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HETERONORMATIVITY, INTIMATE CITIZENSHIP AND
THE REGULATION OF SAME-SEX SEXUALITIES IN
BULGARIA

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Heteronormativity, Intimate Citizenship and the Regulation of Same-Sex Sexualities in Bulgaria

Introduction

To the growing body of work on sexualities in Central and Eastern Europe, this chapter contributes a substantive focus on Bulgaria, a nation-state that has rarely been studied in the Anglophone literatures on the post-communist condition and the history and sociology of sexuality.¹ We offer an historical discussion of the ways in which same-sex sexualities have been regulated in Bulgaria, which traces the major shifts that have taken place in law and policy. In so doing, we make an argument about how the regulation of same-sex sexualities might be understood as part of the wider regulatory practice of the Bulgarian state's "intimate citizenship regime" (Roseneil, 2010b). We suggest that the institutionalisation and regulation of intimacy in Bulgaria has been both implicitly and explicitly heteronormative, radically privileging the conjugal, procreative heterosexual couple, and variously, actively oppressing, excluding, and marginalizing those who have acted on, and sought to live out, their same-sex desires and attachments. However, we also point to the ways in which this heteronormativity has, in recent years, been challenged, as the intimate citizenship regime is reconfigured in the context of

¹ The growing literature on sexuality in Bulgaria has been mainly a result of the efforts of lesbian and gay activists and experts from human rights organisations and to a lesser extent of scholars and academics from various disciplines. A significant part of this literature focuses on historical and socio-legal analyses of sexuality (for example, Gruev, 2006; Dimitrova, 2008; Kukova, 2008; Meshkova and Sharlanov, 1994; Mihajlova, 2006; Pisankaneva, 2003; Popova, 2004, 2009), as well as on recent LGBT activism (Atanasov and Dobrev, 2008; Genkov et al, 2004; Genova, 2008; Pisankaneva, 2002, 2009; Pisankaneva and Panayotov, 2005), and finally on cultural attitudes and representations of same-sex sexuality (Angelova and Liakova, 2005; Atanasov, 2008, 2009; Panayotov, 2009).

processes of globalization from above and below, related to the country's accession to the European Union, and the emergence of transnationally-networked lesbian and gay activism.

The research on which this chapter is based was undertaken as part of a larger comparative study of intimate citizenship in Europe.² Our use of the notion of “intimate citizenship” draws on the work of Ken Plummer (1995; 2003), who has articulated the concept, in preference to the rather narrower one of “sexual citizenship” (Evans, 1993; Weeks, 1998; Bell and Binnie, 2000; Richardson, 2000), as encompassing “the decisions people have to make over the control (or not) over one's body, feelings, relationships; access (or not) to representations, relationships, public spaces, etc; and socially grounded choices (or not) about identities, gender experience; erotic experiences” (Plummer, 1995:151). From this starting point, we carried out a three-pronged study of intimate citizenship, across four countries, which involved an historical analysis of the claims and demands of a range of social movements in relation to intimate life; a policy analysis of law and policy in relation to intimate life; and a socio-biographical study of the life and relationship stories of people, from majority and racialized/ minoritized groups, who are living outside conventional heterosexual couples and families. Out of this research, Roseneil has developed a normative understanding of *full* intimate citizenship as involving “the freedom and ability to construct and live selfhood and a wide range of close relationships – sexual/love

² The study focused on Bulgaria, Norway, Portugal and the UK, and was a component of the EU-funded Framework 6 Integrated Project, FEMCIT: Gendered Citizenship in Multicultural Europe – the impact of contemporary women's movements. The research was directed by Sasha Roseneil, with Mariya Stoilova responsible for the Bulgarian element of the project. For more information see www.femcit.org and Roseneil (2008, 2009)

relationships, friendships, parental and kin relations – safely, securely and according to personal choice, in their dynamic and changing forms, with respect, recognition and support from state and civil society” (Roseneil, 2010a: 82). The (far from fully realized) conditions of intimate citizenship that prevail in any particular nation state, at any particular time might be understood as that country’s *intimate citizenship regime* (Roseneil, 2010b). Intimate citizenship regimes develop historically, in path dependent ways, and comprise the laws, policies and cultures that regulate and construct everyday lived practices of intimate life in ways that are more or less patriarchal or gender-equal, more or less heteronormative or sexuality-equal, and more or less racist/ ethnic majoritarian or multicultural.

In this chapter we begin by outlining the main characteristics of the Bulgarian intimate citizenship regime, and the landscape of social movement activism around issues of intimate citizenship, during the communist and post-communist eras. In this context, we then go on to discuss the ways in which the regulation of same-sex sexualities has shifted over time, and how these changes might be understood in relation to wider process of social transformation. Our discussion centres on two areas of law and policy regulating same-sex sexualities where there has been significant normative change - in moves to legitimate same-sex sexual practices and to protect lesbian, gay and bisexual people from discrimination; and on one area of law and policy which has thus far proved resistant to change – that of same-sex relationship recognition.

The Bulgarian Intimate Citizenship Regime

The Bulgarian intimate citizenship regime has historically tended towards a more gender-equal form of familialism, at the same time as being strongly pronatalist and heteronormative. In his analysis of family systems across time and space, Goran

Therborn (2004) points to the distinctive hue of the Bulgarian Orthodox patriarchy prior to communism, which was notable for granting married women the right to own property and to transact business independently, as well as equal access to divorce. Gender equality became state policy in 1944 with the Fatherland Front's seizure of power, and was instantiated in the communist Bulgarian Constitution of 1947, which also secularized marriage, and equalized the status of children born outside marriage. Under the rule of the Bulgarian Communist Party there was a strong expectation that women should engage in paid labour, and levels of female employment were high (Petrova, 1993; Panova et al, 1993; Koeva and Bould, 2007). This was not, however, accompanied by any challenge to the domestic division of labour: women were to combine the roles of worker, mother and housewife. Early marriage was almost universal, as was child-bearing (Philipov and Kohler, 2001, Frejka et al 2008), and there was a limited "range of available options for self-realisation outside the family" (Frejka et al 2008: 8).

