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LEGALIZING QUEERNESS IN CENTRAL- EASTERN EUROPE

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Central-Eastern European (CEE) policies and discussions of the decriminalization of homosexual practices are similar to other parts of Europe, beginning in the 19th century. Same-sex sexual activity between women was not criminalized, partly because of the traditional phallogentric view of sexuality and preoccupation with penetrative procreational sex as the legitimate form of sexual activity (Hildebrandt 2014). Historical recollections of same-sex desire and acts were often sporadic and piecemeal, reflecting the desires of men rather than women, whose same-sex identifications and practices left fewer detectable marks in the public realm. The scant social visibility of lesbians can be linked to the limited social and economic resources of women in general, relative to men who traditionally had more access to public spaces. In both CEE and Western Europe, the experience of trans people has been marginalized by scholars and contemporaries to varying degree.

The history of decriminalization in the context of CEE reveals how discourses on homosexuality marginalized specific social groups, and how ideologies, particularly state-socialism (1945–1989) and postsocialism, shaped these discussions. This chapter argues how ideological shifts and disruptions did not play a crucial role in determining (de)criminalization outcomes. At the same time, ideology did play a role in how activists framed their work.

Discourses on decriminalization

Criminalization of consensual sexual practices between same-sex individuals, especially between adult men, became a contested issue in CEE in the second half of the 19th century. Before this time, any queer act transgressing the ostensibly God-given authority of the church and the monarch, and especially of non-reproductive sexuality, had been covered by the broad category of sodomy or unnatural fornication. Sodomy was one of the gender- and identity-neutral misdeeds that could be committed by anyone irrespective of their sexuality.

In the 1860s, CEE intellectuals proposed different arguments for decriminalization: the German writer and jurist Karl Heinrich Ulrichs supported decriminalization based on the idea that homosexuality was innate, arguing that men-loving men, characterized by a

certain degree of “femininity of the soul,” made up a third sex (Kennedy 1988). Austrian-Hungarian writer Károly Kertbeny, who coined the terms homosexuality and heterosexuality (Takács 2004), put forward a classic liberal argument of non-intervention by the modern state in the intimate lives of its citizens. After the unification of Germany under Prussian leadership in 1871, Kertbeny’s political pamphlets argued against maintaining the criminalization of consensual homosexual acts. However, his argument of privacy was marginalized in legal discourse.

CEE policies and discussions were shaped by shifting power structures that brought with them different legal models. Traces of legal path dependence (Asal and Sommer 2016) can also be observed particularly regarding the adoption of the Napoleonic Penal Code of 1810, based on the French Penal Code of 1791, which disregarded the criminalization of sodomy. For example, the Polish Criminal Code of 1932, also patterned on French Law, was the first to decriminalize homosexuality in Europe in the 20th century (Szulc 2017).

With the crystallization of psychology and psychiatry as medical specialties in the late 19th and early 20th centuries, the disease model of homosexuality, emphasizing its biological innateness, became widespread across Europe. The long-term effect of applying medicalized and often pathologizing models of non-reproductive forms of sexuality was that essentialist interpretations about sexuality became widely palatable, regardless of the ruling ideology.

Ideological continuities in the conceptualization of homosexualities

Comparing legislation on homosexuality under different political regimes reveals previously unwrapped complexities: contrasts and often continuities. The Soviet Union’s temporary decriminalization of homosexuality between 1922 and 1933 reflected the rejection of moral standards based on religious belief (Hildebrandt 2014), and the Bolsheviks’ passing stance that criminalization of homosexuality was a bourgeois relic. Stalinism, by contrast, “relied on an intolerant and negative view of sex,” and “for the sake of both the nation and the Communist Party” (Herzog 2011, 100) demanded self-discipline as well as marital and family stability from its citizens. This framing of homosexuality as detrimental to the nation was similar to that found in Nazi Germany, where sexual life was linked to preserving the race and the nation, and homosexuality was heavily condemned as “asocial,” with “adverse effects on the German birth rate” (Pine 1997, 122). In state-socialist societies in CEE, especially during the Stalinist period, homosexuality was perceived as incompatible with the communist healthy mores (Kon 1995). We can also observe similarities in the treatment of communists and homosexuals during McCarthyism in 1950s’ USA, comparable with state-socialist considerations of homosexuals being “unreliable elements” (Moss 1995, 230), with limited (reproductive) contributions to building state-socialism, who are easily compromised.

