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# THE OPPORTUNISTIC SOCIETY INCOHERENT, VARIABLE, DISPROPORTIONATE AND UNPREDICTABLE BEHAVIOURS

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## Abstract

The study highlights the incoherence, variability, disproportionality and unpredictability in the enforcement of certain public norms and policies. The same social behaviour is treated differently from one moment to the next, from one place to another, while other times the same policy is applied to substantially different situations that would require a more adapted treatment. The fact that this 'opportunistic' behaviour is systematic proves that we are facing a systemic phenomenon and not random anomalies.

The study summarizes my investigations into the cooperation between private actors and public institutions in applying OUG 31/2002 to presumed fascist groups that follow an opportunistic pattern. I surveyed the behaviour of organizations like the National Council for Combating Discrimination and the National Audiovisual Council, that show a variable, contradictory institutional functioning. An opportunistic functioning of groups and institutions creates an unfavourable environment for the values they are supposed to serve. The existence of an 'opportunistic society' is further confirmed by the antithesis between the grandiloquence of social values campaigns and the underwhelming individual and institutional behaviour in real situations. Among the case studies, the most egregious concern the policies meant to protect the superior interest of the child.

*Keywords:* opportunistic, anarchic, incoherence, unpredictability, behaviour

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## 1. Introduction

The concept of an opportunistic society is the result of a comprehensive study of the decisions of state institutions with precise objectives and domestic rules that are relied on as a source of coherence and predictability in public life. Contrary to these standards, overall the behaviour of the institutions proves to be variable and unpredictable. The examples of opportunistic behaviours were chosen to cover the range of situations and to allow comparisons. By

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documenting the manner in which the Prosecutor's Office and the Police responded to the actions of a far-right group from Timisoara in situations two years apart, I highlight the inconsistency of not only these public institutions, but also of civil society. The second example involves decisions by the National Council for Combating Discrimination (NCCD) and the National Audiovisual Council (NAC), organisms that work with the same type of standards and hence allow for a comparison of their decision-making processes. The cases under scrutiny prove the divergence between rhetoric and fact in the life of Romanian public institutions, and in particular their incoherence, disproportionality and unpredictability in enforcing the law. I looked at the distance between the discourse and formal rules, and the reality of the everyday practice of organizations involved in the child protection. It's important to point out that the evolution of institutional opportunistic behaviour is highly dependent on the feedback or lack thereof from the society at large. I found it necessary to emphasize the difference between 'opportunistic societies' and 'anarchic democracies' because the processes that characterize one or the other are similar and can be easily confused. The anarchic democracy is the ascendancy of individual and group interests over common good, leading to a confrontation between privileged groups and the population. The opportunistic society however denotes a global mechanism in which both institutions and society suffer to a similar extent of an incapacity to generate a coherent behaviour.

## **2. The Prosecutor's Office, the Police: contradictory responses to acts of extremism**

The far-right group 'The Autonomous Nationalists of Timișoara, Heil Hitler' was founded in 2008, and it went on to establishing connections to similar organizations in Germany and Austria [W. Totok, Radio Europa Liberă, 5 March, 2013, online at: <http://www.europalibera.org/content/article/24825034.html>]. In 2010 it launched several attacks that posed a real threat against the Christian community 'The Family' [1]. Members of the Autonomous Nationalist group posted tens of fliers, accusing the members of the community of paedophilia and incest, on the house inhabited by the community and nearby buildings. Incendiary messages calling for collective actions against 'The Family' like: 'Paedophiles are not safe in our town' were accompanied by marches urging violence against the small Christian group. In the space of a few days, the Autonomous Nationalist group managed to create an anti-'The Family' obsession within the local community. But the members of 'The Family' were well-known for their peaceful life and impressive charitable undertakings in support of people in need. This reputation had motivated local authorities to support projects initiated by 'The Family'. The Autonomous Nationalists campaign did not originate from any concrete facts and was not based on the identification of any form of illegality. The transparent motivation was the identity of the 'Family', a Christian group belonging to the new wave of

religious movements, separate from the Orthodox majority, that included families leading a communal life within the same building.

