Ivan Tomović

INVISIBLE PERSECUTION

HOMOSEXUALITY UNDER SOCIALIST JUSTICE

Crna Gora
VRHOVNI SUD

DEPARTMENT OF STATE
UNITED STATES OF AMERICA

lgbt forum PROGRES

NASTAVAK ZAPISNIKA

SA OSUMNJIČENIM [redacted], sastavljen dne 27.VI.1949.

S kime ste održavali homoseksualne odnošaje?

U maju mjesecu 1947.g. imao sam odnošaj sa [redacted], stud.philosophie i to oko 3 puta. U 1948. godini sa [redacted] jedan puta i jedan puta sa [redacted] dok u 1949. godini nekoliko puta sa [redacted] Odnošaj je bio sa obostranim pristankom i na nikakvoj materijalnoj osnovi. Spomenuti su bili u aktivnom odnosu, a ja u pasivnom radi impotencije. Takodjer jedanput sa [redacted] u 1948 godini.

Koliko mi je poznato privatne kućne zabave se često priredjuju. Ja sam svega jednom jednoj prisustvovao i to kod [redacted], kojega sam upoznao preko [redacted] taj se predstavio kao student medicine, medjutim kasnije sa saznalo da je šnajder i kradljivac. On je jednom pozvao k sebi u stan oko 10-12 ljudi i tom prilikom je trebalo Kratkovića izabrati za "kraljicu" i obaviti tzv. krunisanje, medjutim to se nije obavilo. Prisutni su bili: [redacted], neki [redacted] artista, [redacted] i ja. Svaki je uložio 100dinara i za taj novac kupilo se vino i kad se je popilo išlo se je kući, a neki su se i ranije razišli. To mi je bilo prvo i posljednje da sam prisustvovao takvoj zabavi.

P r e k i n u t o.

Saslušani:


U.S. EMBASSY
DEPARTMENT OF STATE
UNITED STATES OF AMERICA
PODGORICA

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Podgorica
2014.

DECONSTRUCTING THE UNFAIR PAST

The book *Invisible persecution: Homosexuality under socialist justice* of the PhD student Ivan Tomovic, represents a key contribution to a final establishment and development of the Montenegrin LGBT historiography.

The joint publishing project of the Supreme Court of Montenegro and "LGBT Forum Progress" with the support of the Government and people of the United States, and Tomovic's work in general promote the rule of law and the approach of society when facing policy and practice of violation of human rights in the past.

Scientific and research work of many years, particularly presented in the book *Invisible persecution: Homosexuality under socialist justice* provides the truth-telling about the past.

By consulting the authentic resources the author, MA Ivan Tomovic, has made an effort to present proper historical facts about conducted court proceedings in order to make today's public (especially experts and decision makers in all forms of authority) face the sources of today's situation and the consequences of an earlier, poor, practice and treatment.

The book, with the reservation that a number of individuals were victims of persecution on the fictional grounds (for some examples is very doubtful that it was really the case of homosexuals) raises the question of legal relation and treatment, in one historical moment, of the freedom of choice and love. For the significant part of the public that political moment, even today, is seen as a highly advanced, positive and progressive.

This work discusses and presents historical, social, legal and personal experiences related to intolerance of intimate relationships between same-sex persons. This work confirms and makes visible the existence of criminal law repression of the LGBT community in the former socialist Yugoslavia. However, a careful reading will confirm the existence of individuals, on the same territory, who kept their identity, dignity and freedom in almost impossible conditions.

The intention of the publishing production "LGBT Forum Progress," the first Montenegrin transparent LGBT organization, is to contribute carefully, politically wisely but always followed by scientific arguments, to a gradual removal of Montenegrin society, in a general sense, from the concept that instead of promoting openness, tolerates secrecy.

Through his research of this subject, Tomovic faced human destiny. Therefore many essential questions were raised in Belgrade, Zagreb, Sarajevo, Ljubljana, Cetinje, Podgorica, Niksic and Herceg Novi. These questions are matter of transition of desire, need and love in sexual and gender identity, in personal identity which confirms human dignity and eventually gives the only possible meaning to life.

A part of the cause of the dominant public's perception of homosexuality and causes of such strong public's opposition to a social acceptance of LGBT people should definitely be related to an earlier criminal legal practice which represents the heritage of the former totalitarian system.

Therefore, both professionally and personally, I consider this book *Invisible persecution: Homosexuality under socialist justice*, by the author MA Ivan Tomovic, PhD student of the State University of Rome, a symbolic and visibly strong contribution of the LGBT community to a deconstruction of heritage and legacy of the former communist regime.

I am proud to be an editor of the publication of Tomovic's work. I feel proud of his success as well as of the success of the LGBT movement. Thanks to this work, Montenegrin LGBT movement proves to be a true liberation movement, in the truest sense of the word, which focusses quietly, patiently and democratically on questions of identity and social inclusion.

Only a state based on the rule of law and fair treatment for everyone, regardless of differences, has a future and is safe from new totalitarian threats.

With a permanent commitment for independence of the judicial authorities, we are confident that this study can, in a certain way, help Montenegrin and regional judges understand LGBT themes, improve the quality of justice and assist in implementing the justice in accordance with national and international standards.

MSci Aleksandar Sasa Zekovic,
Library editor and chairman of the board of the Project
"Improvement of the judicial system"
Member of the Council for Civic Control of Work of Police

Moderna medicinska nauka objašnjava pojavu homoseksualstva kao nenormalnu pojavu u seksualnim odnosima .Nesumnjivo je da se ta nenormalna pojava pojavljuje i razvija u uslovima propadanja jedne k. se.Poznato je da se homoseksualstvo razvijalo i pojavljivalo medju burž askim elementima i da ona znači degeneraciju.Naši narodi oslobodjenjem izveli su socijalnu revoluciju u zemlji.No mi smo takodjer nasljedili znatne ostatke bivšeg kapitalističkog društva, koje se ni u socijalistič kim uslovima nije moglo odreći svojih navika.Naprotiv,buržoaski elementi u odnosima seksualnom i dalje su podržavali i gajili razvratne seksualne odnose, koji negativno utiču na okolinu . Istina opt. [redacted] nije vrši te odnose na taj način da bi to bilo pristupačno javnosti,ali grupa nje govih prijatelja koja je s njim stupala u odnose bila je dosta široka i na kraju krajeva o tome se u javnosti zna.Svakako da takova djelatnost nemoralno utiče na omladinu, pa ovaj sud smatra da su u radnji optuženog sadržani svi elementi krivičnog djela.Takova djelatnost je društveno op sna,pa ju zbog toga treba i kažnjavati, da bi se na taj način onemogučil Zbog toga je sud optuženog proglasio krivim kao u dispozitivu.

Opt. [redacted] u pogledu djela pod II -1/ djelo por če u cijelosti i brani se da on nije nikada imao namjeru da prelje grani cu. Priznaje da mu je opt. [redacted] jednom prilikom pričao da ima namje ru preći granicu i da mu je pri[illegible] da ima namjeru preći sa nekim drugima Također priznaje da mu je opt. [redacted] pričao da bi granicu prešli prerušeni u seljake i da bi u tu svrhu trebali obrijati bradu. Brani

I. Introduction

This research aims to demonstrate the treatment of homosexuals by the Yugoslav socialist regime, especially its judicial system. The attention of many western researchers has been focused on the conditions of homosexuals during the World War II, but the same experiences in Yugoslavia afterwards have been completely neglected. Still many people think that Yugoslav regime did not take any position against homosexuals. However, these opinions are based solely on prejudice and not on precise data or historical sources. The fact that it has never been made any kind of systematic research on this issue, makes more difficult finding the material of interest. Since there are no points of reference or secondary sources, the work will be enriched with the experience gained during the research. While there are numerous sources that affirm the existence of persecution by the fascist regimes (such as Croatia during the war) and several autobiographical works and systematic studies on the status of homosexuals in Germany during Nazi regime, the evidences of legal persecution in the former Yugoslavia after the war are still lacking or are not available. During the first part of my research, I found various criminal records that testify the treatment of homosexuals. Most of the cases concluded with imprisonment and loss of civic rights.

II. From World War II to decriminalization of homosexual relations

Before analysing the verdicts and charges after the Second World War, it is necessary to point out the relationship between partisan or early Socialist movement and homosexuals.

The first signs of how partisan movement treated homosexuals are given by the war memoirs of one of the key figures of this movement, Milovan Djilas, a Montenegrin who was in the highest positions of Communist Party and the Yugoslav partisan movement (Vuletic, p. 317). After the war, he had an important position in the Yugoslav government, but he was fired in 1954 and a few years later he had to face imprisonment for criticizing the Communist system and was banned from traveling.

In one passage of his memoirs "The Revolutionary War", Djilas described how homosexuals were forced to abandon the Communist Party because of their sexuality. One day the secretary of the Committee of the Sandzak, Rifat Burdzovic confessed to Djilas that some soldiers had revealed a homosexual behaviour of a Muslim guy, a good soldier and Communist (Djilas, p. 58). While Burdzovic was uncertain whether or not to assassinate this soldier, Djilas's attitude leaves us a bit 'puzzled':

"Neither do I know the practice of the party, nor had I any information on these issues by Marx and Lenin. However, following my conscience, I have concluded that not only the bourgeois were decadent, but also the workers may suffer from such

defects, but that these offenders may not exercise public functions, or be party members. In this way we reacted: Burdzovic ordered the soldier to leave the party, but also discreetly informed the headquarters to keep an eye on him. I later learned that this soldier, apparently very masculine, was a brave man who has fallen in audacious way... If someone occupies an important position, it becomes larger the meaning of what is less important, the glory is larger, but also the errors..." (Djilas, p. 58-9)

Djilas is proud of this soldier, but more for its partisan and communist characteristics, than for some special concern about the difficult situation caused by his sexual orientation. For him, homosexuality is a defect that cannot be and should not be tolerated either in the party or among the leaders of the partisan movement, but those who were "affected" were still able to remain among the partisans and "fall bravely" for the socialist Homeland. This brings us to the hypothesis that due to the severe conditions of the war the partisan leaders were slightly more tolerant toward gay soldiers, but they remained rigid within the party. Finally, the confusion of Djilas regarding the relationship between the party and the views of Marx and Lenin on homosexuality, suggests the possibility that leaders of the party wouldn't have probably reacted in the same way in similar cases, and that they could have been more or less tolerant.

This example offers the first known position of the Yugoslav Communist Party toward homosexuality, that is based on intolerance, ignorance and lack of decision. However, the political system, established shortly after the war, will soon show its hostility to homosexuals and to anyone who was suspected of practicing „unnatural consensual sexual intercourse".