Under communism "only reproductive sexual acts between spouses were considered legitimate sexual practices" (Popova, 2004: 1, our translation). Sexual pleasure as an end in itself was disapproved of, even within marriage, and abortion was increasingly restricted.³ The state's pronatalism reached its apotheosis in the 1951

³ Abortion first became available in 1956, but was later progressively restricted as part of the pronatalist policy. In 1968 abortion was prohibited for childless women; only women above the age of 45 or who had more than 3 children could have an abortion. A special medical board had the authority to approve abortions in "special" circumstances, such as women under the age of 16, women who have 1 or 2 children, and abortions in cases of rape or for medical reasons. Further restrictions on abortion were introduced in 1972 when abortion was prohibited for women with 1 child. These changes met the strong disapproval of

Bachelor Tax (Decree for the Stimulation of Birth Rates). This penalized women aged between 21 and 45 and men aged between 21 and 50 who did not have children, requiring them to pay 5% of taxable income at the age of 21, rising to 15% at 35 (Ministry of Labour and Social Policy, 2006). The law enabled public reprobation⁴ and imprisonment for infidelity⁵ (Penal Code, 1956), and “Comrade Courts”, established in 1961, were public forums at which local Communist Party activists and members of the community discussed individuals’ intimate lives, particularly issues of extra-marital sex, domestic violence and alcoholism, and offered advice on how to preserve marriages (Popova, 2004; Brunnbauer, 2008). The attempt to confine sexuality to the marital relationship was further pursued through the arrest and imprisonment of prostitutes (Meshkova and Sharlanov, 1994; Popova, 2004, 2009), and of men who engaged in same-sex sex (Pisankaneva, 2002; Popova, 2009), which we discuss below. This often forced people with same-sex desires to enter marriages and to lead double lives (Pisankaneva, 2009).

The criminalization of same-sex sexual acts between men dates back to the rule of Simeon at the turn of the 10th century (893-927), when the death penalty was

the public and were revoked one year later (1973) when all women were allowed to present their case to the medical board and permissions are granted more easily. All restrictions were removed in 1989.

⁴ “Public reprobation” was the announcement of the sentence in public places, for example in front of the people with whom the accused worked, or at an organization of which s/he was a member (Law on the Administrative Punishments and Violations, SG 92/28.11.1969).

⁵ In 1956 changes in the Penal Code introduced imprisonment for up to 6 months or fine up to 1000 BGN and public reprobation for a spouse who left his/her family and was living with another person. The same punishment was stipulated for the person with whom the spouse lived. In the case of second offence, the punishment was imprisonment for up to 3 years.

introduced (Bulgarian Helsinki Committee, 2001). In 1896, in the post independence era, the penalty was reduced to “confinement to a dark cell for 6 months” (Penal Code, Art. 216 cited in Bulgarian Helsinki Committee, 2001), but under communism, after a wave of conservative, pronatalist legal changes in the early 1950s, the punishment for homosexuality was increased to three years imprisonment (Penal Code, 1951). This new legislation penalized both acts of “sexual intercourse” and acts of “sexual satisfaction”, between people of the same sex, with the latter encompassing, for the first time, sexual acts between women (Bulgarian Helsinki Committee, 2001). It might be possible that a communist ideology of egalitarianism that expected an equal contribution from women in employment and promoted a culture of “low gender polarization” (Lofstrom, 1998) was able to imagine women engaging in sexual activities and giving and receiving sexual pleasure in ways that were unthinkable in other contexts.⁶ However, whilst there was a state campaign against “intellectual homosexuals”, who were sent to corrective labour camps by the communist regime, it seems that no women were sentenced for same-sex sexual acts (Gruev, 2006; Pisankaneva, 2002).

The post-communist era saw a general relaxation in the policing of heterosexual intimate lives. The Bachelor Tax was repealed, and the 1991 Constitution stated that:

The privacy of citizens shall be inviolable. Everyone shall be entitled to protection against any unlawful interference in his private or family affairs and against encroachments on his honour, dignity and reputation. (Art.32:1)

The emphasis on supporting heterosexual reproduction has continued, albeit within the new globally sanctioned discursive framework of the rights and interests of the child

⁶ Our argument here has parallels with Lofstrom’s (1998) discussion of why homosexual acts between women were criminalized in the 1889 Finnish Penal Code.

(Protection of the Child Act, 2000; The Family Code, 2009). With rising levels of divorce and an increasing proportion of (a declining number of) children born outside marriage - reaching over 50% in recent years (National Statistical Institute (NSI), 2009) - there have been moves towards the legal recognition of heterosexual cohabitation,⁷ but full recognition in the Family Code has recently been rejected (Family Code, 2009), and access to partner-related benefits is limited to heterosexual married couples.⁸ Alongside marriage, biological relations are privileged in a wide range of intimate citizenship rights and obligations – particularly in relation to issues of care, such as recognition as a care-giver and as “next of kin” by hospitals, and in relation to inheritance.