Through calumnies and incitation to violence, the Autonomous Nationalists campaign posed an imminent threat to 'The Family' community. The acts went beyond the protection of the freedom of speech even by the very liberal standards of the American system, because they used words "in such circumstances" and "of such a nature as to create a clear and present danger" [Schenck v. United States, 1919]. The motivation behind the aggression is identity-related (religious), which makes it a form of hate speech, thereby classifying it as a criminal offence. The Police investigated the identity of the authors of the fliers, which was easy to discover given that the name of the organization was listed on the fliers. But in spite of the nature of these activities, the local authorities chose not to pursue the Autonomous Nationalists of Timișoara. Some of the local population supported the actions of the far-right group. The press itself adopted the position of the Autonomous Nationalists, creating an intense and prolonged stressful environment for 'The Family'.

In 2013, the Autonomous Nationalists of Timișoara were centre stage again by offering on the organization's website 300 RON to every Roma woman that would consent to be sterilized. The stated motivation was a reiteration of the ideology embraced at the founding: 'an urgent solution/solving of the Roma problem' in order to 'conserve the racial genotype'. At the same time, the group states its 'total opposition to...mixed relations'.

This time, the civil society reacted vehemently. The associations Romani CRISS and The Centre for Monitoring and Combating Anti-Semitism in Romania protested and lodged complaints against the Roma-phobic organization. The Prosecutor's Office and the Police started investigations, and questioned the authors of the incitement, while the Timișoara Court started a criminal trial against the Autonomous Nationalists. The authorities responded promptly and drastically. The press presented the facts objectively and critically.

The manner in which the Prosecutor's Office and the Police treated the events at the beginning of 2010, when the attacks against 'The Family' took place, and those of 2013 – the 'offer' to compensate Roma women for undergoing sterilization – followed very different standards. But the events are of the same nature. The incitement to a pogrom against a religious community is a far-right, fascist action, as is an invitation to Roma women to be sterilized for the purpose of preserving the racial genotype. The behavioural inconsistency was not only observable in the authorities, but also public opinion, and in particular the press. The difference in attitude of such diverse social actors cannot be explained by a political 'order' from above. The case highlights the more general lack of compass of the society relative to the norms at its basis.

The case of the Autonomous Nationalists of Timișoara highlights the inconsistent manner in which order institutions treat, at different times and in different contexts, the same organization. It is symptomatic also for the more general theme of the confusion of the order institutions in positioning themselves relative to extremist-fascist activities like the ones involving the Autonomous

Nationalists. In Romania, fascist propaganda was forbidden by Governmental Ordinance no. 31/2002, which later became part of the Penal Code. Therefore, at a normative level, the rules are relatively clear. But at the level of applying the norms the behavior is incoherent.

Activists, organizations and researchers have repeatedly drawn attention to the lack of legal prosecution of anti-Semitic campaigns. One enlightening example is that of the journalist Ion Coja, whose discourse is of the most virulent anti-Semitism [2]. On the other hand, the Prosecutor's Office charged for criminal offenses the authors of conspiracy theories that vilify *Freemasons*, texts of little public impact that had been written before Government Ordinance no. 31/2002 was passed [3]. It was overzealous in a benign case in which no violation of the law could be demonstrated.

For a few years now the Police has mobilized an impressive contingent for the protection of Gay Parades, suggesting a concern for the security of those that support the rights of LGBTs. At the same time, when called on 20 February 2013 to protect the presentation of a movie about the gay community at the Museum of the Romanian Peasant, the police stayed passive while a homophobic group interrupted the performance [4]. Although half of a year has passed since the attacks of some homophobes on the participants to the viewing of 'Files of Gay History' performance happening only a few meters away from a Police station, no progress has been announced in identifying the culprits. This behaviour suggests a complicity that undermines the credibility of anti-extremist policies in Romania and of increase the confusion.

### **3. Too strict or not strict enough: the jurisprudence of the NCCD**

The National Council for Combating Discrimination (NCCD) is a source of numerous such examples. In 2005, a member of the Szekler National Council was fined for stating: "Hungary is the only country that is becoming, step by step, a second Israel" [5]. On January 19<sup>th</sup> 2012, the Board of the NCCD fined the staff chief of the Mureş Prefect for posting on his Facebook page the message: "Arbeit macht frei – that's what the protesters need to understand", in reaction to the protests held in front of his institution during that winter [6]. The NCCD considered the ironic use of this text, a reminder of the inscription on the entrances to German concentration camps, as Nazi propaganda.