Likely to other former communist countries of Eastern Europe, police harassment and repression of homosexuals in Yugoslavia was committed during the period from '40s until the end of '70s. There is a testimony of B.J. who talked about how homosexuals were arrested, imprisoned and executed throughout Yugoslavia (Globus, January 1999). However, I have not been able to demonstrate with archival sources any information that came out in the Croatian magazine "Globus" which spoke of the executions and capital punishments. It was written that in Dubrovnik some men convicted of homosexuality were subjected to public stoning. In addition, the most violent persecutions were apparently practiced in the city of Rijeka, where homosexuals were tried and finally assassinated. It is however true that along with others who were considered enemies of the system, homosexuals were imprisoned in the concentration camps of Nova Gradiska and Goli Otok. Many of those who feared such fate, committed suicide or escaped from Yugoslavia to Western Europe or America. This persecution did not stop at the end of '50s, as previously thought, but after that a law has officially criminalized consensual male homosexuality with imprisonment of two and then a year in 1951, according to Article 186, paragraph 2, of the Criminal Code of SFRY.

Unfortunately, the sources are not often well preserved because of the various displacements of the archival material, their destruction and bad cataloguing.

Thanks to the criminal records I was able to demonstrate the amount of convictions according to Article 186/II, the data of convictions and the final sentence. In many cases I have also come into possession of entire criminal proceeding material.

It is also important to understand if some of these sentences were used as an excuse for the elimination of political enemies. This can be better understood thanks to profession and the role that the prisoners used to exercise in society. However, it is not always easy to identify people who practiced so called "forbidden sex".

In the 70's in some republics the persecution tendency appeared to be occasional, but the sentences were more realistic and were attributed only to "unnatural" sexual practices.

The most surprising data is the increase of convictions in the 80's in Serbia, as well as those for consensual and "forced unnatural sexual intercourse". Therefore, it is perhaps appropriate to seek reasons for deep homophobia in Serbia today and even a lack of political will to ensure the basic human rights to the LGBT community.

Although, the persecution of gays intensified in the first decade after the war, there was some improvement especially in the legal and social level over the next few decades. Gay and lesbian movements in the West were more noticeable and visible in the 60's and 70's. At the same time, the Yugoslav social and political scene was flooded with movements for reform in the economic, political and social aspect of life. At the end of the '60s, many students in Belgrade protested for the improvement of living and political conditions. 1971 Student protests in Zagreb were the culmination of the „Croatian Spring" - a period between in 1968 and 1971- when several groups, including students, intellectuals, politicians and workers joined a „mass movement", who sought independence for Croatia within the Yugoslav federation. However, Tito managed to quell the protests using the method of government based on partially balanced and satisfied interests of all parts of the federation.

The changes to the Yugoslav constitution of 1971, and the new constitution of 1974 gave much more power to the republics. These reforms have allowed each republic the opportunity to make their own laws. As a result of this, the legal situation of homosexuals in Yugoslavia was significantly changed at the end of the '70s through the constitutional and legal changes that have shifted the responsibility and legal regulation of sexual acts from the federal center to the republics.

The discussion of changes in legislation related to sexuality issues was firstly conducted in Slovenia. In 1974 during the conference of the Association for the Yugoslav Criminal Law, Ljubo Bavcon, a law professor at the University of Ljubljana and president of the Commission for the adoption of a new Criminal Code of the Republic of Slovenia, with whom I've already had the opportunity to make a long interview, suggested for the first time the decriminalization of homosexuality.

In new criminal law, which came into force in 1977, Croatia, Slovenia, Montenegro and Vojvodina decriminalized the homosexual consensual act between two male adults. However, while Slovenia and Montenegro have introduced the age of 14 as the age limit beyond which people can have both heterosexual and homosexual relations, Croatian criminal law established the age of 14 for heterosexual intercourse and limited the homosexual one to the age of 18. Moreover, in the Croatian Criminal Code there were still used a terms "sexual immorality" and "unnatural sexual act" to refer to sexual practices among people of the same sex, while in Slovenia the phrase "sexual acts between persons of the same or the opposite sex" was used. Homosexual

acts between men were outlawed in the criminal law of Bosnia and Herzegovina, Kosovo, Macedonia and Serbia, which together with Romania and the Soviet Union were the only Eastern European countries where the homosexuality was still criminalized.

It is interesting to note that Belgrade and Zagreb are the capitals with the highest rate of persecution in relation to the number of inhabitants. Although in the '50s there were more convictions, in the period preceding the decriminalization in Croatia (1978) and Serbia (1994)[1] appeared many accusations against homosexuals. Yet, it had to pass many years until the minimum age for consensual homosexual and heterosexual intercourse was equalized. However, in the Croatian and Serbian legislation a definition of the unnatural and immoral relationship disappeared completely only a decade ago.

Surprisingly, today most progressive country in terms of human rights, Slovenia was involved in these persecutions and in Ljubljana there were over fifty processes in the '50's and '60's, of which more than half ended with the sentence in prison, and the other were prosecuted as misdemeanours or minor offenses.

The reason that there were no many sentences in Montenegro lies in the mentality of the people who had no courage to denounce sexual acts. While in Croatia and Serbia, there were many more convictions for child abuse, in Montenegro it remained in secrecy and only small amount of cases were taken to justice. Nevertheless, there were some convictions in the early '50s. Due to the lack of criminal documentation, I managed to find only the personal data of convicted persons to the Article 186 in the 70's. Sarajevo has many points in common with Montenegro, both with mentality and the strong presence of traditional and patriarchal manners, responsible for the lack of legal transparency.

III. Indictments and convictions of Montenegro and the region:„enemies or deviant individuals"

In a research that included all former Yugoslav republics, a large number of accusations and verdicts against homosexuals were found. It was concentrated mainly in the capitals or larger cities and it included the period from 1946 to 1996, i.e. the period of criminalization of homosexual relations in former federal Republics. In addition to state and national historical archives, it is interesting that a large number

1It is interesting that at the beginning of 1900 the Laws of the Kingdom of Serbia and the Principality / Kingdom of Montenegro did not criminalize homosexuality. In 1986 at the Congress of the Communist Party, Jovan Cirilov, a Serbian writer and director of the Yugoslav National Theatre, called for the abolition of all anti-gay norms, although all were declined. In Serbia, homosexual acts remained illegal until the 1994, when it was decriminalized during the regime of Slobodan Milosevic. This is actually very emblematic fact, especially if we take into account the repression that Milosevic committed to the detriment of ethnic minorities, including sexual ones. (Campaign Against Homophobia, Annual Report: January 1998. - January 1999 - ILGA Europe).

of documents was found in the archives of basic or municipal, district or high, and to a lesser extent, supreme courts. Of great importance was the holding of the Presidium of the People's Assembly and its Amnesty Commission that was replaced in the '60s by Federal Executive Council.

During the '40s and early '50s in Yugoslavia, it seems that most of the judgments that appeared at the district or high courts, until their definition as crime with the introduction of new Article 186 in the Criminal Code in 1951, finished at supreme courts. The reason is in the fact that the judgments pending the Art.186 CC, that were brought to a fairly loose link with the laws of the Kingdom of Yugoslavia, provided draconian penalties with even twelve years of imprisonment. Those verdicts were based on very arbitrary interpretation of the legal heritage of Kingdom of Yugoslavia.

As a result, in the conditions prevailing at that time, many judicial decisions were brought with literally draconian penalties that represented human tragedies. One of the convicts committed a suicide during the second year of imprisonment. However, the trouble for researcher to determine condemned people and find the corresponding crime lies in the fact that these accusations were generally placed at the end of the list of crimes for which people were convicted, due to the unclear legal definitions of offenses and penalties. Therefore, in most cases, elements, such as illegal border crossing, smuggling of goods that were lacking, political propaganda, embezzlement, treason and related offenses, were put in the beginning of the list of accusations. „Unnatural fornication" was not easy to identify because it was often labelled as offense against public morality, that also included crimes such as: rape, sexual abuse, paedophilia, marriage adultery and so on.

In Montenegro, several sentences before the end of the 40's and early 50's were found due to the fact that those were often brought back to Supreme Court or the Presidium of the People's Assembly of the FNRY. After the adoption of Article 186 in the Criminal Code of Yugoslavia, it was not possible to find a significant number of indictments because they were usually solved at the level of municipal and rarely higher courts.

Given the fact that Article 186 foresaw fines and imprisonment up to one year with the loss of civil rights, this crime was labelled as a lesser offense and most of its records were eroded and destroyed after certain number of years.

It was possible to come across the occasional judgments, with very few data available from the trial, testimony records and other details. Criminal registers and record files, found mainly in the archives of the High Court in Podgorica and Supreme Court in Cetinje, helped to a great extent to determine number of convictions and accusations. Unfortunately, even these records were destroyed and it was not possible to investigate systematically a period of interest and make a general conclusion about the status of homosexuals in Montenegro.

However, despite the assertions of some sociologists, researchers and professors who agreed that homosexual relations were not punished in Montenegro, data from the criminal registers and archive holdings proved the existence of such convictions.

At the archive holding of Presidium of the People's Assembly of Montenegro, 1946-1951, several sentences, testifying judiciary dealing towards gays, were found.

A) Convictions - cases from Montenegro

i) Homosexuality „worse" than syphilis?[2]

In the criminal case No. 270/1949 of the District Court of Herceg Novi a sentence against S. S. From Herceg Novi was passed for performing „*unnatural fornication*" activities as „*active and passive pederast*" during 1947, 1948 and 1949.

Syphilis infection was added as aggravating circumstance, but the main reason of the judgment was an act against public morality, or performing „unnatural sexual acts" with different people. There is also the information on other three persons condemned to a lower sentence for the same reason, but without any details on the amount of fines or imprisonment.

Given that these were the files transmitted within the application for a pardon, only a certain part of this criminal case arrived at the Presidium of the People's Assembly, which means that it was not possible to get detailed information on the process of determining evidences or statements of testimony during the trial.

As it has been already mentioned, this case implies the imposition of draconian penalties, because there was no specific article of a law that would prosecute the offense.

Defendant S.S. was sentenced to two years in prison with the loss of civil rights, and he was denied twice the application for a pardon. Significant number of details about the judgment and its progress can be identified from the letters that convicted sent to Presidium.