The Landscape of Intimate Citizenship Activism in Bulgaria

During the one party communist era there were no independent social movements organising around issues of intimate citizenship (or indeed around any issue). In the early years, the various women’s organizations which had existed prior to the coup in 1944 were unified into a single organisation, the Bulgarian Public’s Women’s Union (Български народен женски съюз). In 1950 this Union was merged into the Fatherland Front (Bulgarian Public’s Women’s Union (BPWU), 1950; Bulgarian Association of University Women (BAUW). 1968 saw the formation of the Committee of Bulgarian Women (Комитет на българските жени), still under the

⁷ Changes to the Transplantation of Organs, Tissue, and Cells Act (2003) in 2007 allow cohabiting partners to of more than two years to become a living donor to their partner (Art. 26), when previously living donors could only be those related by marriage, origin or adoption. The 2009 Labour Code (Art.163:7) allows both married and cohabiting fathers to take fifteen days paid leave on the birth of their child.

⁸ For instance, inheritance rights, survivor’s benefits and adoption as a couple.

auspices of the Fatherland Front (Central Committee of the Bulgarian Communist Party (CC of BCP), 1968). This granted a highly circumscribed form of autonomy to “organised women”, rather than constituting an independent “women’s movement”. The issues taken up by organised women under communism included labour force participation and work-life balance, equality in family and partnership relations, women’s living standards and education, and, most of all, childcare (Committee of the Movement of Bulgarian Women (CMBW), 1980). Whilst demands during this period were mostly addressed to the state and had a protectionist tinge, a wider range of intimate citizenship issues emerged into the public sphere in the pages of the Committee’s women’s magazine “Today’s Woman” (“Жената днес”) including gender and domestic violence, women’s reproductive rights, sexual pleasure and sexual objectification of women.⁹

It was only after 1989 that independent women’s organizations began to emerge, with a significant spurt in the development of NGO-led feminism, largely funded from outside Bulgaria, from the late 1990s onwards (Daskalova, 2000) as part of the development of what Steven Sampson (2002) calls “project life” across the former communist states. Women’s NGOs addressed a range of social issues that concerned women, including education and culture, political decision-making, employment, healthcare, and the environment (Daskalova, 2000; Daskalova and Filipova, 2003). More recently, the focus of women’s organizations has been on gender equality in economic, social, and political citizenship, and, to a lesser extent on issues related to intimate citizenship (Stoilova, 2009). There has been little attention to issues of same-sex sexuality amongst women’s organisations.

⁹ For more details about publications in “Today’s Woman” see Stoilova (2009).

The first, and most important, gay non-governmental organisation, the Bulgarian Gay Organisation “Gemini”, was established in 1992, focusing in its early years mainly on HIV prevention (BGO Gemini, 2007). In 2001, supported by the Open Society Institute, and later working in transnational coalition with Dutch gay organisation, COC, and Accept Romania, BGO “Gemini” extended its aims to include wider campaigning around LGBT issues, and community building activities (such as the creation of a “safe house”, a library, a monthly bulletin, socio-cultural activities and self-help groups of lesbians and gay men). BGO “Gemini”’s first legal campaign was directed at the criminalisation of sexual acts in public places, and it was involved in drafting the Law on Protection against Discrimination, which was passed in 2004. In 2004, BGO “Gemini” hosted the first international conference on LGBT issues in Bulgaria and launched the first gay radio broadcast in 2006 (BGO “Gemini”, 2007).

Since the mid 2000s the range of actors on the lesbian and gay scene in Bulgaria has expanded to include youth, queer, lesbian and bisexual women’s organisations and groups, such as LGBT Action, Gay - Straight Alliance, LGBT Idea, Queer Bulgaria, and Bilitis. The choice of the name “Bilitis” for a resource centre for lesbians and bisexual women references the earliest lesbian rights organisation in the United States, Daughters of Bilitis, founded in 1955, whilst the use of the abbreviation “LGBT” and of the concept of “queer” clearly draws on more recent traditions of activism in the Anglophone world. The emergence of these groups has contributed to the greater visibility of the lesbian and gay community in Bulgaria, and to the articulation of demands for legal protection and political representation. The focus has largely been on campaigning for legal recognition of same-sex partnering and parenting, action against discrimination, and HIV prevention. There have been annual Gay and Lesbian Fests

since 2005 organised by Bilitis, two LGBT prides (in 2008 and 2009) organized in Sofia, and various street demonstrations, for example an anti-homophobic “Free Gay Hugs” campaign (January 2010, Sofia), and an anti-death-penalty in Uganda demonstration (January 2010, Sofia). In spite of these developments, activism in Bulgaria has been rather uneven and volatile as even the largest organisations such as BGO “Gemini” and Queer Bulgaria have experienced long periods of organisational instability and inactivity. Furthermore, the activities and visibility of the gay and lesbian community are mostly concentrated in the capital (Pisankaneva, 2009) and a few large Bulgarian cities.

In addition to this, there have been various issues which have not been addressed, for example domestic violence, bisexuality or transgender identity.¹⁰ The first sex-reassignment surgery in Bulgaria was performed in 1993, but the procedure for the recognition of the “new” gender is still not regulated and there is only one piece of legislation that mentions sex-reassignment, according to which a person who has changed their gender has to apply for new documents within thirty days (Law for Bulgarian Identification Documents, 2007, Art.9). Furthermore, a regulation issued by the Ministry of Defence identifies transsexuality as a sexual disorder, thus making trans individuals unfit for military service (Dimitrova. 2008: 11). These issues, however, have remained outside the activist agenda.

The Legitimation of Same-Sex Sexual Practices

¹⁰ Despite the fact that some organisations state a concern with issues of bisexuality and transgender, and/or use the term “queer” in their names (for example, LGBT Action, Bilitis, Queer Bulgaria), in practice these issues are largely missing from activist agendas.