While female homosexuals or lesbians were still considered to be women, this was not the case for men. Male homosexuality was mostly perceived as a manifestation of “disreputable and illegal masculinity” (Healey 2002, 166), underscoring the strict boundaries and insecurities of the exclusively heteronormative scripts of Soviet-type masculinities.

Ideological approaches to legislation in post-Stalinist CEE

Almost all state-socialist countries decriminalized homosexuality in the period after 1953. Though the reasons differed, legislation was often framed in medical terms. Their

diverse decriminalization paths challenge the idea about a homogenized “bloc” ideology shared among CEE countries.

In state-socialist Czechoslovakia and Hungary, the notion that homosexuality is a pathological phenomenon was essential to the legalization of consensual homosexual sex in 1961, but the decisions were based on different medicalized approaches. In Czechoslovakia, it took place in the context of sexology research. The world’s first university-based sexology institute opened in 1921 in Prague and continued work during the state-socialist period under the leadership of Josef Hynie. He and his colleagues, including Kurt Freund, applied medical rather than criminal approaches to sexual deviations. After his failed aversion therapy experiments in the 1950s, Freund concluded that homosexuality is not “curable,” and advised counseling toward self-acceptance (Freund 1977, 239). Freund took part in organizing a legal-psychiatric seminar, where psychiatrists, sexologists, legal experts, and representatives from the police drafted a proposal against continuing the prohibition of homosexual acts, preceding the introduction of a new penal code in 1961 (Davison 2020; Sokolova 2014).

Lifting prohibition of consensual homosexuality in Hungary followed the 1958 medical recommendation of a committee of psychiatrists. The committee considered counter-arguments against decriminalization, including that homosexuality corrupted the youth, harmed family life, inhibited population growth, and may lead to homosexual marriage. The inhibition of population growth argument was quickly dismissed by referring to the general acceptance of birth control. The committee emphasized that ending criminal liability would likely limit blackmailing. They also argued that the struggle between one’s homosexual instinct and the fear of being caught and punished would lead to neurosis.

With the introduction of the 1961 Hungarian Criminal Code, consensual homosexual activity between adult men was decriminalized, and gender equality or more precisely, equal treatment regarding the perpetrator’s gender, was introduced regarding “unnatural fornication” (forms of behavior that have never been clearly defined). From this time, both men and women could be prosecuted, and a special clause prohibited “unnatural fornication conducted in a scandalous manner” (Takács 2015a). The age of consent for same-sex relationships was set at 20, considerably higher than the 14 years age of consent for heterosexual relationships.

Bulgaria decriminalized male same-sex sexual activity in 1968, and used language similar to Hungary in retaining laws against acts that “cause a public scandal or entice others to perversity” (Torra 1998, 75), and set a higher age of consent for homosexual than heterosexual sex (18 and 14 years respectively). In 1968, the German Democratic Republic (GDR) also removed the prohibition of consensual homosexual acts between men over 21 from their Criminal Code, although in practice this prohibition had been rarely enforced since the late 1950s (McLellan 2012).

Also in 1968, Yugoslav legal experts published a report in which they argued against repressive measures for dealing with “deviant sexual behavior” among consenting adults, and defined homosexuality as a “less dangerous social phenomenon” (Takács, Kuhar, and PTóth 2017, 1949). The first Yugoslav decriminalization steps took place in 1977, but only in the Socialist Republics of Croatia, Slovenia, and Montenegro and in the Socialist Autonomous Province of Vojvodina (in the northern part of Serbia, with a Hungarian ethnic minority), while Serbia did not enact legislation at this time. In Slovenia and Montenegro, the age of consent remained 14 years for all, while in Croatia and Vojvodina a higher age of consent was set at 18 years only for homosexual relationships (Torra 1998).

Romania had a different trajectory, with criminalization of consensual homosexual acts for both men and women being introduced for the first time in 1936, two years after homosexuality became re-criminalized by Stalin in the Soviet Union. The 1936 Romanian Penal Code came into operation during the chaotic years preceding World War II, when the Kingdom of Romania was more aligned with Nazi Germany than Soviet Russia (HRW 1998), and homosexuality remained criminalized through the socialist period.

