leading to the ban of gays and lesbians from federal employment until the mid-1970s.

Penalization of same-sex sexual activities between men in Hungary, 1878–1961

At the beginning of the 20th century, Hungary—as part of the Habsburg Empire—was characterized by complete independence regarding domestic policy, but with surrendered state sovereignty in foreign and military policies (Fónagy, 2005). During this period, a Secretary of State of the Ministry of the Interior, Károly Csemegi, created the Penal Code of 1878, including paragraph 241 that rendered “unnatural fornication”—or, literally, “perversion against nature” (*természet elleni fajtalanság*), referring to sexual acts between

men, and bestiality—an illegal act punishable by up to one year’s imprisonment.

The practice of specialized state surveillance of homosexuality that started at the end of the 19th century persisted for more than a decade after the Second World War, too—especially during the rise of the state-socialist political system. Compiling “homosexual inventories” of potential blackmail victims who could be coerced into becoming police informers was part of regular police work in urban areas and especially in Budapest (Takács, 2014). These practices are reflected in archive documents of the Historical Archives of the Hungarian State Security, including the National Police Headquarters instructions from 1958 on how to keep criminal records (ABTL 1958). According to these instructions, there were 13 types of criminal records, and data on homosexual men had to be kept in at least three of them, including the Preliminary Records of Persons Suspected of Crime, the Record of Regular Criminals, and a photo register of convicted homosexuals.

By the end of the 1950s, however, a change in official attitudes to homosexuality had emerged, though largely behind the scenes. A recently discovered archival record shows that in 1958 the Health Science Council within the Ministry of Health, consisting of leading Hungarian neurologists, unanimously supported a proposal to decriminalize “unnatural fornication” between consenting adult men (Takács & PTóth, 2016). Before reaching this decision, the Council carefully considered several arguments and counterarguments for the criminalization as well as the decriminalization of the issue. The pro-criminalization arguments included interpretations of homosexuality as corrupting the youth, harming family life, inhibiting population growth—and it was also pointed out that acknowledging the impunity of homosexuality could even lead to allowing homosexual marriage in the future. However, the Council produced convincing counterarguments to all these issues. For example, the inhibition of population growth argument was quickly dismissed by referring to the impunity of birth control, and regarding blackmail, they stressed that perhaps it would not cease to exist after decriminalization, but its intensity would definitely decrease. Finally, it was also pointed out that the struggles between one’s homosexual instinct and fear of being caught and punished would almost inevitably lead to neurosis; in most cases, however, even the fear of punishment would not restrain their quest for homosexual satisfaction.

In general, the Council based its support for decriminalization on a medicalizing approach that defined homosexuality as a biological phenomenon, the persecution of which under the law would not be logical, and it also acknowledged the increased vulnerability of homosexual men to blackmail, created and sustained by criminalization. These arguments were also echoed in the official ministerial standpoint supporting the decriminalization of consensual sex between adult men that was eventually introduced in 1961:

Homosexuality is either an inborn sexual perversity rooted in a developmental disorder or such acquired anomaly that develops mainly within neurotic people as a result of some sort of sexual impression during childhood, adolescence or at a young age. According to medical observations even in the case of acquired homosexuality or those who wanted to free themselves (from homosexuality), the soundest therapy could hardly ever lead to the desired result. Homosexuality is a biological phenomenon and can therefore not be handled legally as a crime. (OK 1958)

When homosexual activity between consenting adult men became decriminalized in 1961, different ages of consent were set for heterosexual and homosexual relationships, and this remained the case until 2002, when, following the judgment of the Constitutional Court, an equal age of consent (age of 14) for all was introduced. Although the age of consent for heterosexual relationships remained 14 in 1961, the age of consent for homosexual relationships was set at the age of 20 in 1961 and at 18 between 1978 and 2002. Additionally, the circle of potential perpetrators and victims also changed in 1961: gender equality was introduced regarding “unnatural fornication,” for which men and women could now equally be prosecuted, but bestiality was not penalized any longer. Furthermore, there was a special clause introduced on “perversion against nature conducted in a scandalous manner,” for which one could be sentenced to up to three years’ imprisonment. The age of consent and potential public scandal clauses, in particular, provided good opportunities for state authorities to keep (alleged) homosexual practices under close control (Takács, 2015). Thus the long tradition of specialized state surveillance on homosexuality could continue after 1961, too; as the compilation of “homosexual inventories” providing information on potential blackmail victims—potentially being coerced into becoming police informers—has been part of regular police work, especially in urban areas, since at least the 1920s (Takács, 2017).