After the intensification of anti-homosexual laws during the pronatalist 1950s, the first move towards the legitimization of same-sex sexual practice was decriminalisation in 1968. A number of other Soviet bloc countries had already decriminalized sexual acts between men (Hungary and Czechoslovakia, in 1961), with pressure for change coming from the medical profession, particularly “the flourishing field of sexology” (Long, 1999:247), and Bulgaria seems to have followed this liberalization process.¹¹ The impact of decriminalization was limited, however, both because it was not accompanied by the emergence of a lesbian or gay movement, subculture or community (Pisankaneva, 2003) within which those with same-sex desires could organise, socialise and construct individual and collective identities, and because the decriminalisation was only partial. From 1968 until it was equalised in 1986, the age of consent for homosexual acts was 4 years old than for heterosexual sex (18 as opposed to 14). Same-sex relationships remained largely invisible culturally, and the law continued to discriminate between homosexual and heterosexual behaviour, and to regard same-sex sexual practices as deviant and disorderly. Art.157:4 of the Penal Code (1968) rendered criminal homosexual acts in public places and homosexual acts performed in a “scandalous manner” or “in a manner that may incite others to follow a path of perversion”, and Art.157: 5 made homosexual prostitution punishable.¹² In the 1970s and 80s two new pieces of legislation, The People’s Militia Act (1976) and its Supplementation (1983), further emphasised the communist regime’s distaste for same-

¹¹ A number of sexology clinics and a research institute existed under communism, but were closed in 1999 (Okoliyski and Velichkov, 2004).

¹² Art.155(1) of the 1968 Penal Code penalised the persuasion of a woman to prostitution, but not the act of prostitution itself, where Art.157 penalised both the prostitute and the client in the case of homosexual prostitution.

sex sexuality, allowing for the arrest and forceful resettlement of people committing “anti-social acts” amongst which was the “public display of homosexuality”.¹³

Culturally, homosexuality continued, throughout the communist era, to be seen as “an unhealthy sexual and moral practice that reveals an admiration of Western lifestyles, and could be “cured” by corrective labor or public censure” (Pisankaneva, 2003: 1). In 1986 the age of consent was equalized again without any public discussion or wider commitment to non-discrimination towards homosexuals.

The liberalization of the intimate citizenship regime in relation to heterosexual intimate lives that accompanied the end of communism took well over a decade to begin to impact upon non-heterosexuals. The new post-communist right to an intimate life unhindered by the state, articulated in the 1991 Constitution, implicitly applied only to heterosexuals, and in 1997 conditions worsened for lesbians and gay men, with the raising of the age of consent for same-sex sex to 16. This move once again explicitly linked homosexuality with criminality, coming as it did as part of a wider set of amendments to the Penal Code aimed at reducing criminality during the economic and political transition (Kostov, 1999). This occurred against the background of a cultural backlash of patriarchalism and conservatism (Daskalova, 2000; Pisankaneva, 2009) and growing negative publicity around issues related to homosexuality in the media (Atanasov, 2009).¹⁴ Ironically these anti-corruption moves were an important part of the

¹³ It seems, however, that no one was prosecuted under either of these articles (Bulgarian Helsinki Committee, 2001: 7).

¹⁴ The public silence around homosexuality under communism was replaced by a growing media attention to these issues, usually offering stereotypes of same-sex sexuality as scandalous and deviant and using homophobic language (Atanasov, 2009: 1).

process of preparation for accession to the EU, but the introduction of an unequal age of consent fell foul of the *acquis communautaire*.¹⁵

In the early 2000s, both lesbian and gay and human rights NGOs (BGO Gemini, and the Bulgarian Helsinki Committee) and, most significantly, the European Commissioners investigating the country's preparedness for EU accession, brought the issue of the inequalities relating to same-sex sexuality onto the political agenda for the first time (European Commission (EC), 2002). The Regular Report on Bulgaria's Progress towards Accession in 2001 noted that, "Bulgarian law currently discriminates against homosexuals. Discriminatory provisions in the Penal Code need to be removed to avoid discrimination" (EC, 2001: 22). So it was that as part of accepting the anti-discrimination elements of the *acquis communautaire*, in order to be able to accede to the EU, Bulgaria revoked the various discriminatory paragraphs discussed above, including the unequal age of consent (SG/92/2002). Keen to speed the process towards accession, all groups in Parliament agreed to these changes within a year of the report, adopting the terms of the EU's modernising, anti-discrimination agenda in their reference to "archaic formulations" that treat "homosexual acts as perversions", and thereby "support a discriminatory regime towards homosexuality" (Draft Law on Alteration and Supplementation of the Penal Code, 2002: 2, our translation). The draft law went on to specify that "the existence of the mentioned texts contradicts the regulations of European legislation, breaks international contracts and puts under question Bulgaria's accomplishment of the political criteria for EU membership" (Draft Law on Alteration and Supplementation of the Penal Code, 2002: 2, our translation).

¹⁵ The Copenhagen criteria set out in 1993 require candidate countries to adopt the *acquis communautaire*, the total body of EU laws and regulations.

The final explicitly discriminatory provision in Bulgarian law relating to same-sex sexual acts was repealed in 2006. Art. 157 of the Penal Code stated that same-sex sexual acts (both “sexual intercourse” and acts of “sexual satisfaction”) that used force or threat, or the abuse of a state of dependence or supervision, or which involved a person unable to defend him/herself (Penal Code, Art. 157) were a criminal offence, the punishment for which was to include public reprobation, which was not provided for heterosexual acts of the same nature.¹⁶ With the revoking of this Article, equal punishment was established for sexual assault whatever the gender of the victim or aggressor, and “homosexual intent” was no longer regarded an aggravating factor.