The convicted, in his application for a pardon, stated that he committed criminal offense of „unnatural fornication" under the pressure of natural anomalies that he could not reject. „*He points out the awareness of the disgust of this crime and his advanced age, that will an end to this anomaly, that was a burden during his life, because the nature had sufficiently punished him when he was brought into the world with these unnatural and disgusting preferences*." In a letter of September, 18, 1949, convicted reminded the details of the District Court trial in Herceg Novi during which it was found that from his early youth, he was affected by natural defect, „*the inability of normal sexual relationship with the opposite female sex*". He also pointed out that all his life he felt unhappy because of his „*abnormal tendencies*". In this regard, he requested the health - protection measures rather than punishment, arguing that such measures were specified at the Criminal Code. The convicted considered him ill and believed he should have been guaranteed medical treatment, not only because of syphilis, but also his homosexuality. The court refused his requests and confirmed a sentence of two years in prison.

Before submitting his appeal to Presidium, the Criminal Chamber of the District Court in Herceg Novi expressed an opinion according to Article 5 of the Law on guarantying amnesty and pardon.

2 State Archive of Montenegro, holding: A.1.5.74 Prezidijum Narodne Skupštine NRCG (1946-1952) (Presidium of People's Assembly of Popular Republic of Montenegro, Strogo povjerljiva akta (Strictly confident acts), 1949, file. 18, No. 952/49.

The Chamber declared that the appeal should not be approved due to the nature and gravity of the offense and *its social danger*. The confirmation of the judgment was: „1) according to the judgment K.45/49 of June, 10, 1949. this court found the defendant S.S. guilty as, though aware of syphilis infected, during 1947, 1948 and 1949 he repeatedly sodomized with a Dj. B. as active and passive pederast infecting him with syphilis, and with other unknown persons to this court, exposing them to dangers of infection; 2) during the period from January, 14 1949 and April 18 of the same year the defendant performed repeatedly sodomized acts as a passive pederast with third charged M.S. thus exposing him to the risk of infection. The verdict is entirely confirmed by the judgment of the District Court in Titograd Ca. 180/49 of July, 30 1949."

A month later of the sentence confirmation, after 20 months in prison, on a new application of pardon , the Presidency of the Presidium of the People's Assembly, according to Article 1 of the authorizations of the Presidium of the People's Assembly NRCG, and in relation to Article 2 of the Law on granting amnesty and pardon in the People's Republic of Montenegro, made a decision which did not accept any appeal to the convicted for a criminal offense „unnatural fornication in concurrence with the criminal offense of sexual infection".

It can be concluded that the Court easily prosecuted this crime, and it considered the infection of sexually transmitted diseases as an aggravating circumstance. However, this case allows us to see how people with different sexuality were treated. The Court did not take into consideration the offender's request for treatment, although the terms such as anomalies, deviations, unnatural fornication, were used in the verdict itself. Within this case, it was possible to get the information about two other men convicted for having sex with the S.S., despite the lack of details on the sentence and the court proceedings.

S.S. belonged to the bourgeois intelligentsia, a prominent and wealthy family that has left a significant mark on the development of local life. The available documentation specifies that he was a member of an ethnic minority. The review of the District Court of Herceg Novi, dated on September 20th, 1949, says about him, among other things, that *"during the occupation he behaved in a good manner, and after the liberation too, he did not run away during the liberation."*

It is important to point out that there was no registered medical documentation in any case which could confirm the existence of the sexually transmitted diseases, or that judicial authorities call upon it in the case that it was not stored, and there is no sign that the defendants and convicted persons, or witnesses were treated indeed.

ii) The political misfit or „deviant individual"? [3]

3 State Archive of Montenegro, holding: A.1.5.74 Prezidijum Narodne Skupštine NRCG (1946-1952) (Presidium of People's Assembly of Popular Republic of Montenegro, Strogo povjerljiva akta (Strictly confident acts), 1949, fasc. 18, no. 1281/49.

According to verdict K.141/49 of District Court in Niksic from November, 3 1949, R.V. was found guilty „*because on the undetermined night in 1949, ended up with a witness K.R. in the same bed with his approval, situated in the hut of a car park in Niksic. He immediately began to rub the beard on his face, hug him and grab him for his penis, and then required him to have an intercourse with him with the intention of satisfying his sexual urge, and thereby committed a criminal offense „unnatural fornication". For the alleged offense, the Court sentenced him to five months of correctional labour and payment of fine of 500 dinars.*"

From the judgment we become aware of the fact that the convicted was on remand from October, 10, 1949 to October, 10, 1949. On December the convicted sent a request for pardon to Presidium of the People's Assembly. In the long letter he tried to prove his innocence, indicating awareness of the people of that time and its consideration of homosexuality as a most shameful act.

Unlike the previous case, this defendant did not admit that he was a homosexual, and insisted that the entire scene had been *a setup*.

Given the fact that only relevant documents were sent to the Presidium, there is no access to the investigative material, but the letter shows the procedure for the flow of evidence. It was completely ordinary trial during which a number of witnesses were called. Moreover, several sessions of the Council of Judges were hold.

Specifically, the letter stated that on August, 10 on the road to Niksic with his truck he stopped in the place where the headquarters of the General construction company was situated, and asked for lodging at the guards. At that time he was approached by K.R. and offered his the accommodation in his room, where allegedly other two men had been already sleeping. He said he slept all that night and in the morning was ready for work. Afterwards, it was almost every day he had been going to that place, but argued: „neither he nor anyone else could say anything, nor didn't have to say, because if anything of this what said K.R. was true, he would have called his fellows M.K.. and K.R., as they were sleeping in the same room with K.R, which was beyond any doubt."

After more than a month, the defendant was called for an interview with the director of the company, who confirmed what K.R. was talking about him, to which R.V. insisted to face K.R. When K.R. met him, reportedly he said that the R.V. was lying down next to him when he grabbed him by hand and rubbed his chin, and nothing else. The defendant then claimed that it was a big lie and that he would sue him for libel, on what K.R. reportedly shook hands with R.V. in a gesture of reconciliation. The defendant relied on the testimonies of those who were present on that occasion and confirmed his statement. It further stated:

„The fact that K.R. apologized and shook hands with me, and that in the same room their friends M.K. and other K.R. along with testimony that K.R. was sleeping, is a proof that everything against me was false and was made in bad faith in order to accuse me of the most shameful act, that is the biggest burden for my soul, because nobody have heard of something similar in Montenegro so far. In addition to this, I am married, 45 year old with three children, and this shameful accusation falls on my family and the entire fraternity and their unblemished honour and past. I also declare that a half a

year ago, when I worked in Bracanac I was constantly among the workers and slept in the barracks, so if I were that kind of person like I was untruthfully described by K.R., someone would have recognized me before K.R.(...)"

„(...) After all, I kindly ask the Presidium of the People's Assembly to release of forced labour for which I was convicted by the final judgment of Municipal Court in Niksic."

Before the Presidium announced its decision, District Court of Niksic expressed an opinion that did not pardon correctional labour for a period of five months justifying it with following words: *„ Considering the reasons stated in the appeal, as well as all the evidences in this case, the Court is of the opinion that the convicted R.V. should not be forgiven for such shameful and unnatural acts*."

Surprisingly, the Presidium gave a different opinion, in terms of providing partial pardon to the convicted which reduced his sentence from five to a period of one month of forced labour. However, after the correspondence with the Court and Ministry of Justice, on January 27, 1950 Presidium Presidency issued a decision to disregard any pardon to R.V., convicted by the District Court in Niksic, no. K. 141/49 on November 3, 1949.

These hesitations and different opinions were not typical of the criminal proceedings conducted in that period, especially at the level of the supreme authority for Amnesty and pardon, such as Presidium. It remains the open question whether the acts of the so-called „unnatural fornication" were punished in the absence or insufficiency of evidence, only because it was considered *„the most shameful act, dangerous for society*", or it was used to eliminate or discredit political enemies and traitors of regime. If we consider that the convicted R.V. was recruited in Chetnik's movement during the occupation, and that he was denied the right to vote because of his active participation with Italian occupiers during 1944, the real cause of his conviction is more ambiguous especially due to perseverance of judicial authorities in confirming the judgment, based on solely evidence of K.R. testimony.

Bearing in mind that for many charges for minor offenses such as slander, libel, minor theft or bodily injury, or even embezzlement on duty, the convicted were often pardoned by the Presidium, and then by Supreme Court or the Executive Council, acts of „unnatural fornication" were quickly and efficiently prosecuted, and convicted persons were rarely pardoned in terms of reduction of sentence. Taking into account that it is very difficult to prove this kind of offense, most of the people reported to court these acts in order to save themselves from possible lawsuits, due to repentance and personal frustration, the hostility toward the defendant or even political disagreements.

In some cases, the criminal charges were brought by neighbours, mutual friends or even relatives of the defendant, who eventually became aware of their intimate relationships with another man. Massive arrests and prosecution of larger number of people from different social political status also occurred. It happened more in Serbia and Croatia, where the defendants were followed by the police in order to set up a witness who usually was coming as spy to private gatherings and organized entertainment of homosexuals.

It is interesting that most of the defendants confessed to the charges, believing that this would be a mitigating circumstance, and their „unnatural fornication of-

fenses" justified as mental disorder, natural anomaly, disease or deviation, for which they should not be sent to jail or forced labour.

In many republics of former Yugoslavia, including Montenegro the perpetrators of these acts were often members of ethnic minorities that also leaves another open question in the State's attitude towards minorities. It is not easy to prove whether there were politically unfit persons or it was something else. However, it remains the fact that many people accused of „unnatural fornications" were members of national minorities, such as Muslims and Croats in Montenegro, Muslims in Serbia, Serbs and Croats in Bosnia and Herzegovina, Croats and Serbs in Slovenia.

iii) Minorities, foreigners, or „dangerous homosexuals"?[4]

With the judgment of the District Court in Kotor, No. K. 59/48, and the District Court in Titograd the defendant G.A. was sentenced to ten months of detention with forced labour for „unnatural fornication".

The judgment states the defendant is indigent, single, with good behaviour, both during the occupation and the liberation. He was sentenced because „during the months of October and November in 1947 had sexual intercourse with K.A. German citizens - a former war prisoner (also convicted for the offense of unnatural fornication), once in a transformer at the power station in Kotor, then twice during work in Prčanj and in the transformer in the woods, a fourth time during work in electrical transformer in Stoliv. Therefore, by the judgment of this Court No. K 59/48, of August 28, 1948, he was sentenced to imprisonment with forced labour for a period of 30 months, in which the time spent in detention on remand since July 23 in 1948 is included."

The case was then forwarded to the District Court in the former Titograd, as the higher instance, which reversed the first-instance verdict by the sentence reduced to ten months of detention.