Criminalization of same-sex sexual activities in Yugoslavia and Slovenia, 1852–1977

Until 1930 the Austrian Criminal Code from 1852 was used in the territory of present-day Slovenia, which—like Hungary—used to be part of the Habsburg Empire. It criminalized “felony against bodily integrity and morality,” which included fornication among people of the same sex (Podvratnik, 2010). In 1930 the Kingdom of Serbs, Croats, and Slovenes (later Kingdom of Yugoslavia) adopted a new Criminal Code, which prohibited both “fornication against nature” (article 285) as well as “lewd behavior” (article 287), which was loosely defined as any act aimed at “satisfying physical lust” (Zec, 2014). The alleged aim of criminalizing “unnatural fornication” was to channel *libido sexualis* in such a way that the nation becomes “healthy in

mind and body [...] and that it suppresses sexual anarchy” (Dolenc & Maklecov, 1934, p. 333).

However, the fact that the Criminal Code did not differentiate between sexual acts performed publicly or privately, with or without consent, with minors or adults caused some commotion among legal experts. In the postwar Yugoslav Criminal Code, adopted in 1951, the “unnatural act of being unchaste between persons of the male sex” (article 196) remained a criminal offense, but the punishment was reduced from five to two years of imprisonment. That was changed again in 1959 (now article 186), when punishment was halved to a one-year imprisonment. According to Donnelly (1952, p. 532), the new Criminal Code moved from individual rights protection toward “protection of the rights and interests of the community,” as the main aim of the Code was to provide protection from socially dangerous acts. In “unnatural fornication” court cases, the judges often referred to homosexual acts as precisely such: socially dangerous. Homosexuality was surely not a characteristic feature of the new “socialist man,” as (s)he was imagined and created at the time, despite the more “liberal and humane” Communist regime, which came about after the Tito-Stalin split in 1948 (Dota, 2015).

Although the postwar Penal Code was more precise in terms of criminalizing only male homosexuality, it remained unclear what kind of acts “unnatural unchastity” entailed. The prevailing legal interpretation was that the term referred to only *immission in anum* and not to other kinds of nongenital acts aimed at satisfying one’s sexual drive (Kobe & Bavcon, 1970). Such a position was the result of both (socialist) legal theory, which increasingly adopted liberal positions in relation to one’s sexual life and intimacy in terms of limiting the role of the state in interfering into private consensual sexual acts, as well as the effect of resounding (Western) studies on homosexuality, which slowly created a pathway for depathologizing same-sex relationships in the 1970s. It does not mean that homosexuality was seen as something consistent with the state-socialist regime; in the examined court cases, judges often explicitly stated that homosexuality hampers the development of a socialist society.

Similar to the arguments used in Hungary, a medicalized interpretation of homosexuality as a biological phenomenon that cannot be properly prevented by criminalization was echoed also in the Slovenian debates on decriminalization of homosexuality. Governmental committees dealing with criminal offenses increasingly saw homosexuality as a socially less dangerous act than previously. According to a government *Report on Prostitution and Homosexuality*, from 1956 homosexual behavior in Slovenia was not widespread. The report also questioned the advisability of keeping homosexuality criminalized as “it takes a lot of effort for systematic detection of homosexuals,” while “it is likely that criminal measures would not prevent such

behavior” (cited in Zornik & Mirović, 1996, p. 34). Similarly, the influential Bavcon’s *Research Report on Social Pathology* from 1968 defined homosexuality as a “less dangerous social phenomenon” and argued against repressive measures as a solution for homosexuality; while the authors claimed that homosexuality should remain classified as a “negative sexual activity,” they nevertheless opted for its decriminalization as “Yugoslavia is one of the few countries where homosexual contacts among consenting adults remain criminalized.” They also reported that the police had already realized that repression was not an effective tool for dealing with “deviant sexual behavior of two consenting adults” (Bavcon, Kopal, Milčinski, Vodopivec, & Uderman, 1986, pp. 124–135). It is therefore not surprising that 6 years later, in 1974, when each of the Yugoslav republics were granted a constitutional right to their own Penal Code and Bavcon became president of the Commission for the Preparation of the New Slovenian Penal Code, he proposed a different concept of sexual offenses, freed from religious admixtures and the notion of being unchaste. Bavcon’s starting point was legal protection of the sexual integrity of both women and men; in the context of sexuality, each person should have the right to inviolability and free decision-making (Greif, 2008; Kuhar, 2012). This led to the recognition and criminalization of rape in matrimonial unions and the decriminalization of homosexual acts of consenting adults in 1977.¹