So, in an exceptionally short space of time, between 2002 and 2006, a number of legal changes were enacted that fully equalized the law surrounding same-sex sexual practice. However, the fact that these changes were top down, rather than bottom up, brought about by the transposition of EU policies to Bulgaria, rather than as a result of changing attitudes and social pressure and mobilization within the country is, we would suggest, of lasting significance in terms of their impact on the everyday lives of people in Bulgaria.

The Protection of Lesbian, Gay and Bisexual People from Discrimination and Violence

The development of positive legislation in Bulgaria to protect lesbian, gay and bisexual people from discrimination and violence has been directly related to EU accession. The moves towards the legitimization of same-sex sexual practice which took

¹⁶ Public reprobation is still used, for instance, announcing the non-payment of child maintenance on local radio (Darik News, 2007) or announcing a conviction for drink-driving by a minor on the municipality notice board (Darik News, 2010).

place under communism were not accompanied by any overt condemnation of the oppression of homosexuals or any acknowledgement of an entitlement to protection against discrimination. The introduction of anti-discrimination legislation which included explicit mention of sexual orientation was a response to the demands of the EU. The EU Employment Equality Directive of 2000¹⁷ banned discrimination based on religion and belief, age, disability and sexual orientation, in employment and occupation (access to employment and pay and conditions), vocational training, and membership of employer and employee organisations, identifying four types of discrimination: direct, indirect, harassment and instruction to discriminate. The Directive also shifted the burden of proof from the employee to the employer in cases of alleged discrimination, and allowed organizations or associations to act with or for a complainant, both radical moves which serve to recognize the relative powerlessness of an individual worker-complainant, when facing the resources of their employer.

The Protection against Discrimination Act (PADA) (2004), which was regarded as “revolutionary for the Bulgarian judicial system” (Mihajlova, 2006: 1), enacted the Employment Equality Directive, targeting both direct and indirect discrimination, as well as shifting the burden of the proof in favour of the victim, and allowing legal non-profit entities to initiate court cases, and to act as plaintiffs on behalf of the victims. The law included all aspects of discrimination, direct and indirect, which are recognized in both international and Bulgarian law, explicitly including sexual orientation, and applies to the exercise of all rights recognized by law, thereby following the European

¹⁷ Directive n. 2000/78/EC, 20 November. Available at:

http://ec.europa.eu/employment_social/news/2001/jul/directive78ec_en.pdf

Convention on Human Rights (Kukova, 2008).¹⁸ It also moved beyond the requirements of the Employment Equality Directive to address equal treatment and equal opportunities “in principle in every part of the social sphere” (Kukova, 2008: 3), offering protection in the areas of employment, education and training, as well as in the provision of goods and services, which is not yet addressed by EU law, and it provided for the establishment of a statutory Commission against Discrimination, to deal with the implementation of the Act and cases of discrimination, the Protection against Discrimination Commission (PADC).

The lesbian and gay organisations which had been formed from the early 1990s had not addressed the issue of anti-discrimination legislation in advance of the issue being brought on to the political agenda by the accession negotiations. Lacking experience of lobbying and campaigning, and political capital and credibility, and less well-supported and funded by international agencies than the women’s NGOs, they were relatively marginal actors in the public consultation and discussions about the anti-discrimination proposals, in contrast to the women’s organisations, which were active in the drafting of the proposals. However, after the Protection against Discrimination Act was passed, lesbian and gay organisations have been involved in testing its implementation.

The first and most widely discussed such case was in 2004-2005 when Sofia University was successfully charged with sexual orientation discrimination for banning

¹⁸The Bulgarian Constitution outlaws discrimination on the ground of sex, race, nationality, ethnic origin, origin, religion or belief, education, opinions, political belonging, personal or public status, property status. The PADA introduces a number of “new” grounds: citizenship, disability, age, marital status, and also sexual orientation.

a group of gay men from using its saunas.¹⁹ In 2009, a bisexual woman prisoner, supported by the Bulgarian Helsinki Committee, won a case against the Prosecutor's Office of Bulgaria for direct discrimination. She was awarded non-pecuniary damages because a prosecutor had turned down her request to be put forward for early release on the basis that she “had ‘a clear and stable homosexual orientation’ and her ‘way of life’ and ‘emotional state, thinking and behaviour’ were problematic” (Bulgarian Helsinki Committee, 2009: 1). The case revealed how the authorities had collected detailed information about the woman’s intimate life – with reports addressing her “accommodation”, “family relations”, “lifestyle and contacts”, “emotional status” and “mindset and behaviour”, in a manner reminiscent of the Communist regime. She was described as having a “masculine behavioural pattern” and “masculine appearance” (FRA, 2008: 138-139).

Alongside the PADA, a number of other legislative changes mainstreamed anti-sexual orientation discrimination provisions across the Bulgarian welfare state. The Health Law (SG 70/10.08/2004), which lays out the principles governing the provision of healthcare, now includes sexual orientation in the list of grounds which cannot be used in the assessment of the patient’s health condition, and the Judicial Ethics Code (SG 60/22.07.2005) includes sexual orientation in the grounds on which lawyers may not discriminate. The Social Security Act (SG.12/13.02.2004) has provisions that do not

¹⁹ This was the first case of sexual discrimination won by one of the biggest lesbian and gay organisations, Queer Bulgaria, on behalf of the victims. The Sofia University “St. Kliment Ohridski” was found guilty of direct discrimination against a group of four young men who were denied access to the sauna and verbally assaulted by the security guards in January 2004 due to their sexual orientation. The Court found that the victims have suffered non-pecuniary damages and each of them was offered a remedy of 500 Bulgarian leva. In addition to this the University had to grant them access to the sauna.

allow insurance companies to refuse additional voluntary insurance to individuals based on numerous grounds, amongst which are sex and sexual orientation (Art.283), and sexual orientation is mentioned as grounds on which discrimination or privilege is not allowed by the Regulation of the Procedures for Selection of State Servants (SG 6/23.01.2004).