Application for pardon was submitted by the mother of the defendant, who expressed she was living in a bad conditions, that she was old and frail, and that her son was only breadwinner, although he and he was seriously ill and affected by epilepsy. Nevertheless, he fought with his work for the restoration and reconstruction of the country and state during the war, therefore he cannot be considered socially dangerous. His mom demanded for liberation with following words:

*„Just by chance he is still very young and inexperienced, and, burdened with a serious illness of epilepsy. He could have been misled by degenerate German prisoner of war to commit the crime for which he was convicted. Ever since his earliest youth, my son is known to be very quiet but very worthy young man. The ability of a healthy and proper reasoning during the war and occupation led him to the only right direction: to help the background workers of NLM (*National Liberation Movement*) and to*

4 State Archive of Montenegro, holding: A.1.5.74 Prezidijum Narodne Skupštine NRCG (1946-1952) (Presidium of People's Assembly of Popular Republic of Montenegro, Strogo povjerljiva akta (Strictly confident acts), 1949, fasc. 15, no. 111/49.

constantly help partisans soldiers as messenger. Even before the liberation of Kotor, he voluntarily joined the Yugoslav army, but was dismissed due to the occurrence of epilepsy. Immediately after being discharged from the army, he constantly participated in various works of rehabilitation and reconstruction, such as the construction of Niksic - Titograd railway where he worked continuously in two shifts. For his great work he was rewarded, praised and appointed commander of operating units. Finally, all this shows that my son cannot be socially dangerous, and it is quite reasonably that pardoning him will be efficient so that in his future work he would achieve even more success. Hoping for immediate and affordable solution to this my application I am eternally grateful."

Municipal Court of Kotor expressed the opinion that the G.M.'s application for pardon of her son, convicted by the judgment of the District Court in Titograd CA 215/48 of September 28, 1948 to ten months of detention with forced labour, for a criminal offense of „unnatural fornication", should be rejected. The reason for refusing the application states: *„The Court's opinion is based on the fact that the acts of this kind are considered dirty by the environment, therefore the fulfilment of this requests would leave politically weak impact on the social environment in which the defendant used to reside."*

Furthermore, the procedure was forwarded to the Presidium, which made a decision to disregard pardon application of the mother of convicted on February 1949, and the Ministry of Justice signed the final decision.

This is also one of the cases in which there was no complacency of the Presidium. The impression is that this inflexibility serves as giving examples to the society in order to remove *„deviant behaviour"*. Therefore, political influence becomes more important than the circumstances of the individual who is forced to bear the burden of satisfying the majority of society.

The very fact that the society looks at homosexual relationships as *„filthy and immoral"* seems to be sufficient to accept and process it as a criminal offense. This practice, inherited from the former Yugoslavian Criminal Code, became official in the new Criminal Law in 1951, that would be applied in all federal republics for offenses called *„unnatural fornication between males"* under the Article 186. Although homosexual relations between women were not mentioned in the law, there were fewer judgments witnessing the criminalization of lesbian sexual consensual intercourse.[5]

B) The judgment in Croatia - "Bourgeois elements in sexual relations"

i) Imprisonment for "illness" and "acute social danger"[6]

5 Historical Archive of Ljubljana, holding: Okrožno sodišče 1945-1977 (District Court 1945-1977); State Archive in Zagreb, holding: Okružni sud 1945-1977 (District Court 1945-1977).

6 Public Archive in Zagreb, fond: HR-DAZG-1007 District Court in Zagreb. 1949-1975, 1949, file 31, No. K 226/49.

Regarding this case, it is interesting to present the details of a very similar criminal proceeding conducted in Zagreb in the same year. In fact, it is a very complex case in which two defendants were found guilty of several offenses, and one of them, among other things, for the offense of an unnatural fornication. Within K226/1949 judgment, on the District Court, both defendants were found guilty of offenses under Article 2 of the Law on crimes against the people and the state in terms of preparatory actions for illegal crossing the border, then a criminal offense under Article 3, paragraph 3 of the Law on Suppression of inadmissible trafficking, inadmissible speculations and economic sabotage.

However, the first defendant was also convicted of offenses against public moral that is, performing unnatural fornication with men during the period from May 1947 until his arrest. He was sentenced to a single sentence of imprisonment, with hard labour for a period of five years where detention of June 5, 1949 was included. The second defendant was sentenced to a three and a half years of imprisonment, although not for an unnatural fornication. Both were sentenced to a loss of civil rights for a period of one year.

In the explanation of the judgment it was stated that the first defendant, besides the intention of connecting with enemy groups from abroad which were acting against the then order in The Federal Republic of Yugoslavia (FNRY), had also exercised an unnatural fornication. In his defence, the defendant admitted that he had indeed exercised homosexual relationships in a passive form, and that this was his natural sexual drive and he couldn't do anything about it, because this way he was satisfying his sexual urge. He stated that all the people with whom he was in a relationship came to him and that they performed an intercourse in a closed room. Here is a quote from the defence of the defendant which was transmitted by the court in the appeal procedure:

"It wasn't available to other persons nor conducted publicly in any case. Everyone who came to him came by a mutual consent. In his defence he further states that since his early youth he had this kind of sexual urge and that he had never had any inclination or desires towards women. I ask for him to be acquitted of this offense."

The Court states that, based on the confession of the defendant, it was found that the objective act was committed and that the criminal legislation of the former Kingdom of Yugoslavia incriminated this offense as "an unnatural fornication" and considered it punishable. It was stated in the verdict: "The principle expressed in the Criminal Code of the old Yugoslavia, pursuant to Article 4 of the Law on Invalidity of regulations is not inconsistent with existing order in FNRY."

It is interesting to quote the way Court approached determining the reasons for the punishment of homosexual relationships through which a new socialist dogma is affirmed:

"Modern medical science explains the phenomenon of homosexuality as immoral occurrence in sexual intercourse. There is no doubt that such abnormal phenomenon occurs and develops in times of the decay of one society. It is known that homosexuality was developing and occurring between bourgeois elements and that it means degeneration. Our peoples performed social revolution in the country by the liberation. But we

also inherited large parts of the former capitalistic society, which could not give up its habits even in the socialistic terms. On the contrary, bourgeois elements in sexual relations were still supported and debauchery sexual relations were nurtured, which had negative impact on the environment. True, the defendant did not make these relationships in a way that would be accessible to the public, but the group of his friends who had relations with him was wide and in the end the public knew about it. Certainly such an immoral activity affects the young people, so this Court finds that the actions of the defendant have all the elements of the offense. Such activity is socially dangerous and therefore it should be punished in order to be prevented. Therefore, the Court finds the defendant guilty as stated above."

At January, 1950, after the appeal of the defendant, the Supreme Court rejected the same as unjustified and confirmed the judgment of the Court of first instance. On the appeal, among the other things, the defendant criticises a judgment on the part mentioned in item I-3 and points out that *"today, homosexuality is not considered as a criminal offense but rather as a defect like deafness and similar. In his case, this action was not done for financial reasons or it aroused a public scandal and it does not have special marks due to which his actions could be criminalized."*

The complaint contains very sensitive confession which testifies about the character, educational level and awareness of the defendant. Given that it could still be valid in many societies, I quote it in full:

"Finally, I am sentenced to six months in prison because of committing acts of unnatural fornication. I think that my actions should not be punished because they are not criminal offenses. From the earliest times of human history and in the cultures of people in the ancient world, the Egyptians, Greeks, Persians, in the Islamic world, Japan and China this unnatural fornication was tolerated. Only in the performance of the Catholic Church and its supremacy, this fornication was called Sodom's sin of adultery, sodomia rationae sexus, and was convicted severed penalties. Catholic Church has very strict views about regulation of sexual relations and it put the seal of the sacrament on the marriage. As some states managed to restrict the supremacy of the Catholic Church they introduced more tolerant views in regulation of sexual relations, marriage and in the issue of homosexuality. As far as I know, all modern states today do not consider adultery or homosexuality as criminal offense. According to my knowledge, the new basis of the special part of the Criminal Code do not consider nor the adultery nor the homosexuality as the criminal offense. About this, that the adultery is not a crime there is a judgment of the District Court III which argues that because the marriage today is considered as a sacred relationship therefore the adultery cannot be prevented by punishments when sexual activity in the marriage cannot give necessary satisfaction. It means much more for the homosexuality. According to the established knowledge of the medical science, homosexuality is considered as the defect like the deafness or the muteness. Homosexuals are born with this defect or it is a result of the hard mental activities and it can be cured with the psychoanalyses. If it is a defect which should be healed, then it is not a felony and a person is not a delinquent but a patient. In my case, the action was not made because of material reasons and it did not cause a public scandal and because of that it cannot be considered as the felony. I think that it would not

be in the best interest of the justice to punish the homosexuality today and within the six months, when the new section of the criminal code comes into force, not to consider homosexuality as the felony. Today, we are creating a new legal consciousness based on the current principles and beliefs and it would be useful if it could be valid both today and in six months.

The reasons of my eccentricities I will explain under the section III of this complaint. Now I point out that I am, a young man of twenty-three years, impotent because of the atrocities I survived during the occupation. So I consider that I should not be punished for this incrimination and by punishing me the first instance judgment applied wrongly the Criminal Code.

I was a fourteen-year-old boy, in the year 1941, when my father was taken away by the Ustashas, before my eyes, and brutally killed. After that, I was hiding in Zagreb with my mother, always in fear of Ustashas and I become nervously ill due to the loneliness and fear and I fell into the religious madness and I was building altars in my room in order to cover up my fears. When liberation came, I was defected young man of eighteen years and I went on theology among the monks. I grow up in the time of the puberty in a physically and mentally weird person and also impotent. That is the reason why I intimately become homosexual, not because any fornication or any similar circumstance."

In his appeal, the defendant pays special attention on the part for "unnatural fornication", because he considers his nature, although caused by external impacts and fears from the war, as one part of his personality on which he has no impact. We become aware of his questionings regarding sexuality and knowledge of history, religion and philosophy which were connected with this topic. Although this is partly precise constants, the awareness of the defendant, at the time when the flow of the information was completely restricted, is surprising.

He asks to be released from the punishment for the "unnatural fornication", considering his physical and mental condition emerged during the war. His confession stating that it was his natural sexual drive and that he was not having sexual intercourses at the public place and that he was not doing that because of material benefit and he neither was spreading the stories about his sexuality, did not help in the appeal.