The nature of the two texts penalized by the NCCD is not the same. The first suggests a fear of Jewish people, the second expresses political adversaries. However, neither contains abusive words regarding a minority belonging. And yet the Board of the NCCD decided to punish both. But did not take the same measures in other cases in which the wish to offend or marginalize was clear, or infringed the freedom of thought, conscience, and religion. In its Decision of August 10<sup>th</sup> 2009, the Board of the NCCD refused to penalize the publishing of a hiring advertisement that specified that the "candidate should be a God-fearing person" [7]. The Board also decided in 2010, regarding a statement by a member

of the House on prime time TV that "atheists are dangerous people", that "an involvement of the State in this issue ... would be excessive" [8].

The jurisprudence of the NCCD, in its entirety, contains hundreds of decisions to penalize language deemed as abusive (NCCD). Going by these numbers and contrary to what the two examples of 2009 and 2010 would indicate, the NCCD has been active in combating discriminatory discourses. However, it is exactly in cases of egregious discrimination, that also involve the authorities, that the position of the NCCD showed a contradictory change. This includes the NCCD Decisions regarding the situation of the Romanian Church United with Rome, Greek-Catholic (RCUR). Statements about the discrimination against this Church are a constant in the Rapports of the State Department of the USA. The discrimination against the Sâmbăta Greek-Catholic parish was recognized in 2010 by the European Court of Human Rights. The European judges used arguments that are relevant for the whole of the RCUR issue. The ECtHR decision in particular should have been a relevant precedent for the Board of the NCCD. Yet, in 2011, the NCCD considered three issues mentioned by the State Department of the USA as showing discrimination against the RCUR and returned one decision of non-discrimination and two of lack-of-competence [9]. The latter two, regarding requests to retrocede land formerly owned by the RCUR, are similar to a request to retrocede land to the Jewish Community that was deemed by the NCCD to be a case of discrimination [10]. These inconsistencies increase the level of confusion and unpredictability.

#### **4. Chaotic decisions: the National Audiovisual Council**

What are the causes of this fluctuation and unpredictability in the activity of the NCCD? What is the source of such an opportunistic institutional functioning? In the case of the NCCD, the opportunistic behaviour manifests itself within the framework of a rigorous algorithm for answering petitions developed by the Board. The procedure for analyzing petitions is clear and usually followed, and every decision is accompanied by an extensive argumentation. The NCCD studies [G. Dezideriu (ed.), *Combaterea discriminării în România: un pas spre egalitate și diversitate*, 2006, online at: [www.cncd.org.ro/Files/?FileID=49](http://www.cncd.org.ro/Files/?FileID=49)], the NCCD reports – among which the comprehensive Report on implementing the racial Directive, 2003-2010 [11] - and the collections of decisions prove the existence of well-ordered work procedures and allow a statistical evaluation of the activity of the institution. But they do not permit the identification of outliers - a separate study is needed.

The institutional opportunism is easier to observe in the activity of the National Audiovisual Council (NAC). Like the NCCD, the NAC is an autonomous public institution under parliamentary control, and it has a similar function to that of the NCCD. The results of the activity of the two institutions are however substantially different. The NCCD has reduced the discrimination against disadvantaged groups. Some NCCD decisions were brave, in that they went against the position of the political majority – see their decision regarding

the presence of religious symbols in public schools. On the other hand, the audiovisual in Romania has undergone a continuous degradation. The Law of the Audiovisual gives expansive powers of intervention to the NAC, enhanced further in 2011 by the adoption of the Code for regulating audiovisual content. In spite of this power, the decisions of the NAC are incoherent, often debatable, and surprising sometimes by their excess and sometimes by their passivity.