Whilst there is inconsistency in the incorporation of protection against sexual orientation discrimination into Bulgarian law, and there are areas where it is not included in the list of illegal forms of discrimination, the direction of legal and policy change is clear; the Bulgarian state has been taking on board the new European norms about sexual orientation discrimination. Indeed, revisions to the Constitution of 1991 have been considered by the Ministry of Justice (Temporary Commission for Preparation of Proposals for Changes in the Constitution, 2004), in order to bring the Constitution into line with the EU Charter of Fundamental Rights, which would include constitutional protection against sexual orientation discrimination.

However, when it comes to homophobic speech and violence, against which there have been European Parliament resolutions, and Fundamental Rights Agency pronouncements, but no legally binding directives requiring member states to institute criminal law sanctions, the Bulgarian state has not acted. Homophobic speech is banned as harassment on the grounds of sexual orientation by the PADA (Kukova, 2008), and one case has been brought, unsuccessfully, to court, and another to the PADC, but there have been no policy initiatives to combat homophobic violence. The Bulgarian Helsinki Committee (2001) points to police violence against homosexuals, the collection of personal information from homosexual victims of violence that does not relate to the case, and refusal to register acts of homophobic violence. BGO “Gemini” has stated that

lesbian and gay people “very often” say that they “prefer” “becoming reconciled [to violence] to defending their rights and seeking legal protection” (BGO “Gemini, 2004: 1). And despite campaigning by lesbian and gay activists, homophobic intent was not included as an aggregating factor in hate crimes or hate speech in the 2009 revised Penal Code, even though its extension included as aggravating factors race, ethnicity, nationality, religion and political views.

Another demonstration of the inconsistency in the development of anti-discrimination protection was the recent case of a Bulgarian municipality passing a Public Order Regulation (Art.14; 12.11.2009, Pazarjik) forbidding “the public demonstration and expression of sexual and other orientation” (LGBT Action, 2010a), thereby recalling the revoked provisions of the Penal Code (1968) which banned the public display of homosexuality. The youth organisation “LGBT Action” organised a protest against the regulation which was subject to violent homophobic attacks and resulted in the arrests of five anti-gay demonstrators (Standart, 2010). The regulation was pronounced unconstitutional, and was found to violate of basic human rights, by the Ombudsman of the Republic of Bulgaria, who also pointed out that the formulation is “unclear, unpredictable and creates the risk of arbitrary judgements by local authorities” (Statement of the Ombudsman cited in LGBT Action, 2010b: 1, our translation). A ruling from the PADC revoking the regulation is anticipated at the time of writing.

The gaps in protection and inconsistencies in implementation notwithstanding, the public debates about changes in the law concerning sexual orientation discrimination, and publicity about cases taken under the law, have provided an agenda around which to organise, and a space for lesbian and gay activists to speak publicly

about the discrimination and violence they face in their daily lives. In addition, they provide the normative grounds from which claims for the recognition of same-sex relationships proceed.

The recognition of same-sex relationships

The ongoing heteronormativity of the intimate citizenship regime in Bulgaria is underlined by the absence of any legal recognition of same-sex relationships in law and policy, and of any signs that such recognition is on the agendas of the political parties. The 1991 Constitution, adopted after the fall of the communist regime, defined marriage for the first time - and in advance of the trend that developed in the early years of the 21st century in the wake of demands for same-sex marriage – as “a voluntary union between a man and a woman” (Art. 46:1). More recently, in 2008-9, debates about the formal legal recognition of cohabitation, which have been posed in terms of the need to acknowledge social transformation, the emergence of a “new value system”, and “basic civil rights, mobility, and freedom of personal life” (Council of Ministers, 2008b: 61), have continued to explicitly define cohabitation as “between a man and a woman” (Family Code Proposal, Art.13, Council of Ministers, 2008a). There has been much debate about marriage “dying out”, as more and more people cohabit and have children outside marriage, and there has also been strong resistance to legal change that might downgrade the value of marriage. The “gold standard” status of heterosexual marriage has been defended on the basis that it represents the ideal for national public morality, whatever the reality of people’s everyday family practices (Council of Ministers, 2008b).

So, despite the wide-ranging anti-discrimination legislation enacted in the first decade of the 21st century, and the 2009 Family Code stating that “every person has the

right to marry and to found a family” (Family Code, 2009, SG 47/23.07.2009), same-sex partners remain, in every respect, legal strangers. There is no provision for the recognition of same-sex partners in relation to any rights or obligations, or any fiscal and social benefits. Same-sex partners have no rights to inheritance, to a share in a pension, or a “family name”, to be given information about, or to be involved in decision-making about their partner’s health. They have no care entitlements, tax relief, or survivor’s benefit. They are not allowed to refuse to testify against each other in court, as married heterosexual couples may, and they cannot adopt children together, or access reproductive technologies.

Whilst the EU has, thus far, not intervened in the field of family law, and there are no directives relating to same-sex partnership recognition, and hence no pressure on the Bulgarian state to enact legal change in this area, EU regulations on movement, residence, asylum and family reunification require member states to recognize partnerships that are recognized in a couple’s state of origin.²⁰ This means that same-sex married/ partnered or cohabiting couples from another EU member state are, in principle, allowed to enter and reside in Bulgaria as a couple if they provide a formal certificate delivered by the authorities of the state of origin testifying to their relationship.²¹ For nationals of non-EU countries, however, the regulations are different

²⁰Entry, Residence and Exit of EU Citizens and Accompanying Members of Their Families Act, 2007.