In the criminal appeal CA 30/50 the Supreme Court rejected the proposal for a clemency. This was explained as follows:

"Commenting the complaints presented about the act of unnatural fornication, it is necessary to establish that the grounds of the appeal are in the contradiction with the popular legal opinion about that thing. The unnatural fornication is not considered as a defect of an individual, which has no impact on the community. It is a totally unhealthy phenomenon which we understand as a sick part of the social organism, which needs a radical cure. In relation to this type of deflection, our folk community always took appropriate reactions. There is no reason against a battle against the evil which means a degradation of the society today. Thus, the principle pronounced in the Criminal Code of the old Yugoslavia in terms of the Article 4 of the Law on invalidity of legislations adopted before the 6th April, 1941, and during the enemy occupation, is not in contradiction with the current legal understanding and our socio-political reality. Moments of the material motives and causing a public scandal are not included in

important elements of the criminal act of the unnatural fornication and it is irrelevant for the existence of the offense. In any case, circumstances which the appellant stated as a condition for the existence of the criminal offense of the unnatural fornication can act according to the concrete situation in qualifying manner or as aggravating circumstances which increase the social danger of offense and offender. In this case, the first instance Court correctly took that there is an average case of criminal offense of the unnatural fornication without qualifying moments and without aggravating circumstances and there was a proper sentence for the determined act. Therefore, the stated objections are rejected as irrelevant."

From the reasons of the rejection of the appeal we can see the way in which the former regime treated homosexuals. Although everything which related with the religion was unavailable or rejected, the method of treatment of homosexuals was similar to the Church's relation to the so-called "unnatural fornication". The terminology which was used and reasons of social danger were identical as religious attitudes in Catholic, Orthodox and Islamic religious organizations.

The Court did not attend to consider the appeal and to determine its legal and procedural merits, but it rejected the appeal without any reason and as the only reason stated the evil and social danger.

From the exposure of the judges in this case, we can notice that the homosexuality was seen as *"an acute social danger"* then and during the construction of the socialistic Yugoslavia which needed *"mentally, physically and morally healthy young people for the proper development"*. Such young people needed social protection from new elements which can take into *"perverted and unworthy life for a socialistic man, what harms the interests of the young persons and our community which has many expectations from them."* It was also considered, in this case, that the acts of the defendant had devastating impact on young people which leads that it was very *"socially dangerous"* and that the defendant, as a completely negative in moral and political views, should be isolated from the society with the appropriate punishment and used, with others like him, for supervised socially useful works in order to enable to strengthen their will for the battle against *"deviant sexual urges"*.

Especially poignant and emotional detail of this criminal case is the speech of the mother of the convicted person to the Marshal Josip Broz Tito, on the occasion of the parole. After three and a half years in prison, the mother tried, in desperation, to liberate her son and addressed to the Marshal Tito with the following words:

"… In his youthful years my son sinned, but I am convinced that the former serve of the sentence had an educational effect on him, and that he could be a valuable member of our community. On this occasion I have to mention that I have raised my son in good, and also in national spirit, so thereupon during the occupation we were persecuted, my husband was killed in 1941 and all our things were destroyed. I helped the move according to my abilities, which suggest that my today's attitude towards our authority is proper.

Today, my only child is only aid in my future, so therefore, Comrade Marshal, I address you with a request to forgive my son the longer serve of the sentence through amnesty, or to be released on parole. I know that it is not regularly to address you, but

in my maternal care I am taking that step, and I hope that you will take my request into consideration."

After that the prisoner sent a request for amnesty to Presidium of the National Assembly of the FNRY, which was rejected on June 27 in 1951, by which the last remedy was used.

He served his full term of imprisonment, and this case in particular and with arguments confirms the attitude of the former justice system, but also the effect of the Yugoslavian socialist regime in relation to homosexuals.

C) The judgment in Serbia

i)"Active" or "passive" role? It is up to the Supreme Court…[7]

Taking into account that the "unnatural fornication" was considered as a minor offense, especially after 1951, the Supreme Court rarely had some cases. However, in some situation when besides this the defendant was convicted of other offenses, the judgment had the significance of the high instance, so it occurred on republican Supreme Court, and in very rare situations, on Federal Court. In Serbia there were many interesting cases, but unfortunately only few of them had been preserved, because the criminal cases where the sentence was shorter than 10 years, by law were not permanently stored.

The insight into the prosecution of homosexuals during the incriminating period was possible thanks to the numerous registries, directories, and registers of criminal cases in which it was possible to determine the reasons for the judgment, personal information, as well as the duration of the sentence of convicted persons.

However, the holding of the Supreme Court has preserved a small number of cases in which there is the Supreme Court condemnation, asking for amnesty, and the judgment of the Trial Court.

The verdict of the District Court in Pozarevac K.48/56 of May 18 in 1956 states that defendants Z.R, S.R., and P.J. were found guilty of one offense each of unnatural fornication under the Art. 186 of the Criminal Code, and the defendant S.S. was found guilty of two offenses under the Art. 186 of the Criminal Code, one such offense of assisting, and one offense of assisting in conducting the crime of rape and unnatural fornication with a minor under the Art. 181, paragraph 1 of the Criminal Code, and in relation with Art. 20 of the Criminal Code, and the defendant Z.R. was found guilty of the criminal offense under the Art. 181 of the Criminal Code.

"For the previously mentioned offenses, defendants Z.R. and S.R. were individually sentenced to imprisonment in the duration stated in the sentence, thus for the committed offenses they were sentenced to imprisonment in duration: the defendant S.S. was sentenced to 1 year and 6 months, and the defendant Z.R. to 10 months, while for

7 The archive of Serbia, fond G/264 the Supreme Court NRS, 1956/CC, file 12, No. CC. 3402/56.

the previously mentioned offenses, defendants P.J. and S.R. were sentenced to imprisonment in duration of four months. Defendants were obliged to compensate to the state the costs of the criminal proceedings, and they were obliged to compensate the amount individually stated in the sentence for payment of lump sum. By the decision, the defendant M.J. was imposed a correctional measure – reprimand."

With the judgment of CA 3402/56, the Supreme Court dismissed appeals of the barrister of defendants S.S. and P.J. as groundless, and confirmed the judgment of the District Court in Pozarevac K.38/56 of May 17 1956 regarding the defendants. The Supreme Court has not examined the judgment of the District Court in relation to defendants Z.R. and S.R. and the ruling related to defendant minor, seventeen-year-old J.M., because these parts of decision were not under appeal.

Panel of Judges of the Supreme Court considered all the records of this case and the impugned judgment in the sense of Art. 353 of the Criminal Procedure Code, and by the assessment of the complaint it concluded the following:

"Individual prison sentences were determined to the defendant S.S. for offenses of unnatural fornication from the sentence of the IV and V – in which he had a passive role - for the same duration as to defendants S.R. and P.J. who had an active roles in conducting these acts. The defendant S.S. was found guilty of the offense of assisting in the commission of offenses under Art. 186 of CC and 181, paragraph 1 of CC in connection with Art. 20 of the CC, so the statement in the appeal of the barrister of this defendants is not true that he was more strictly punished than the perpetrators of mentioned acts who had an active role in the commission of the same, because the defendant J.M., a minor, was not sentenced, and P.R. was not charged with a crime under Art. 181, paragraph 1 of the CC. The Supreme Court concludes that sexual role the offender had while conducting the offense, did not have any influence on the assessment of the degree of offender's criminal responsibility of the criminal offense - unnatural fornication from the Art. 186 CC and the same offense with the minor from the Art. 181 paragraph 1 CC.

From the above, the Supreme Court holds that the Court of First Instance gave a proper sentence to the defendant S.S. as the defendant P.J., on who the sentence should have the correctional effect and in the future to stay away from the commission of such acts and influence others for the performance thereof, so the appeal of the barrister of the defendant S.S. and defendant P.J. the Supreme Court dismissed as groundless, and decided as in the enacting clause of Art. 361 of the CPC."

In most similar cases, the court justified this by the fact that for each offense, and for this, the intention is required, or awareness of action and its forbidden unnatural character. So when that consciousness exists in both passive and active subject, in that case both of them are responsible by the criminal justice and both of them should be punished. It was also considered that the crime of unnatural fornication can be performed by two or more people, and it aims to the unnatural commission of sexual act, so it is understandable that both actors should be punished, as the Law provides itself.

Some judges considered that when it comes to an unnatural fornication, in order to satisfy a sexual drive, persons who engage in these activities in a passive way should not be found responsible, therefore "passive subjects" should not be prosecut-

ed in the same way as "active ones". They argued that this is a disease of passive subject which follows him throughout his life, so that is ultimately found out. However, that was a thesis of only small number of judges, and in most cases the active and passive subjects were punished in the same way.

It is interesting that in Serbia until 1994 the homosexual consent intercourses were punishable, they were punishable with draconian measures until 1951, and pursuant to Art. 186 of the SFRY CC as well as in other Yugoslav republics they were punishable until 1977, and until 1994 pursuant to Article 110 of the Criminal Code of the Socialist Republic of Serbia.

D) Judgment (Slovenia) – "Never again!" Suspended sentence to homosexual "offenders"[8]

Due to increasing openness and flexibility, in Ljubljana, I expected a slightly number of prosecutions for homosexual consent relations.

However, the archival data show a different picture, so even in the 60's in Okrajno (Basic) and Okrozno (High) Court they identified dozens of judgments with the prison sentence provided by the Article 186 of the SFRY CC.

Namely, the judgment of the Okrajno Court IK482/60, and with the confirmation of the same on the Okrozno Court CC 63/61 dating from September 30, 1960, the defendants H.S. and P.V. were found guilty of performing unnatural fornication ("*non-sacred impurity*"), and they were sentenced to one month in prison.

However, due to extenuating circumstances of impunity and given that the first defendant has young children and a family, and that there was no specific aggravating circumstances, a prison sentence was altered in the first instance procedure to a suspended sentence of one year and the first defendant needed to pay court costs and fines.

The defendant H.S. Croat, 38 years old, married, with two young children, employed, former Croatian defence counsel and a NLM soldier (National Liberation Movement), with no criminal record; and the defendant P.V., Slovene, 58 years old, married with one adult son, transporter, entered into a military records at MR Ljubljana, also with no criminal record, were convicted because:

"they had conducted an act of unnatural fornication, alongside with the fact that P.V., on April 16th, around 20.00h, in the public restroom located at the French Revolution Square in Ljubljana, had shoved his sexual organ in the H.S.'s anus, who had agreed on that. Thus, they had committed a criminal offense of an act of unnatural fornication under Article 186/II, and by the same law they were convicted to one month in prison. According to Article 48 of the CC, both defendants' enforcement of the sentence is altered to a one year of probation, provided that during this period they do not commit the same or any other criminal offense. According to Article 90/1

8 Historical Archive, fond LJU 86, Okrajno Sodišče Ljubljana, Kazenske zadeve IK, file 97; No. IK482/1960.

of the CPC, both defendants are required to pay the costs of the criminal procedure, by a lump-sum of 1,000 dinars."

In the explanation of the verdict, it is possible to determine the process of gathering evidence, alongside with the testimonies of police officers-witnesses, and the statements of the defendants.