Postsocialist decriminalization

The diversity of approaches to decriminalization under socialism continued under postsocialism. As the Soviet Union maintained criminalization from the 1930s until its collapse in 1990, decriminalization could start only in its successor states, including Ukraine in 1991, Estonia and Latvia in 1992, and Lithuania as well as Russia in 1993. After the dissolution of Yugoslavia, a second wave of decriminalization took place, starting with Serbia in 1994.

In Romania, the infamous “section 200” of the 1968 Romanian Penal Code (Long 1999), criminalizing public manifestations of homosexuality, was abolished only in 2001. A year later postsocialist Hungary equalized the age of consent, setting it at 14 for all consensual sexual relations, a decade after Czechoslovakia equalized the age of consent for homosexual and heterosexual sex at 15.

The diversity of the timing and forms of legalizing queerness complicates the conceptualization of (homo)sexual politics of state socialism across CEE and challenges approaching the region as a bloc. Several factors contribute to the region’s heterogeneity, including varying cultural and religious traditions, as well as democratic and economic conditions. In CEE, Orthodox Christian denominations seem to generate a more negative effect on attitudes toward homosexuality than Roman Catholic ones (Szalma and Takács 2019), but the influence of Orthodox Churches differs. Spina (2016) argues that the Romanian Orthodox Church wields more influence over their members’ beliefs and attitudes than the Bulgarian one. The importance of democratization can be illustrated by the collapse of the Soviet Union, leading to a decriminalization wave in its successor countries. At the same time, it can be argued that liberation from a semi-colonial status might also contribute to the (re)emergence of nationalist agendas, re-traditionalizing gender regimes, and in the longer term in some cases, even a form of demographically focused neoliberal governance.

Grassroots mobilizations under different ideologies

It is important to see legalizing queerness in specific socio-spatial contexts as an often lengthy and complex process rather than a one-off event of decriminalization. These processes usually included several iterations and alterations in the scope, composition, genders, ages of the (sexual) actors, as well as their—typically not at all well-defined—acts.

In fact, it can be argued that the lack of active prosecution could make legal emancipation efforts—at least temporarily—redundant. This was the case in Poland between the 1930s and the 1980s which, Szulc (2017, 91) argues, had “a more progressive legislation toward homosexuality than some Western Bloc countries” that can be linked with the lack of an urgent need for more systematic homosexual self-organization before the 1980s. Repealing sodomy laws reduced the chances of creating “queer scandals” in the press that could draw undesired public attention to criminalized queer encounters, even

though such press scandals were not a very likely scenario in CEE, where state-controlled media avoided discussion of non-normative sexualities and gender expressions. In this context, especially when considering that the social visibility of lesbian women in public spaces was more limited than that of gay men, the 1982 presentation of the film *Another Way* [*Egymásra nézve*] directed by Károly Makk, the first mainstream film in Hungary and CEE to portray a lesbian relationship, was a great breakthrough for challenging silence. Winning the FIPRESCI critics award at Cannes, it soon became a Hungarian lesbian cult film, which carved a place in public discourse for same-sex desire among women.

The thawing of official attitudes toward homosexuality did not necessarily translate into greater visibility or a more accepting social climate. Queer life in CEE and grassroots activism during state socialism was characterized by the precarious coexistence of homosexual identities and the constraints of everyday life, including limited access to private space, the surveillance of public spaces and private lives, along with limited opportunities for self-identification (Long 1999; McLellan 2011, 2012; Sokolova 2014; Takács 2015a).

Until the end of the 1980s there was no officially recognized homosexual movement in CEE, where besides the general constraints on individual self-expression, communist parties prohibited the formation of any kind of NGOs. The history of the first organized homosexual groups in CEE was divergent, depending considerably on the harshness of prosecution of homosexuality. Despite official restrictions in some countries, including the GDR, Hungary, and Poland, activists organized their movements within the confines of state socialism, instead of opposing or hoping to undermine the system. They met in private parties organized in bigger apartments or in spaces rented for other purposes, such as for movie nights (Kurimay and Takács 2017; McLellan 2011; Szulc 2017).