Data and methods

Our study is based on the analysis of original archive material consisting of “unnatural fornication” court case documentations from both countries. The geographical scope of our study is limited to the capital cities, since most of the available and still accessible documents could be found in the archives of Budapest and Ljubljana. The examined court cases in both countries lacked a political dimension; most defendants seemed to be ordinary people whose accusation of homosexuality was not politically motivated. The lack of political dimension of the court cases might be connected either to the real lack of or the limited access to such cases, but it is more likely that it can be explained by limited access to historical documents of state-socialism such as classified documents of secret police informants. For example, in Hungary many such cases—some involving Catholic priests—are still not accessible in the Historical Archives of the Hungarian State Security.

The Hungarian data collection was conducted during 2013–2014 in the Budapest City Archives, where we examined the surviving records of the Budapest Criminal Courts. The registry of the Budapest City Archives included approximately 900 entries about cases involving charges of “unnatural fornication” between 1917 and 1970—but some of the original records were not available any longer because of being destroyed, recycled, or simply

missing. According to the available records, after the decriminalization of homosexual activity between consenting adult men in 1961, there was a significant drop in criminal charges against homosexual men—although the exact numbers are impossible to estimate. In this article we will concentrate on the content of 313 Hungarian court cases, including 556 defendants, from the 1950s, when Hungarian homosexual men were prosecuted in unprecedented numbers.

The documentation about the Slovenian court cases against homosexual acts was obtained from the Archives of the Republic of Slovenia and from Historical Archives Ljubljana.² The court cases range from 1945 until the decriminalization of homosexuality in Slovenia on July 1, 1977. The available database includes about 50 cases from Ljubljana's Regional and District Courts. Some of the files, listed in courts' annual criminal records, are missing. It is also not clear if there were other cases against homosexuals, conducted by State Security Administration UDBA (i.e., secret police of Yugoslavia).

About 5% to 10% of the examined records contained references to sexual acts involving same-sex or different-sex children under 14 (14 being the age of consent for heterosexual sexual contacts in both countries in the examined period), which were often described as “pedophilia cases.” Some of the non-pedophilic cases also involved underage same-sex partners of adult men. In our analysis we have disregarded these cases.

This empirical base implies an unbalanced focus on homosexual men since the crime of “unnatural fornication” could be perpetrated—at least for a while—only by men in both countries. In fact, in Hungary there were no court cases involving lesbian women at all, but there was one in Slovenia, where they were persecuted on the basis of violation of public morality.

Results: When, where, and how

In both Hungary and Slovenia, the most intense (and empirically well-documented) period of state surveillance of homosexuality emerged at the rise of the state-socialist political system after the Second World War. Compiling “homosexual inventories” as part of regular police work in urban areas and similar practices were in place in both Hungary and Slovenia. According to Soruz (1994; see also Greif, 2008), the police in Slovenia collected information on same-sex desire, especially about those who were politically engaged in the state-socialist government; the information was part of their personal dossier and could be used to discredit or blackmail them.³

Despite the medical and legal developments in both countries that started in the 1950s, hardly anything could be detected from them by the homosexual suspects in the Hungarian and Slovenian courtrooms of the 1950s,

where many defendants were accused of not being worthy and cooperative members of the new socialist order.