H.S. states that he had stopped in the restroom at the French Revolution Square after leaving the bar and that he was slightly drunk. He said that other people were present in the restroom as well, and that he does not remember everything very well, but he assumes that nothing similar to what was stated in the indictment did not happen, and that he had neither realized nor heard that the matter was about the relationship between persons of the same sex before the very hearing. The quote from the explanation of the indictment says: *"He denies that at the hearing in the Interior Affairs Office he stated that he had agreed to have sex with the second defendant. He reminds that about two years ago, when he came to Ljubljana, in the restroom under the Tromostovja Bridge a man began to touch his sexual organ, and says that unless that case he had not experienced anything similar to that, and completely denies that in Ljubljana he had met and hung out with homosexuals.*

"The second defendant P.V., who negates this act and guilt, said in his defence, that on that evening he really entered the above mentioned toilet because he had to use the bathroom. During that, the first defendant leaned over him, probably because he was drunk and had pushed him. At this point, the two police officers approached them, legitimized the defendants and took their personal information. He denies that they had touched one another's sexual organs, and that the first defendant had shoved his sexual organ in his anus, and he claims that nothing happened among them, and denies that they both had their trousers lowered. He also denies that he had admitted the police officer that the first defendant had touched his sexual organ".

The police officers who arrested the defendants had also witnessed before the Court. They stated that they had heard some commotion in the restroom and spotted the two people who were pushing each other. When they had pointed the flashlight towards them, both of them allegedly pulled their pants up and pretended that they were using the bathroom. The officer P.J. claims that, during the defendants' identification, on his question to the first defendant if he was a gay, the defendant confirmed that and confessed that the second defendant and he were touching each other for their sexual organs.

The officer of the Ministry of Internal Affairs in Ljubljana, Mr. D.B., testified that they both admitted that they had consensual sexual intercourse. Namely, the first defendant had also admitted that two years ago he had met and started spending time with homosexuals. Then, when the witness recalled him that a procedure was instituted against him for the similar actions in 1959, he stopped denying that he did not know what homosexuality was". "After that, the defendant told in details what happened, that the second defendant had touched his sexual organ and his buttocks, and that he persuaded him to have the intercourse, and after that he allowed him to shove his sexual organ in his anus. When the officer entered the toilet, they were both surprised. Furthermore, he confessed that he had some disagreements with his wife

and that they were living separately because of that, so then he hooked up on unnatural fornication, which was especially pleasant for him when he was drunk. On the other hand, H.S. was weeping and he promised that it will not happen ever again. In his further confession, he states that P.V. had approached to him and began to touch his sexual organ, which he liked, and he admitted that they had conducted an act of unnatural fornication. Furthermore, he states that the said toilet is known to the security forces as a gathering place for homosexuals and that it is controlled by the police precisely for that reason."

"The PLM (Police Department) Ljubljana's report concludes that the both defendants were arrested on April 16th, 2014, in the evening hours, in the restroom at the French Revolution Square in Ljubljana, which occurred when the police officer was approaching to defendants with the flashlight, who at that time were pulling up their pants and separated from each other, and after all that, the first defendant has admitted everything, while the second defendant stated that the H S. has touched his sexual organ. From all of this, it can be concluded that they had touched each other's sexual organs, and that both of them admitted that. Upon completion of the evidence gathering process, the court finds that the criminal offense of the defendants was fully proven. Even though police officers-witnesses had not directly seen them having sexual intercourse, it is easy to draw that conclusion, given their longer stay in the restroom, which was known to be the gay cruising area. Witnesses had also heard slipping, and when the officer pointed his flashlight towards the toilet, both defendants pulled up their pants, which were lowered, and then the defendants separated from each other and pretended to use the bathroom. Both defendants confessed to the police officer that they touched each other's sexual organ, and the witness P.J. insisted in confronting both of them, in the course of which the second defendant stated that he touched first defendant's sexual organ… As follows from the evidence gathering process, the first defendant, according to the testimony of D.B., admitted that he had allowed the second defendant to conduct an act of unnatural fornication, and also at the head trial, the first defendant assumed that it was possible and also said that D B. was not lying in his statement.

According to the given factual state, all the elements of a criminal offense of an act of unnatural fornication under Article 186/II of CC were found, for which a prison sentence of one year was prescribed. In the course of determining the sentence, the Court took into account the mitigating circumstance that both defendants had no criminal record, and also the fact that the first defendant was father of two small children and he had to take care of them, and the fact that there were no special aggravating circumstances. In accordance with the sentence, both defendants were obliged to pay the costs of the criminal procedure."

On February 28th, 1961, the sentence was upheld during the criminal appeal procedure before the District Court and the High Court, and the appeal was marked as unfounded. P. V. filed an appeal, and the same was rejected and the defendant was obliged to reimburse costs of instituting a new procedure. For the reasons stated in the first instance sentence, the District Court held that *"the sentence imposed by the Court of first instance was measured to fit the seriousness of the offense and the guilt of the defendant. The enforcement of the prison sentence was altered to a suspended sen-*

tence, pursuant to Article 48 of CC, and whether the original sentence will be enforced or not depends on the future behaviour of the defendants".

Conducting sexual activities in a public place, whether it is heterosexual or homosexual intercourse, was not taken at any given time as an aggravating circumstance during this procedure. That means that the both defendants were incriminated due to conducting an act of "unnatural fornication", in accordance with Article 186 § 2 of the Criminal Code of Yugoslavia, i.e. the assumption that it was the very committed criminal offense, because no witness could directly confirm that. The evidence is based on the statements of the defendants in the police station and the Office of the Ministry of Internal Affairs in Ljubljana, which the defendants later denied. The fact is that they were both in the restroom, but also were not directly caught during a sexual intercourse. We cannot know the circumstances in which the defendants, if they indeed have admitted this act, did that, and whether the confession was gained under torture. It is interesting that the Court considers homosexuality as a criminal offense in line with other offenses against public morality, such as rape, abuse of minors and the like, and the Court concluded that such act should not be repeated in the future and demanded from the defendants not to fall again under the influence of that "*socially dangerous and immoral phenomena*", in order to avoid being *convicted in a much stricter manner.*

There are some registered cases where the same individual was convicted more than once, and in that case, the imposed prison sentence was harsher.

This, as well as many other cases from Ljubljana, disapproved the opinions of many historians, lawyers and professors about the lack of these types of sentences and claims that Article 186 was only merely written on the paper.

III. Social criminalization - the struggle for visibility and rights from post-communism until today

During the criminalization period, in the 60's and 70's the debate on the issues of gays and lesbians was enhanced in the Yugoslav press, though focused more on movements for the improvement of rights in Western Europe and the United States. In fact, many of these articles were taken and translated directly from Western daily newspapers editions such as „Newsweek", „Time" and „Le Monde". There were some sensationalist articles about the attempts of contracting marriage for homosexuals in the Netherlands, United Kingdom and United States. Less attention was focused on the status of homosexuals in Yugoslavia, which reduced chances of successful improvement of rights and social status of gays and lesbians, who were at that time still considered primarily Western phenomenon.

However, events in the West had an impact on attitudes towards homosexuality in Yugoslavia. This can be seen in the article written by Vesna Kesic in 1979 in the liberal weekly magazine "Start". She wrote of the gay rights movement in the West, the argu-

ments for and against homosexuality, and in conclusion she said that homosexuals were no different from heterosexuals, except for their sexual orientation and that homosexuality is not unnatural or immoral. Since she was prominent person in the Croatian feminist movement, which was formed in the late 70's, the article announced in which direction the relationship between feminist activism and public debate on gay and lesbian issues would develop. This new wave of feminism that emerged in Yugoslavia in the 70's favoured the holding of the first public discussion on lesbian issue, who also represented the first step towards the formation of activist groups. The first of these groups was formed in Slovenia in the mid 80's. Here begins a new era of gay and lesbian history of the former Yugoslavia, a period in which gays and lesbians gained more visibility in society.

In April of 1984 the first festival of gay culture was organized in Ljubljana, followed by the establishment of the first gay organization in December of the same year. The festival and the organization were called 'Magnus' after Magnus Hirschfeld, famous German sexologist. The six-day festival – which for the first time created official if temporary 'gay spaces' in different locations in Ljubljana – presented the exhibition of European and American gay print media, featured a variety of lectures, including a lecture by the French theorist Guy Hocquenghem, and screenings of films such as Rainer Werner Fassbinder's The Bitter Tears of Petra von Kant, William Friedkin's The Boys in the Band and the infamous Cruising, Frank Ripploh's Taxi zum Klo and John Schlesinger's Sunday Bloody Sunday. Berlin emerged as an important reference point for the gay and lesbian movement in Ljubljana, resulting in a similar queer lexicon and imaginary between the cities. *(Kuhar, 2001, p. 26)*

In this context it is important to look back on the period and the social changes that have engulfed the former Yugoslavia in late 80's.

Post-communism became an instant economic, political, social, cultural, artistic reality, but what about the changes and developments in relation to sexuality? Did everything except for gender roles and sexuality quickly change? It is necessary to do the analysis of this period, that would help in understanding the relationship between social and sexual changes between specific macro and micro dimensions of social life in post-communism.

In the 1989 a new era began on the eve of the "Iron Curtain" fall, marking a spontaneous and chain-reactive collapse of communism, i.e. state socialism, which was not foreseen by Sovietologists and other social scientists *(S. Bianchini , G. Schöpflin , P. Shoup , 2002, p . 99)*. The change was profound in the sense that it affected every aspect of social life. Formerly communist states and societies experienced a change from autocracy and one-party authority model to democracy and pluralism. Ideological monopoly of the communist utopia ceded political space to different, often conflicting concepts and orientations. The states ceased to exercise almost complete control over the society.

The collapse of the socialist experiment in connection to hyper-regulated economy was replaced by a market system, which required major legal and macroeconomic reforms. This started a broad and controversial privatization process.

State funds were open to competition, which often had a criminal or semi-legal character. Rare opportunities for success created a huge demand for traditional-

ly strong political clientelism. The new economic system required new institutions and reforms, which were usually introduced by copying western standards leading to conflicts with local customs and untrained administrators. Some hybrids of old and new institutions, especially in the legal field, are not uncommon.

Motivated by political and economic changes, the dominant value system based on collectivism, began to take on an individualistic character. Political participation based on individual voting and competition produced a new perception of the society. The idea of an egalitarian or class-divided society was replaced by the realization that society was composed of poorly connected individuals who strived for the realization of their interests, or more often, trying to keep afloat. This led to the atrophy of traditional social bonds *(F. Bonker , K. Müller , A. Pickel , 2003, p. 19).*

These rapid changes enabled the countries of Central, Eastern and South-Eastern Europe to join the process of globalization, especially in the economic, even political (in terms of enlargement of the European Union) and cultural sense. During the 1990's, the post-communist countries became societies opened to international trade, flow of information and cultural influences.