The collapse of state socialism in CEE after 1989 opened opportunities for mobilizing queers in their home countries as well as—rephrasing Szulc (2017)—“transnationalizing” homosexuality by (inter)connecting formerly unconnected people and products, including cultural representations, leading to potential acceleration in various sexual and gender identity formation processes. These changes resulted in an expansion in the volume as well as diversification of activism, from a homosexual toward LGBTQI+ movements since the 1990s. The seedlings of this expansion had already been planted in some places several years before. In Hungary, for instance, where one of the first formal homosexual organizations of CEE, the Homeros-Lambda National Association of Homosexuals, was registered in 1988, the increasing visibility of the movement was not primarily a result of democratization or a crisis within state socialism. Instead, it was the considerable agency of Hungarian homosexual activists in navigating space within late socialist Hungary, and the emergence of HIV/AIDS, that worked as a catalyst that transformed the Hungarian homosexual subculture into a more organized gay and lesbian movement (Kurimay and Takács 2017).

The emerging LGBTQI+ movements in CEE and elsewhere tried to problematize the ways in which sexuality and gender—of their members and in society at large—shaped social inclusion and exclusion mechanisms, and in many cases prevented the enjoyment of full citizenship rights. In former state-socialist countries, citizenship in general, referring to rights and practices in the public sphere and “intimate citizenship,” dealing with the “rights, obligations, recognitions and respect around those most intimate spheres of life—who to live with, how to raise children, how to handle one’s body, how to relate as a gendered being, how to be an erotic person” (Plummer 2001, 238), in particular, evolved slowly and with disruptions deriving from their semi-peripheral condition and the democracy deficit accumulated especially after World War II. Recent European

empirical findings indicate that individual perceptions of democracy deficit, expressed in CEE countries, can contribute to a homophobic social climate, while satisfaction with the functioning of the democratic system can contribute to an increase in the social acceptance of lesbians and gays (Szalma and Takács 2020).

Movements and *EU*ropeanization processes

In the post-Soviet era, the Council of Europe and the European Union (EU) have become important agents of change toward the legal emancipation of LGBTQI+ people, expanding equality issues beyond gender, and mainstreaming LGBTI+ rights in the EU policymaking processes (Hildebrandt 2014). *EU*ropeanization could provide much needed transnational resources, such as organizational capacity, for mobilizing NGO-based activism in resource-poor environments but interaction between *EU*ropeanization processes and domestic norms could result in various outcomes in different CEE countries (Ayoub 2016). For example, for Polish lesbian and gay activists, entering the EU meant an opportunity to be fully recognized, while their opponents saw it as “a threat to Polish sovereignty combined with an opportunity for Poland to introduce ‘Christian values’ to EU politics” (Ayoub and Chetaille 2020, 22).

By the time eight CEE countries became members of the EU in 2004, sexual orientation had already developed into a protected category with anti-discrimination rights attachments (Stychin 2001). However, the *EU*ropean values were shaped by the founding members and the old EU member states, and latecomers received them as part of a ready-made package deal. Kulpa (2014, 432) argues that this passive receiver role was rooted in a “didactical and cultural hegemonic relation of power, where the CEE figures as an object of West/European pedagogy. [...] the CEE is somehow ‘European enough’ to be ‘taken care of’, but ‘not yet Western’ so as to be allowed into the ‘First World’ club.”

The still ongoing *EU*ropean(ization) project has been criticized by activists and scholars for promoting a homonationalist Pink Agenda (Ammaturo 2017), elevating “certain forms of gay activist engagement and, perhaps also non-heterosexuality, more generally, to a measure of democracy, progress, and modernity” (Bilić and Stubbs 2016, 233). At the same time, while homonationalism is often portrayed by scholars as being closely connected to Islamophobia, in CEE there are alternative racialized and sexualized Others that deserve attention, especially in local contexts with long histories of anti-semitism and social exclusion targeting the Roma people.