One of the most extensive of such cases took place in Slovenia in 1947 against three men (all university students at the time) and a woman (a clerk) who were accused of being a group that committed crimes against public morality by organizing heterosexual and homosexual orgies.⁴ They were also accused of spreading pornographic literature to lure other people into their sexual perversities. Among such literature, the court listed the *Lexikon der Sexual Wissenschaft*, a book freely available in public libraries. However, the accusation of sexual immorality was just a broader context, as the main indictment was that of being the enemies of the state (K 26/49). The latter contributed to one of the harshest sentence among the Slovenian “unnatural fornication” cases: the main protagonist of the group, a well-known writer, was sentenced to 18 years of imprisonment, while the others were sentenced to 12 years, 3 years, and 7 months of imprisonment. After the group was found guilty of all charges, the judge specifically stressed that sexual orgies are socially dangerous acts, which originate in a rotten bourgeois morality, and they emphasized that the “sexual anarchy” the defendants engaged in is “a typical phenomenon of the Western decadence; it is a consequence of the disintegration of capitalist mentality and morality and disintegration of capitalist society as such.” He then stressed that

we are building up socialism and therefore we must necessarily also build up a new man, who will be physically and morally healthy. Our building of socialism requires people who are selfless and who consider work their greatest honor and pride. The moral strength in the field of sexual morality is (...) one of the fundamental bases of our society. Disintegration and anarchy in this area can lead only back to the old capitalist conditions. (K 26/49)

Similar rhetoric echoed in Hungarian courtrooms at the time. For example, in a case of 1954 the Court considered as an aggravating circumstance that

the defendants have seriously hurt the *socialist way of living together* in that they did not want to satisfy their *seksual* [*sic*] leaning in the normal way, but with this perverted fornication that is banned by the law. (...) The first defendant being an older and thus a more serious man should have been conscious about his act of seducing a young man, which is not only disgusting, but also vicious from the socialist society’s point of view. (BFL 1954/3077)

Same-sex sexual activities were seen as incompatible with socialist morality, especially in the context of corrupting the youth; seducing young men by older ones could be dangerous because of their potential homosexual conversion.

In Slovenia some of these court cases included Catholic priests, who were simultaneously accused of “unnatural fornication” and political engagement.

In this particular court case with a Catholic priest from 1949, the judge claimed “it is typical that such morally deprived people (i.e., homosexuals) work against the positive construction of our state and more or less openly take the positions of the enemies of our government” (K 49/49). The priest admitted to homosexual behavior, which he regretted, but denied anti-state actions. In his defense he went as far as criticizing the church, expressing his doubts about the existence of God, and promised that he would withdraw from the church if he was freed. As he was found guilty of numerous other criminal offenses, he was sentenced to 7 years and 6 months of imprisonment.

According to the main line of argument at the bottom of most examined “unnatural fornication” cases was that “normal conduct” of sexual life and consequently avoiding—the often unspecified—dangers associated with its “unnatural conduct” constituted the public interest that should be protected by law (BFL 1956/1620). In some instances “social dangers” associated with “unnatural fornication” were described in detail—including the “rude violation of morality, ignoring the natural order, degrading human dignity, and abusing bodily and intellectual integrity” (BFL 1954/3663)—and punishment was set in accordance with the extent of the “public scandal” presumably caused by the defendants. It should also be emphasized that the majority of defendants were adult men who were caught—and then reported by a third person: a conscientious passerby, a disguised policeman, or a concerned public toilet attendant—while having, having just had, or were just about to have consensual sex with each other and who wanted to avoid any kind of publicity, not to mention a public scandal. However, at the court their “crime stories” were presented as if they had intentionally wanted to draw attention to themselves, and in this way scandalously penetrating (not just each other but also) public space.

In Hungary the majority of cases included descriptions of hand jobs, mutual masturbation, or oral sex, while reference to anal sex practices, unlike in Slovenia, was relatively rare. In a few cases the defense tried to argue that “unnatural fornication” refers to only anal sex, but since the exact scope and content of the term remained largely unspecified, this argument was not granted. In Slovenia, on the other hand, references to anal intercourse were common, although there were debates among legal experts whether “unnatural fornication” includes only anal sex (Kobe & Bavcon, 1970). A typical court case in Slovenia included information such as in the example from 1959: “The accused are found guilty of ‘unnatural fornication’ between persons of the male sex. On 10 October 1958 at 3 o’clock in the morning they were on a bench in the park, where they first put their genitals into each other’s mouth—they were seen doing that by witnesses—and then the first defendant stuck his genitals into the buttocks of the second defendant in order to sexually act out” (K 173/59).