Immediately after the „Great transformation", there was high optimism due to a relief after the „death" of old regime, which increased hopes for a rapid westernization, Western prosperity and lifestyle.

However, the enthusiasm quickly calmed after numerous problems appeared caused by the complex task of simultaneous transformation of political, economic and social structures. At the macro level, the normative vacuum and political instability - driven by political struggles, weak governments, ethnic cleavages, irregularities in the allocation of property rights, and increasing corruption *(Sojo, 1998, p. 36)* - led to „the delegitimization of the public sphere" *(S. Bianchin , ..., 1999, p. 121).* The growth of distrust in state institutions and political discontent replaced the initial enthusiasm that the transition process had begun. Everyday life became infused with frustrated political debate in which the official policy was obsessively blamed for all the problems of life. Short-term cultural optimism and unlimited possibilities were over and pessimism and cynicism set in. Transition costs came in various forms, through: increasing rise in unemployment, poverty, social inequality and mortality, as well as the decline in the quality of public services such as health and social care, and a wide perception of the absence of the rule of law, which created together a new violent social reality. A small number of post-communist countries were able to catch up with the West, and most of them found themselves in a worse situation than before.

In the second half of 1990's , several post-communist countries, such as Slovenia, Poland and Hungary showed the first signs of a successful change. However, many other states needed to struggle with many of the structural and procedural problems.

In various societies different gaps appeared, especially in the political, economic and cultural life of Yugoslavia, which significantly weakened the new system. The society found itself without institutional support, which was further weakened creating a great social disorientation. This weakness was exploited by politicians who promised the people a new future. When pillars of national and cultural identity were gone, there was a flare-up of nationalism and heightened ethnic and religious intoler-

ance. Instead of building a prosperous future, the society decided to create different and strictly defined „pure" identity, marked by the same religion, ethnicity, national origin, language, etc. Divided identities created bigger distance of people who had used to live in the same country for over seventy years. In a situation of expressed hatred and intolerance, a very little space remained for freedom of expression, especially in terms of sexuality and gender identity. However, the 90's led to legal and social changes that affected the decriminalization and liberalization in the expression of sexual orientation and gender identity. It is highly probable that this was the result of time and international pressure on institutions in order to eliminate unacceptable laws and norms, which are banned by all International and European conventions on human rights and freedoms.

Therefore, from where can we start estimating the impact of post-communist transition on gender identity and sexuality, including LGBT community, still seen as culturally "different"? According to the historical-sociological approach, the process of social regulation of sexuality is based on social institutions such as religion, family, secular institutions, schools, law and medicine, that produce or reproduce ideologies, norms and define social expectations *(Parsons, 1996, p. 45)*. Despite the fact that each complex and modern society is a dynamic system in which large number of ideologies coexist, creating a sexual subculture, it is considered that a set of dominant ideas has the most important impact on gender roles, sexuality. It also affects the balance of power at any given moment in history. Three main supports of social regulation of sexuality - religion, family and secular institutions – have experienced a profound change after 1989. Exempt from the stringent control system of one-party rule, the church has become a pervasive social and political force that has been influencing the decision-making process even in the simple questions on public morality. Already showing signs of instability before the transition, the family has become less popular and weaker than ever before. The imperatives of the new system, especially the political and economic, changed the existing state institutions, as well as justice system, often formally converted and reshaped into Western-like institutions, under the pressure from international organizations.

Since the status of minorities, LGBT and gender identity depends on the already mentioned processes, it is necessary to study the course of history with all the consequences that they have had in the society. Promotion of human rights and democratization do not happen suddenly, but it takes some time for all differences to become an equal part of society in transition. Some countries showed that they took less time and effort than others, and this study should show different dynamics in the states and compare them with each other. The result of rapid democratization and institution building also includes the improvement of the legal and political status of all components of society, including minorities. This also implies the increase of awareness of human relationships, faster recognition of freedom, equality and more civil rights. Thus, a society becomes more opened to diversity, which facilitates the formation of various movements and organizations, engaged in promotion of positive and realistic attitudes of everything perceived as „different". It could be argued that countries such as Slovenia, Croatia, Hungary and the Czech Republic achieved

a higher level of democratic progress. On the other hand, there are still many countries that still have a lot to do in the social and the political and legal level. This does not mean that these countries, including Montenegro do not have organizations and movements engaged in the fight for the improvement of human rights and the strengthening of institutions. The three pillars of social regulation, however, are still in crisis and require time and effort to find a solution for their peaceful coexistence. Public institutions are still subjected to the influence of religion and traditional family ties, which cause an increase of corruption, intolerance, nepotism, typical phenomena of a patriarchal society. Under these conditions, all activities involved in the promotion of „different" or „minorities" will be in conflict with society.

NGOs are less transparent and are forced to work with in secret, in places far from danger. Religious communities are in conflict with most of the activities promoted and realized by these organizations, so that each type of activity in order to raise awareness at local (such as conferences, discussion meetings with students) or national level (projects, training, demonstrations, major events, political pressure for advancing the rights and the visibility) are prevented, slowed or even blocked in advance.

Before 1989 the religion was under the strict control of the Communist Party in most of mentioned societies, so the influence of the church was strictly limited or discouraged by the state. After 1990, at least two elements, in addition to the fall of the communist regime, teamed up to create the conditions for an explosion of religiosity. The first is uncertainty and psychological costs caused by the process of economic, social disorientation and by reduced standard of living. The second element is the „rebirth" of national identities. Since the historic „national religion" was a key element of national identity, it is not surprising that in countries where ethnic clashes occurred in the 1990's, religion became an important ethnic element and one of the means of social mobilization. Post-communist part of Europe faced a „sharp" rise in religiosity, while in the West the percentage of religious people has greatly decreased in recent decades *(European Value Survey, 2002)* .

The rise of religion, its social impact and increase at the perception of Church as the highest moral authority, strengthened the conservative attitudes and slowed liberal and democratic political initiatives particularly in the field of abortion, sex education, homosexuality, gender roles and domestic violence. Social and economic problems, rising unemployment, a decline in household savings left negative and direct impact on the dynamics of marriage and family life.

Although there is no empirical data, it is possible to assume an increase in the frequency of interpersonal tensions and conflicts. Despite the fact that the trend of divorce and the emergence of alternative forms of marriages are widespread in the West, the current statistics on divorce in transition countries are surprisingly above the Western statistics data. *(UNDP statistics reports 2003, 2012).* This does not mean that marital instability simply exploded in 1989, or that the transition process itself was the initiator of the increase in divorce. This process had already been present during the '80s, especially in countries such as Hungary, Russia and Czechoslovakia, provided that the transition process accelerated these trends. Reaction of religious and nationalist circles was quick, but obviously insufficient.

Pro-natal and pro-reproductive rhetoric proved to be too outdated and inconsistent with the new, globalized cultural expectations. Alternative forms of cohabitation, with non-traditional sexual practices and norms, have continued to gain popularity within the younger generation in transition countries.

In this situation, the process of institutional transformation was slow, although since the beginning of transition, strengthening and democratization of the institutions had been a priority. The task of reforming process of legal, economic, political and social institutions was the most important point for international consultants and international financial institutions. However, it turned into a very difficult and frustrating job, which did not show a linear progression. In some countries, as already mentioned, the institutional reforms were relatively rapid and successfully reformed new institutions proved to be effective both in the consolidation of performing tasks under the new rules, and in providing incentives for the development of civil society. Institutional reform in post-communist societies had two main features: a) to be modelled on western standards; b) to encourage citizen participation in the process. Both elements were very important and led to new institutional status focused on the rights of individuals, which were largely absent in the old legislation.

Openness to civil society initiatives and the participation of various stakeholders in matters of public interest had long-term benefits, which resulted in greater transparency of public criticism, as well as in the regulation of "private sphere". Child abuse and domestic violence, sexual harassment, women trafficking were prosecuted to a significant extent been by the state, although not sanctioned often in a systematic way. Moreover, the intense political pressure, especially from the European Union, led to important legal innovations in the field of gender and sexuality. In particular, it should be mentioned: the decriminalization of homosexual relations in Ukraine in 1991, Russia in 1993, Belarus and Serbia in 1994, Albania and Moldova in 1995, Macedonia in 1996, Bosnia and Herzegovina in 1998, Armenia and Romania in 2002.

As it can be noticed, in many transition countries the decriminalization of homosexuality was a recent event. Often, a change in the law was the result of international pressure and it was considered by the local political as a chance to access international organizations. Taking into account that this process was not a result of internal political activities, nor of a broad public consensus on human rights, the exclusion of homosexuality from the penal legislation had negative feedback from the society. This caused internal debate, including civil society, religious institutions, various political factions, and so on. Since campaigns to raise awareness and educate about liberty and the rights of the LGBT community had been left out, consensus on the new legislation was not reached. Although judicial persecution was formally over, the space for the „social criminalization" was opened. There were also proposals for holding a referendum in a few countries, such as, Romania in 2001. Polls conducted by Gallup in Romania on 2003 showed that 45 % of respondents still believed that homosexuals should not be treated as the rest of the society, 37 % said that homosexuality should still be punishable, and 40 % stated that homosexuals should not be allowed to live in Romania *(Gallup Report, 2003).*

The legacy of the communist regime in the Balkan countries includes the importance of national values in public discourse as a very unstable separation of public and private spaces. In the case of sexual minorities, this separation is manifested in the criminalization of homosexual intercourse between consenting adults, up to the end of the 90's, with the exception of Bulgaria (1968), Montenegro (1977), Slovenia (1977) and Croatia (1977). Lack of will for the decriminalization of these relations is based on nationalist thesis that believe the LGBT community is dangerous and unfavourable for the preservation of the traditional family and lifestyle influenced by religion, as in the case of Serbia, Bosnia and Herzegovina, Macedonia and Romania.

It has been already mentioned that the promotion of human rights has a stimulating effect on the political and ideological domination of communism in Eastern Europe. Considering the discontinuity between the communist and post-communist period, it would be expected that the post-communist society would prefer striving for the promotion and protection of human rights. Obviously that was not the case, and most of the post-communist states often „betrayed" their commitment to the promotion of human rights and freedoms.