²¹There is no data on the actual implementation of the free movement of same-sex couples within the EU in general, or on the granting or refusal of visas or residence permits in Bulgaria in particular (Kukova, 2008: 5).

and the notion of “family members” is restricted to opposite-sex spouses or partners (Act on Foreigners in the Republic of Bulgaria, 2007).²²

The recognition of same-sex relationships has been one of the main goals of lesbian and gay activism in Bulgaria in recent years. The earliest initiatives were undertaken in 2004 and 2005 by BGO “Gemini” and Queer Bulgaria. During the pre-election campaign these groups sought support from various political parties for the representation of gay rights in parliament, and for the pursuit of legal recognition of same-sex relationships. These demands, however, have remained largely ignored by politicians, and the Bulgarian Socialist Youth is the only political group to have openly declared its support of these quests for sexual orientation equality.

BGO “Gemini” also played an active role in the heated public debate that surrounded the process of revising the Family Code, between 2006 and 2009, to which a range of religious groups, conservative, pro-family and nationalist organisations replied with homophobic campaigns. BGO “Gemini” demanded that the amendments to the Family Code should include the legal recognition of same-sex cohabitation and parenting (BGO “Gemini”, 2008c). In support of these claims it organised the first gay pride in Bulgaria under the slogan “Me and My Family” (June, 2008). Public reactions were polarised, but homophobic responses were more visible, and there were violent outbursts against the 200 participants in the parade. Firecrackers, Molotov cocktails, and stones were thrown at the marchers. More than eighty people were arrested for violence, including the leader of a Bulgarian nationalist organisation. The parade was accompanied by about 100 police officers and no participants in the march were injured.

²² Dimitrova (2008) gives an example how a civil partner of a Bulgarian citizen was denied the right to residence because the couple entered a civil partnership in Iceland.

However, the organisers of the parade received numerous threats to their lives, both before and after the march (source: personal meetings with BGO “Gemini”). Popular responses to the march saw the participants as demanding “special” rights that were regarded as endangering public morality, and as putting children at risk of “becoming homosexual”.

BGO “Gemini” also sent an open letter to the Chairs of the National Assembly and the Judicial Committee on the subject of partnership recognition, referring to the illegitimacy of sexual orientation discrimination, and to the respectable, law-abiding status of homosexual citizens:

From judicial and moral points of view such limitation is unjust, and represents discrimination against Bulgarian citizens based on their sexual orientation [...] Homosexual Bulgarian citizens are part of the public, they are tax-payers and voters, and have the right to demand to be granted equality. (BGO “Gemini”, 2008b: 1, our translation)

An article published on the website of BGO “Gemini” (2008a) analysed the main arguments advanced in public discussions of the Family Code to deny legal recognition to same-sex relationships. The most common argument was that marriage is a union between a man and a woman, as the Constitution and the Family Code explicitly state. Other arguments focused on the idea that a same-sex family was an inappropriate environment for raising children, suggested the immorality of same-sex relationships, and expressed concerns that such changes would undermine the institution of marriage and its procreative functions. It was also very common that legal recognition of same-sex relationships was seen as giving special rights to people in such relationships.

The statement of the former Head of Parliament, Gerjikov, is typical of the way in which same-sex relationships have been discussed in the political sphere:

With all my respect for the different, I cannot accept that gay marriages should be made legal in Bulgaria. We are a patriarchal society and this would “detonate” public opinion. So may those who find it necessary to be together in a same-sex [relationship] not want the official recognition of the state for this”.

(Nova Television, 2009, our translation)

This reluctant-realist acceptance of the existence of same-sex relationships, and the nod to “respect for the different”, alongside a refusal of state recognition for such relationships, is a globally-widespread, contemporary discursive response to the demands of lesbians and gay men for equal intimate citizenship rights. Writing in the UK, prior to the introduction of civil partnerships for same-sex couples in 2005, Richardson (1998) suggests that lesbian and gay men “are granted the right to be tolerated as long as they stay within the boundaries of that tolerance, whose borders are maintained through a heterosexist public/ private divide” (Richardson, 1998: 90). And Cooper (2001:86) points out, notions of “proper place” and the public/private divide both contribute to the preservation of inequality because they create exclusions. Furthermore, gay demands for equal rights in terms of opportunities, recognition, freedom or satisfaction (Cooper, 2001: 76) are often constructed as seeking special rights or protecting special interests, and are presented as “promoting” a single minority viewpoint (Duggan, 1994: Brickel, 2000). A distinctively traditionalist, and Bulgarian-nationalist, hue is added to this position by Gerjikov in his reference to Bulgaria as a “patriarchal society”—a performative re-assertion of the historical power of the Orthodox Church, which brushes aside the 20th century Communist commitment to

gender equality in work and family, and the reality of the long-standing relative lack of cultural authority of the Church.

Conclusion

According to the 2008 Eurobarometer study on discrimination in the EU, people in Bulgaria have the lowest levels of comfort with the idea of having a homosexual person as a neighbour²³, and with the idea of having a homosexual person in the highest political office of all EU member states.²⁴ Bulgaria also has the lowest proportion of people knowing their rights, should they be a victim of discrimination or harassment (17%) (EC, 2008: 22), and the lowest level of awareness of discrimination against LGBT people: only 20% saw discrimination on the basis of sexual orientation as widespread (EC, 2008: 52), against an EU average of 51%, and only 1% said that they had witnessed discrimination on the grounds of sexuality, against an EU average of 6% (EC, 2008: 57). The research also found that Bulgaria had the lowest proportion of respondents who reported having friends who are homosexual, at 7%, against an EU average of 34%. The 2006 Eurobarometer study reported that 15% of Bulgarians were in favour of same-sex marriage, against an EU average of 42%, and 12% thought that same-sex couples should be allowed to adopt, against an EU average of 31% (EC, 2006).