While the judicial files are very precise and detailed in describing how the “unnatural fornication” took place—a typical file consists of information when, where, and how many times a defendant “plugged his penis” into another man’s “buttocks”—it is usually hard or impossible to reconstruct how the defendants were caught, and how the case ended up at the court. In the case of public places—such as parks and toilets—the defendants were most often randomly found by policemen, but in other cases it is likely that they were reported by other people either witnessing or involved in the incident.

Lack of access to private space was a crucial aspect shaping the personal relationships of most people during state-socialism, thus securing basic privacy for having sex could be a serious problem for many. This was a general feature of Eastern Bloc countries, especially in the first decade of the postwar years, when material deprivation coupled with inadequate and overcrowded housing “made privacy and indulgence in extended intimacy all but impossible” (Herzog, 2011, p. 101). In the early 1950s, having one’s own apartment was almost impossible for single people in the nationalized housing market, where centralized housing offices allocated council flats to rent, with long waiting lists of potential renters. In this context, getting married could lead to a better position on the waiting lists and could increase the chance of securing one’s access to private space. It was not unusual among the examined cases that the defendants were married men, and sometimes they also had dependent children (which could count as a mitigating circumstance at the court). Married men could have sex with their male partner(s) at home mainly during the day, when other family members were not at home; for example, in a Hungarian case of 1958, one of the defendants picked up a man in a bathhouse close to his home and asked the other man to wait in front of the house while he went up to the flat to check that his wife was away at work so they could go use the flat for having sex (BFL 1958/12107).

Besides private homes, typical venues for meeting potential partners or having sex included cruising areas, parks, and public toilets. In Slovenia there are a few cases where men were caught having sex in cars or at their workplace, while in Hungary typical venues included also public bathhouses (with steam chambers such as in the Rác, the Király, the Lukács—or with open air pools such as the Széchenyi or the Gellért Thermal Baths). The examined court cases confirm that a distinct bathhouse-oriented male homosexual culture remained a characteristic feature of Budapest during state-socialism, too; in many bathhouses certain weekdays were reserved for men only, providing a relaxing environment where they could meet and interact with each other without raising too much suspicion.

Regarding punishment types, in most cases where the accusation was only “unnatural fornication”—and it was not aggravated by loitering, prostitution,

stealing, robbery, or assault—the typical sentence was a suspended jail term of one to six months combined with a fine (in Hungary being carefully calibrated around one month's salary of the defendant) or, in a few cases, just a fine—except for recidivists. The latter received prison sentences in Slovenia, whereas in Hungary in the case of recidivists and seducing underage young men, the fine could be considerably higher. Furthermore, in Hungary young men selling sexual services were more likely to be sent directly to jail and banned from the capital, especially if they did not have a registered workplace (unemployment was illegal in the state-socialist period of alleged full employment, and one had to have a special residence permit to be able to live in Budapest). In general, Slovenian punishments seemed to be somewhat stricter than the Hungarian ones.⁵

Particularly older men were considered “proper homosexuals”: homosexuality was part of their perverted nature. At the same time, some judges expected that an older man should already have some common sense and should not engage in such acts any longer. On the other hand, younger men, caught in the act of “unnatural fornication,” were often seen as experimenting, and these temporary “experiments” were not taken as seriously as the “unnatural acts” of older men. It was understood that the young ones could still “grow out” of such immoral behavior and become good citizens and “useful members of society.” However, if an older man involved a younger man in “unnatural fornication,” it was considered an aggravating circumstance precisely because homosexual behavior was interpreted to be a bad influence that could lead to repeated homosexual behavior of the young man.

Various extenuating and aggravating circumstances were considered in the court cases: among the mitigating circumstances that courts could take into account in Slovenia, impunity of the defendants was mentioned most frequently. Confession of the crime and participation in the Second World War on the side of the Slovene Partisans were also considered mitigating circumstances. Other circumstances included the defendants' family situation, state of health, expressing regrets, and age. Age could be considered a mitigating circumstance if the defendant was relatively old; at the same time, older age could also be considered an aggravating circumstance, if the “unnatural fornication” was performed with a younger man. The most serious aggravating circumstance was “unnatural fornication” with a minor, but the length of the period when one indulged in such behavior was also considered a circumstance that could increase the penalty.