However, only in the late 90's LGBT rights were included as an integral part of human rights in most of Eastern Europe. From that moment on, the protection of LGBT people was based on international law and international mechanisms and practices of human rights, with the argument that LGBT rights derived from the principle of universal human rights and were not „new". Parliamentary Assembly of the Council of Europe and the European Parliament stressed the need to end discrimination based on sexual orientation both for member and non-member states. Amsterdam Treaty, adopted by the EU in 1997 is especially directed to the fight against discrimination based on sexual orientation. The European Convention on Human Rights and Fundamental Freedoms, and the establishment of the Council of Europe, also affirmed LGBT rights with respective resolutions from the 1980, and regular recommendations of Council of Europe to its members to support the rights of LGBT persons. Under these pressures, and sometimes political will (especially in the case of Slovenia and partly Croatia), most of the countries of the former Yugoslavia expanded their legislation to combat discrimination based on sexual orientation or gender identity. Slovenia went a step further by legalizing same-sex unions 2006. Although the situation varied greatly from country to country, from fairly widespread acceptance of Slovenia to the extreme homophobia in Bosnia and Herzegovina, Macedonia and partly in Montenegro and Serbia, the status of sexual minorities in these societies does not seem very stigmatized and it seems to be some improvements in political, legal and social systems. There are two arguments in favour of the optimistic thesis. First one is the foreign political pressure, which is particularly active in the process of accession to the European Union. The second argument indicates the existence of a new generation of LGBT activists, whose growing visibility and activities can be largely attributed to the development of civil society in Eastern Europe after 1989. Following the guidelines of international practice in the struggle for human rights, and with a growing collective action, their agenda is more proactive and often followed by media. Moreover, internal political stability and consensus are inevitable

in order to guarantee the basic human rights of LGBT people and promote their full acceptance in society.

The introduction of systematic sexual education in schools, although still absent in most post-communist education systems, is necessary in order to facilitate the improvement of LGBT status. Several attempts to introduce comprehensive programs faced a strong resistance. It can be easily illustrated by the recent case of Bosnia and Herzegovina. More time and effort is necessary to include LGBT themes as part of the regular education plan in basic school systems. The link between the past and the present will not only reconstruct the course of history, but it will offer a new perspective in an attempt to give the right answers to all the problems that LGBT people are facing in the Balkans.

je kažnjavan teškim kaznama.Katolička crkva je na reguliranje seksualnih odnosa gledala veoma strogo,te je i na brak udarila pečat sakramenta. Kako su se pojedine države otkrivale supremacije katoličke crkve,to su uvele tolerant-nija shvaćanja u reguliranju seksualnih odnosa,u pitanju braka,te u pitanju homoseksualatva.Prema mome znanju,sve moderne države,ne smatraju danas niti preljub niti homoseksualatvo za krivično djelo.Prema mome znanju prema no-voj osnovi našega posebnoga dijela krivičnoga zakona, ne smatra se niti preljub za krivično djelo, a niti homoseksualatvo.O tome,da preljub nije krivično djelo postoji već rješidba kotarskog suda III.,koja to obrazlaže time,jer danas nije brak smatran kao nadnaravni odnos i jer se preljub ne može zakriječiti kaznama,kada život seksualni u braku nemože pružiti potre-bno zadovoljenje.Još mnogo više to vrši za homoseksualatvo. Prema utvrđenoj znanosti medicinske nauke smatra se homoseksualnost defektom ,kao gluhoda ili njemost.Homoseksualnost je rođenih sa tom pogreškom ili usljed teških psihičkih afekata nastalih ,što se liječi naročito psihoanalizom.Ako je to defekt,koji se mora liječiti,onda tu nije delikt,a odnosna osoba nije delinkvent,nego pacijent. U mome slučaju nije vršeno to iz materijalnih razloga, niti je pobudjena javna sablazan,stoga se nemože smatrati,da je to delikt. Smatram,da nebi bilo u interesu pravosudja,da se danas kazni homoseksualatvo, a za šest mjeseci,kada stupi na snagu nova osnova posebnog dijela krivičnog zakona,da se ne smatra više deliktom,ili danas stvaramo novu pravnu svijest na štetu današnjih nazora i shvatanja,pa bi bilo korisno,da ju ista u zakonu ostane danas i za šest mjeseci.

Razloge mojih nastranosti ja ću još obrazložiti pod tačkom III. ove žalbe. Sada naglašujem da sam ja ,mladić od dvadesetčetri godine, impotentan radi preživjelih strahota za vrijeme okupacije.

Stoga smatram,da se se nebi trebalo kazniti za ovu inkriminaciju,a kada prvo-stepena presuda meni kažnjava,onda je krivo primjenila krivični zakon.

Ad: III./

Ja sam godine 1941 bio dječak od 14 godina,kada mi je pred očima odveden otac od ustaša i svirepo pobijen.Zatim sam se sakrivao kroz četiri godine u Zagrebu od njihova,uvijek u strahu od ustaša,te sam tako postao živčano bo-lestan usljed samoće i straha,da sam pao u vjerske ludilo i gradio u sobi o oltare i tako zatvarao moje strahove.Kada je došlo oslobodjenje ja sam bio defektan mladić od 18 godina,te sam se upisao na teologiju i ušao u samo-

Imao sam u dobi puberteta nastrano fizički i psihički,te impotentan.

Conclusion

With this research, my intention is to indicate of how much it has to be done in this invisible part of the history. It is necessary to seek any documents about the persecution of homosexuals both in the state archives and various public institutions, such as courts.

Studies on the post-war experiences of homosexuals cannot be only based on interviews with those who survived that period. The lack of systematic studies of this part of history in Yugoslavia indicates the general lack of historical research on homosexuality.

Therefore the analysis of this period requires and immediate attention. Ignoring the importance of the experiences and human tragedies can always reinforce the invisibility of homosexuality, as well as make it inaccessible for future studies on the subject, even when the educational processes in this part of Europe will become more aware of need to deal with these issues.

The examples of judicial prosecution of homosexuality in the former Yugoslavia in the past show that it existed in that area even fifty years ago, and of course even earlier. The study of homosexuality in the specific context of the former Yugoslavia shows that this region also has its own history of this genre. This is also important for opposing homophobic arguments, especially those who come from nationalist circles, according to which homosexuality is a "product" imported from the West, and contrary to traditional values and Serbian, Croatian, Slovenian, Montenegrin, Bosnian and Macedonian identities.

In order to better understand the problems of the LGBT community in the countries of the former Yugoslavia and the ubiquitous homophobia and discrimination it is necessary to make a "leap" into the past and try to understand what are the roots of the rejection of this "diversity".

By comparing individual countries, I will try to demonstrate not only their relationship with homosexuality in the past, but also the reason why these countries still encounter many difficulties when it comes to the rights and visibility of the LGBT community.

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Archive holdings

Montenegro

- State Archive in Cetinje (holding: Presidium of People's Assembly NRCG 1946-1952; Supreme Court 1946-1977; District – Higher Court in Podgorica 1946-1977; District Court in Niksic 1946-1977)
- Archive of Higher Court in Podgorica (holding: District- Higher Court in Podgorica 1946-1977)
- Archive of Municipal Court in Podgorica (holding: Municipal – Basic Court 1946-1977)

Croatia

- State Archive in Zagreb (holding: Supreme court 1946-1978; Presidium of People's Assembly NRH 1946-1978)
- Archive of Higher Court in Zagreb (holding: District Court 1946-1978)
- Archive of Municipal Court in Zagreb (holding: Municipal Court 1946-1978)

Serbia

- State Archive of Serbia in Belgrade (holding: Supreme Court 1945-1994; Presidium of People's Assembly NRS 1946-1952; Executive Committee 1953-1977)
- Archive of Higher Court in Belgrade (holding: Higher Court 1946-1994)
- Archive of II and V Municipal Court (holding: II and V Basic Court 1946-1994)

Slovenia

- Archive of Republic of Slovenia (holding: AS 1931 – The Secretariat of Republic for Interior SRS, 1945-1970; Reports of Ministry of Interior 1945-1970; Supreme Court AS 1237 - 1945-1977)
- Historical Archive in Ljubljana (holding SI ZAL LJU 85, District Court of Ljubljana 1870-1978; holding LJU 86 – Municipal Court of Ljubljana 1948-1978)

učestvovao pod pritiskom prirodne anomalije,kojoj se nijesam mogao odupri-
jeti,unatoč toga što sam svijestan bio,kao sto sam i danas svijestan,odvra-
tnosti ovoga djela,za koje sam nesrazmjerno teže kažnjen nego ostala dva
učesnika u tome djelu. Ova me kazna teško pogadje,jer sam,kako rekoh,sa-
mom prirodom teško kaznjen i jer i sam osjećam odvratnost i stid zbog ove
moje anomalije.

S obzirom na ovakvo stanje stvari,kao i s obzirom na moju starost,usljed
koje će,vjerujem,već jednom i da prestane ova moja anomalija,ovaj teški
teret moga života,kao i s obzirom da bolujem i od drugih bolesti i defe-
kata,kako je to uvrdjeno pred sudom,molim taj Prezidijum,da mi putem po-
milovanja oprosti kaznu na koju sam osudjen presudom Sreskog suda u Her-
cegnovom Broj K.45/49 od 10 juna ove godine.

S. P. - S. N.

(illegible)

НАРОДНА ДЕМОКРАТСКА ЦРНА ГОРА
СРЕСКИ СУД
Бр. 18 - IX - 1949 год.
ХЕРЦЕГНОВИ

Sreski sud u Nikšiću,sastavljen od sudije Sreskog suda Lekčevi
viće Krsta,kao pretsjednika vijeća i sudija porotnika: Tomića Sime i Se-
nojević Jelene,kao članova vijeća,uz sudjelovanje zapisničara Dedović De-
nice,službenika suda,u nejavnoj sjednici održanoj dana 17-XII-1949 godine,
povodom molbe za pomilovanje ,službenika Opšteg Građ.
preduzeća u Nikšiću,daje

M I Š LJ E NJ E:

DA SE NE OPROSTI kazna popravnog rada u trajanju od pet
mjeseci,na koju je osuđen presudom ovoga suda K.102/49
od 3 novembra 1949 godine.

R A Z L O Z I:

Presudom Sreskog suda u Nikšiću K.Br.141/49 od 3 novembra
1949 godine osuđen je ,službenik Opšteg Građ.Preduzeća
u Nikšiću na pet mjeseci popravnog rada za krivično djelo protiv priro-
nog bluda.Ova je presuda pravnosnažna.

Osuđeni podnio je ovome sudu molbu za Prezidi-
jum NRCG sa kojom je tražio da mu se kaznu oprosti,jer da je nevino
osuđen.

Cijeneći razloge navedene u molbi,kao i sve spise ovoga pred
meta sud je mišljenja da osuđenom ne treba kaznu oprostiti
jer da je djelo za koje je osuđen prijeve prirode.

SRESKI SUD U NIKŠIĆU,dana 17 decembra 1949 god.

Zapisničar,

Pretsjednik vijeća,