In postsocialist societies that have been characterized by dynamics of re-traditionalizing gender regimes and the mixing of late modern commodification with nationalism, the social acceptance of gay, lesbian, and trans people is often portrayed as a desirable European or western value by local LGBTQI+ communities, and at the same time as an undesirable foreign import by nationalists who try to evict homosexuals and homosexuality from their nation (Moss 2014). The strategy of portraying homosexuality as alien to the national culture has been an evergreen in nationalist heteronormative discourses. In postsocialist Romania, the reluctance to decriminalize homosexual relations derived from essentialist assumptions about homosexuality being “alien and threatening to the family and religion oriented Romanian way of life” (Nachescu 2005, 130).

Anti-gender movements have mobilized across Europe, triggered by concrete policy proposals such as the introduction of same-sex marriage in France, or as a preventive measure to avoid the implementation of such policies in the future, for example in Croatia and Romania (Paternotte and Kuhar 2018; see Graff, Chapter 26 in this *Handbook*). The concept

of genderphobia describes the strategic avoidance of breaking gender(ed) norms in institutional settings and in everyday life (Takács 2015b). Genderphobia can be institutionalized (e.g., banning gender studies from higher education) and often internalized. It is a conceptually broader and more neutral term than homophobia, to be interpreted as a specific subset of genderphobia, partly because social rejection of lesbians, gays, queers, and non-heteronormatively aligned others, seems to be part of a broader gender belief system based on assumptions about (hetero- and cisnormative) procreation-centered and often deterministically distinct paths of women and men in society.

Genderphobia targets trans people, often framed as threatening the heteronormative binary gender system by their mere existence, and thus they can encounter hostile interpersonal and social reactions (Kuhar, Monro, and Takács 2018). Trans communities increasingly face organized resistance against gender equality and intimate citizenship by anti-gender movements attacking the straw man of gender ideology, a multi-function enemy that can be shaped in different ways to fit into a political protest to protect allegedly endangered traditional family values. Because of their particular economic and social marginalization, transgender communities have been able to develop activist networks with increased difficulty.

Trans and gender variant people have historically been—and to a great extent continue to be—largely invisible in CEE, where state institutions were for a long time highly reluctant to deal with trans issues. In postsocialist CEE, a lack of systematic legal protection and healthcare provision is a crucial aspect of trans citizenship. Yet questions remain whether it is just transsexual men and women’s citizenships that are sought, or citizenship rights for all gender variant people, which would entail fundamental changes in the social categorization systems of sex and gender (Kuhar, Monro, and Takács 2018).

Conclusions

Queer legalization in CEE refers to complex cultural processes that made non-heteronormatively aligned queer lives increasingly possible at different—individual, interpersonal, and social—levels by creating (social) space and at least some (political, legal) recognition for sexual and gender diversity. These processes provide insights into how concepts and variations of being queer traveled between countries, regions, and within national histories.

This chapter challenges the idea of treating the region as a bloc by showing significant diversity within CEE regarding the timing and forms of legalizing queerness. Local developments were guided less by ideology than by country-specific sociocultural conditions, and individual or ego-network actions. These reveal that ideological shifts and disruptions cannot determine (de)criminalization outcomes as a rule, which can further complicate the conceptualization of (homo)sexual politics of state socialism across CEE.

Steps toward decriminalization took place under authoritarian state socialist governments. Medicalized approaches to sexuality at least in some CEE countries contributed to lesbians’ and gay men’s ability to navigate within a paternalistic state-socialist system predicated on socialist (heterosexual, cisgender) homogamy that shaped both public and private life.

Recent research findings indicate that hostile social attitudes can be unlearned, especially if this process can be supported with practical policy developments strengthening LGBTQI+ rights (Szalma and Takács 2020). At the same time, the democratic decline resulting from resurgent authoritarianism “hybridised with neoliberal capitalism” (Bilić

and Stubbs 2016, 245), which is present in an increasing number of countries in CEE and elsewhere, questions the link between improvement of attitudes and the democratization process, often envisioned as a linear development. Recent policies in CEE, such as ending legal gender recognition for trans people in Hungary by introducing an unalterable sex-at-birth record in the civil registry, proposed and rapidly introduced in the midst of the 2020 COVID-19 pandemic crisis, point to the community-mobilizing capacity of LGBTQI+ rights. These developments also underscore the need for intersectionally sensitive analyses of genderphobia, and intimate, sexual and trans citizenship, that recognize decriminalization as a broad, multilayered process.

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