In Hungary a working-class background was always an asset, while being a Catholic priest approaching young acolytes could be a serious drawback. Mature age could be frowned on by judges, as in a case from 1959, where the “defendant, although over 72, still insists on carrying on with his homosexual behavior” (BFL 1959/4929)—as if homosexuality would be just a phase one can grow out of. The age difference between the partners was also taken

into account: the smaller the age difference, the lesser the punishment. Plea bargaining with showing sincere repentance and the promise of abandoning homosexual behavior, typically by promising to turn or return to therapists, could earn goodwill, while a defense based on reference to excessive alcohol consumption typically did not work.

The latter is also true for Slovenian court cases, where “being drunk” was the most often used explanation for “unnatural behavior.” Most men convicted of “unnatural fornication” defended themselves by claiming that they were drunk and could not remember anything: these defendants typically denied being homosexuals. However, the Slovenian courts, just like the Hungarian ones, did not pay much attention to such arguments and never referred to being drunk as a mitigating circumstance. For instance, in a 1958 court case the judge claimed that the first defendant could not be so drunk because “it is known from medicine that *errectio membri virili* (i.e., erection) is not possible when a man is drunk” (K 173/95). Other defendants used quite extraordinary excuses: for example, in 1959 one claimed that he went with another man—a homosexual—because he had “heard a lot about these poofs” and had wanted to know what kind of penises they had (Ks 263/59). Another Slovenian defendant claimed in 1949 that he used to be able to “have normal sex with women,” but then he underwent a surgery on his penis, and since then he was not able to engage in normal sexual behavior and therefore “switched to men” (K 190/49).

Among the examined cases, the most ambiguous mitigating circumstance was the reference to an essentialist interpretation of homosexuality as being inborn; although homosexuality was generally understood as a dangerous social phenomenon that breaks the rules and morals of the postwar socialist society, in several cases the judges explained that they did not punish the defendants very severely because homosexuality itself was already a huge burden, a punishment in itself. In these cases homosexuality was understood as something where nature played a dirty trick on the defendant. One Slovenian judge, for example, in 1953 explained that the “court did not take a very strict point of view over acts, committed by the accused, as all of them are already ripped-off by the nature for what is the actual driving force of life. (...) That is why the defendants are worth of pity.” The court, however, expected the “defendants to avoid perverse pleasure in the future as it ultimately leads to mental and physical decay” (K 390/52).

In contrast with Hungary, where there were no “unnatural fornication” court cases involving lesbian women at all,⁶ in one of the examined cases in Slovenia, female defendants were persecuted on the basis of violating public morality. The main reason the case was brought before the court in 1947 was that one of the defendants cut the other with a knife on her genitals. This case also highlights the difference in the explanations given by these female defendants and the majority of male defendants in Slovenia: although men in

most cases referred to being drunk as an excuse for engaging in “unnatural fornication,” the two women blamed the “dirty books” they read. The judge explained: “The defendant entered such delusion because of the dirty literature, such as *The Pope’s Daughter* or *The Great Inquisitor*. It is in these books where she read about filthy lifestyles, which pushed her into trying the same kind of acts” (Ks 1598/46–7).

Even though non-heterosexuality was seen as a moral depravity, alien to the righteous socialist men in the making after the Second World War, and heteronormative morality was embedded in the postwar socialist society of Slovenia and Hungary, it is not possible to conclude—at least not on the basis of the examined court cases—that homosexuals were systematically traced down and persecuted as enemies of the state. Rather, the court cases mostly include the anonymous unfortunates who were randomly found and accused of homosexual misconduct. This, however, is not to say that homosexuals were not oppressed during state socialism; the fact that their sexual relations were criminalized and that they were pushed into the margins of society is oppression in itself. However, it seems that in a few cases of lawsuits against political enemies of the regime, details of their intimate lives and knowledge of their “sexual perversions,” if any, could help to build a stronger case against them.

Conclusion

A closer examination of “unnatural fornication” court cases in state-socialist Hungary and the Slovenian part of Yugoslavia revealed the—often defective—functioning of state-socialist bio-power regimes aiming at disciplining individual bodies as well as regulating the population through interventions and regulatory controls. State-socialist paternalism involved many instances of breaching personal autonomy, including those of homosexual men, whose fundamental interest of sexual intimacy was disregarded by the state. They were coerced by law to refrain from engaging in same-sex sexual practices that were condemned as immoral and unhealthy.