The phenomenon can only be analyzed through examples because publicly available data are not sufficient for a quantitative analysis. The following cases are relevant for the greater picture. The demand for a plurality of ideas and opinions, for a wide-ranging variety of information sources and the obligations of providers of audiovisual services are incompatible with transforming a television station into a political or business instrument. The Law asks the National Audiovisual Council to be a shield against such situations. Therefore, the NAC should have abrogated/pulled the license of Realitatea TV in 2010. At that time, the records in the criminal prosecution file of Sorin Ovidiu Vântu proved that the owner of the television station curtailed the journalistic freedom of his employees [C. Rucaru, Ziare.com, 20 octombrie 2010, online at: <http://www.ziare.com/sorin-ovidiu-vantu/stenograme/stenogramele-unei-mari-mizerii-1049742>]. But the NAC did not remove the license, and remain passive in defiance of its obligations as established by the law for such a situation. The reverse of unlawful passivity is activism that goes beyond the law. . In other contexts, the NAC was overly interventionist: CNA send to cable TV operators a letter inviting them to subscribe to Trinitas TV station, although the law requires that the NAC protect competition within the market.

The presence of the press at NAC meeting allows insights into the decision mechanism of the NAC. Here is the evolution of the debate that resulted in removing from the programming of Realitatea TV of an ad by the magazine Academia Cașavencu advertised between 25 and 28 May 2010. The ad had the following message: “In the 9<sup>th</sup> century, the Hungarians invaded Europe through the Ural Mountains. Organized in hords and using a fighting technique specific to people of the steppes, these invaders knew how to frighten their contemporaries and to achieve many victories against them. The last victory took place in the terrible year 2010, when the Hungarians managed to dominate a lazy people in South-Eastern Europe that surrendered their Ministry of Culture without fighting. The culture under Hungarian occupation. Read Wednesday’s Academia Cașavencu.”

A.S., a member of the NCA, declared that the statements in the ad are ‘amplified stereotypes’. During such turbulent periods ‘subjects like these attract’. Another member, N.I., commented: “I see in this an offense to the dignity of the Hungarian people and of the Romanian people, I don’t see any irony. Our contemporaries are the ones that frighten.” I.O. about the content: “I lost my sense of humor when I saw this ad.” D.G., a member of the NCA, contends: “It is a chauvinistic ad. I could not detect the irony or even sarcasm”. The opinion of C.M.: “I don’t think we should take so seriously a humorous ad” [C.M. Andronache, Media.ro, 1 iunie 2010, online at:

<http://www.paginademedias.ro/2010/06/spotul-academiei-catavencu-cu-%E2%80%9C%9Cocupatia-maghiara%E2%80%9D-a-aprins-spirile-la-cna/>].

But the ad did not disseminate stereotypes, it was mocking them. It didn't support chauvinism, it derided it. And yet the NAC debated for a public admonition of the Realitatea TV station and a fine.

In February 2011, the NAC members fined TVR 1 by 10.000 RON for airing two episodes about the organization MISA as part of a documentary called 'Those that think differently'. The official argument was a violation of the law on the protection of minors.

Here are some interventions of NAC members. D.G.: "Too many times during this show they have used this cheap hook of despise audiovisual law. I find it extremely undignified for the Public Television to air such phrases [For reasons concerning Romanian audiovisual law we cannot present these images uncensored]." "I have seen reputable productions. But this is beneath contempt very low, I feel sorry for him."

C.M., member of the NAC: "I think there was a need for more influential people [to express their opinions]"; "We are talking about an extremely controversial topic, aired by the Romanian Public Television. It is a program that probably cost thousands of Euros.... I had bigger expectations of them." [E. Berdeli, 4 March, 2011, online at: <http://insolent.ro/?p=2936>]

The film was thoroughly a documentary. According to the NAC regulations, its members were tasked to ascertain to what extent the film "could have affected severely the physical, mental or moral development of minors" – as stated by the law. But the debate, in this example as well as in the previous one, shows that the NAC members taking part in the meeting did not know the stakes or the complexity of the questions they needed to address. They are supposed to ensure a balance between the freedom of speech and principals like the prohibition of discrimination, in the first case, and the protection of the child, in the second. None of those present followed the typical algorithm for applying the law in such an instance. There were no references to procedure, precedents or more generally the jurisprudence in the area. The NAC members talked about the emotions elicited by the ad or how much they liked or disliked the documentary. The debate proves that the fine agreed to expresses the unhappiness of NAC members about the quality of the documentary, and the child protection principle and airing time were just pretexts.