²³ An average “comfort level” of 5.3 on a ten-point “comfort scale”, with Latvia at 5.5 and Lithuania at 6.1, in the lowest grouping, and Sweden at 9.5 and Netherlands and Denmark at 9.3, in the highest grouping, against a EU average of 7.9 (EC, 2008:57).

²⁴ An average “comfort level” of 3.5 on a ten-point “comfort scale” along with Cyprus (also 3.5) and Romania (3.9), against Sweden (9.1), Denmark (9.0) and Netherlands (8.8), and an EU average of 7.0 (EC, 2008:58).

We do not cite these statistics to draw conclusions about the quality of life of lesbians, gay men and all of those with same-sex desires in Bulgaria, which would be much better researched through in-depth qualitative, and ethnographic studies (a task to which we have begun to make a small contribution). It would be all too easy to read these data as suggesting that Bulgaria is exceptional in its levels of homophobia and intolerance of lesbians and gay men, and we certainly do not wish to encourage such readings. The 2008 Eurobarometer report itself notes the high proportion of respondents in Bulgaria who gave the spontaneous answer that they would be indifferent to having a homosexual neighbour²⁵, and points to the 12% who answered that they “do not know”, or who refused to answer (against an EU average of 1%) (EC, 2008:57). These results suggest that there are considerable numbers of people in Bulgaria who are either completely uninterested in the issue, unable to conceive of the situation, or to formulate a position on it. This, together with the low levels of reported awareness of sexual orientation discrimination and of anti-discrimination legislation in general, and the low levels of personal acquaintance with lesbians and gay men, all combines to suggest that issues surrounding sexual orientation and lesbian and gay rights have largely failed to be registered by the Bulgarian population at large.

Rather than *revealing* high levels of homophobia in Bulgaria, the Eurobarometer data are suggestive of the novelty of the *idea* of homophobia and of attention to sexual orientation discrimination within a country which lacks the history of social movement mobilization that created these notions, and that propelled them onto the European political agenda and into the biopolitical technologies of European surveys, with their rankings of member states according to levels of conformity with emerging European

²⁵ In Bulgaria, Latvia and Luxembourg, 25%, and in the Czech Republic, 27% (EC, 2008:57).

norms of anti-homophobia and sexual orientation equality. EU research on discrimination against, and attitudes towards, homosexuals has emerged in the context of the regulatory framework which has been developed since the 1997 Treaty of Amsterdam created an explicit legal competence for the EU to combat discrimination based on sexual orientation. After meeting the requirements of the *acquis communautaire* to fully decriminalize same-sex sexual practice, and then enacting the EU directives which incorporate sexual orientation discrimination into a comprehensive anti-discrimination framework, Bulgaria, along with other new member states that evince low levels of conformity with new European norms on homosexuality,²⁶ is faced with the political-cultural challenge of rising up the league tables which measure the changing norms and ethics of the European community of nations.

In contrast to many western European and Nordic countries, where there has been over half a century of lesbian and gay activism, which built on a longer history of sub-cultural community life, of bars and clubs, and literary and artistic production, self-organising, self-identifying communities of lesbian and gay men are a recent development in Bulgaria. Much lesbian and gay life takes place in what Melucci (1995) calls “submerged networks”, informal groupings of people who gather in clubs and bars, and through on-line forums, and who are largely invisible to the heterosexual world. Even public figures who are known to be gay rarely “come out” explicitly and declare their sexual identity publicly (Pisankaneva and Panaiotov, 2005). The cultural normalization, and indeed of valorisation, of same-sex relationships and desires that has

²⁶ Notably Romania and Poland, which have lower levels of acceptance of same-sex marriage and adoption than Bulgaria – with only 11% of Romanians supporting same-sex marriage and only 7% of Poles supporting adoption by same-sex couples, according to the 2006 Eurobarometer survey (EC, 2006).

proceeded through pop music, television and film, and the coming out of key figures in the entertainment industries in the UK over the past 20 years (Roseneil, 2000) has barely begun in Bulgaria. The Eurobarometer surveys might be seen as measuring, in one rather crude quantitative way, the level of “normalisation” of lesbian and gay lifestyles and identities across European civil societies. Whilst there is considerable evidence that a process of normalisation is well underway in many countries, as discussed by Bech (1999), Seidman et al (1999) and Roseneil (2000) in relation to the Denmark, the United States and the UK respectively, there is little evidence of such a process in Bulgaria.

However, there are real signs of change. Lesbian and gay groups have begun to challenge the heteronormativity of the national intimate citizenship regime, in the context of an opening up of the issues around homosexuality in the wake of accession to the EU. The full decriminalization of same-sex sexuality, and the creation of a comprehensive anti-discrimination framework which includes sexual orientation discrimination, constitute important shifts in the landscape of heteronormativity in Bulgaria. Whilst these changes have undoubtedly been imposed on Bulgaria from outside, as part of the wider process of rapid Europeanization that is affecting much of contemporary Europe, rather than emerging from the country’s own internal struggles and political compromises, they open up possibilities for those living non-normative sexualities to find a public voice and begin to occupy public space. Whilst marriage remains defined as exclusively heterosexual, and is posited as the ideal moral accomplishment, from which, along with blood ties, all intimate rights and responsibilities are derived, its popularity is declining, and more and more people are living, loving and having children outside its boundaries, implicitly challenging the

social and moral centrality of marriage. The contiguity of such changing everyday practices of intimate life with transformations in law and policy governing same-sex sexualities, might, we suggest, prefigure the possibility of further shifts in the Bulgarian regime of intimate citizenship in years to come.

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