The examined court cases revealed that homosexuals in both national contexts were persecuted, although not very efficiently nor fiercely—even though the heteronormativity of public space and the manifestations of “private homosexuality” in the clandestine male subcultures developed in parks and toilets could provide sufficient opportunities for state authorities to keep homosexual practices under close control when they chose to do so. However, most of the time the police and the government did not put too much effort into chasing homosexuals; at least in the examined Hungarian and Slovenian court cases, we have not encountered any stereotypical images of Soviet-type oppression one might have expected to find in state-socialist societies of the 1950s and 1960s. Nevertheless the lack of private space and being locked into the

heteronormative panopticon of the political regime, entailing surveillance of public spaces and private lives, constituted serious burdens for most homosexual people to establish a sustainable life with a same-sex partner.

In accordance with the anticlerical stance of state-socialist regimes, homosexuality was officially interpreted by following a medicalizing approach that could come in handy to clean the criminal code from the sin-centered religious discourse. However, if homosexuality was not seen any longer as the consequence of a (sinful) individual choice but as an inborn feature or a special condition that deserves medical attention, decriminalization could not be avoided for long.

Immediately after the Second World War, homosexuality was considered primarily an obstacle in the creation of the “new socialist man,” but later on it was increasingly seen as a—not (very) problematic—private matter, as long as it did not involve any youth corrupting potential and stayed (socially) invisible. According to the homosexual contamination model prevalent in both examined societies, homosexualization could happen either directly via older men seducing younger ones and turning them into additional “non-reproductive” members of society, or indirectly by demonstrating with their (socially somewhat visible) presence another kind of love and thus the potential pluralization of lifestyles.

Our study has several limitations, primarily linked to the fragmented empirical evidence we could find in the archives. We have focused mainly on ordinary homosexual members of the general population, and not those involved in the political system, because we have found much more archive material about ordinary defendants than people with some sort of political importance. It can also be expected that homosexual men in political power positions were less likely to become defendants in court cases, and the identity of defendants whose homosexuality could be used for political blackmailing purposes was often kept concealed originally by the secret police, and later often by the archivists. Despite its limitations, we believe that our study could shed light on previously unknown aspects of the social as well as legal history of homosexuality-related social phenomena in Hungary and Slovenia, especially regarding the practices and consequences of state surveillance focusing on same-sex attraction during state-socialism.

Notes

1. Several other Yugoslav republics followed Bavcon’s conceptualization of “sexual freedom.” Homosexuality was decriminalized in Slovenia on June 1, 1977. In the same year Croatia, Montenegro, and Vojvodina (an autonomous region in the north of Serbia) also decriminalized homosexuality, while other Yugoslav republics kept its criminalization in their Penal Codes until the mid- or late 1990s (Serbia until 1994, Macedonia until 1997, and Bosnia and Herzegovina until 1998). On the other hand,

criminalization of rape in matrimony union remained a “laughing matter” among some legal experts and politicians at the time. Slovenia was the only former Yugoslav republic to introduce such provision in its new Criminal Code in 1977. It should be also noted that there was never separate ages of consent set for homosexual and heterosexual practices in Slovenia; thus in 1977, the age of consent remained 14 for both heterosexual and homosexual relationships.

2. We are indebted to Ivan Todović, who collected files about court cases against homosexuals in former Yugoslavia and kindly handed over the Slovenian part of his collected data to the Slovenian author of this article for further analysis.
3. Zornik and Mirović (1996) reported on one interviewee who claimed that the list of homosexuals was marked in the police dossiers of the 1960s with the number 47 and that gay men would sometimes refer to each other as being “47.”
4. This case was annulled in 2002 at the request of two descendants of the defendants due to obvious errors in the legal procedure and its obvious political motivation.
5. In addition to criminalizing female homosexuality between 1852 and 1951, Slovenian jurisprudence shows more similarity to the Austrian than the Hungarian in this respect, too. For instance, Herzog noted the difference between punishment of unnatural fornication during the first decade of the 20th century in Austria and Hungary, where the “punishments were somewhat less harsh than in Austria” (2011, p. 37).
6. In Hungary there has been only one murder case found from 1963 so far where the defendants were presented as lesbians: two women murdered the husband of one of them, and their lesbian relationship was considered one of the mainsprings of their action.

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