This manner of NAC Board functioning, that lacks professional landmarks and methodologies, is a source of instability and chaos in decision making. The research I've undertaken of a part of the NAC jurisprudence has proven that, in the case of the Council, the institutional unpredictability are generated by a lack of established procedures and relevant knowledge on the part of the decision makers. Since Romanian public opinion lacks the discrimination to evaluate audiovisual policy, it is unable to produce constraining behaviours that might impose a more rigorous conduct to the NAC. The lack of procedures and professional culture have turned the NAC in the standard model of a chaotic institution, typical of the opportunistic society.

## **5. Rhetoric, formal regulations and facts**

A likely source of decisional uncertainty and unpredictability is the gap between rhetoric, formal regulation and facts. Among the known areas of divergence between discourse and reality, one has particular relevance: statements and behaviours concerning children.

According to an extensive Gallup survey, 63.6% of the population supports the death penalty for paedophilia [12]. Over the years, several publications asked their readers' opinion on the same topic, and concluded that paedophiles are at the top of the list of those deserving the death penalty according to these surveys. The comments on newspapers forums gives glimpses in this attitude: "I don't think these criminals should live in jail on our money... especially after what they did! I don't want to hear about Human Rights being against capital punishment", wrote one of the many vigilante on the forums. Some politicians joined themselves the 'popular' opinion. In 2002, the Prime Minister at the time, Adrian Năstase, stated that: „As far as I'm concerned, if a reintroduction of the death penalty were considered, it probably should be accepted in cases of paedophilia" [Ziua, 18 Oc 2002]. In 2012, Senator Iulian Urban submitted a draft law to reintroduce the death penalty for people found guilty of raping children.

In spite of this rhetoric, in Romania paedophilia, defined as a sexual relation with a minor under 13, is a common practice in certain Roma communities and, as shown by recent studies, involves increasingly younger girls (11-12-13 years old) and it is spreading to non-traditional groups [13]. The particulars of early marriage traditions demand that we distinguish between sexual acts involving minors and 'paedophilia in general'. However, the consequences are damaging in both cases. The young girls become mothers at 12-13-14 years old, put an end to their education, and become subservient to a family heavily dominated by males [14].

If the zero tolerance for paedophilia rhetoric were based on a genuine interest in the fate of children, the early marriages phenomenon would be unacceptable to the population. The primacy of rhetoric over action is underlined by correspondent decisions made within the judicial system. Prosecutors request, and judges hand out, short, suspended sentences to Roma involved in sexual acts within early marriages, thereby encouraging the practice [15].

A corollary of the paedophilia issue is child prostitution. According to research conducted by Save the Children, sexual exploitation and the proximity of prostitution among minors, especially girls, has reached worrying levels in Romania. Of particular concern is the situation of institutionalized girls. Prostitution rings have been identified at the 'Friendship' Centre in Botoşani, the Solca Placement Centre, the 'Mihail şi Gavril' Centre in Suceava, etc. [S. Rusu, *evz.ro*, 24 noiembrie 2012, online at: <http://www.evz.ro/detalii/stiri/scandal-imens-povestea-centrului-de-plasament-transformat-in-bordel-batai-cu-pumnii-si-p-10126.html>].



The Romanian State formally expresses, periodically, its concern for the fate of children. The Parliament has adopted the relevant international legal instruments. In 2003, Romania joined the European Convention on adopting and executing decisions regarding the placement of children and re-establishing the placement of children, and in 2004, a legislative package in the area of protection of children's rights was adopted. A National Authority for the Protection of the Rights of the Child was established (2005), a number of programs of national and international scope were adopted (2005-2007), and national strategies were established in the area of protection and promotion of the rights of the child – the last one covering years 2008 to 2013.

In their actions however the policy of Romanian authorities follows a different track. Between 2000 and 2010 child protection evolved in a positive direction because of the financial support of international organisms. Once the Romanian state took over the task, however, this area became vulnerable. The economic crisis has disproportionately affected child protection. On January 2010, the Government dismissed around 3000 social services and child protection employees and reduced the child protection budget by 317 million Lei. In 2011, the number of social services employees was further reduced.

The distance between formal measures and actions can be estimated through investigations into criminal behaviours toward children. In 2013, cases of children being tied to their bed in hospitals were made public [E. Moise, *Opinia Buzaului*, 2-8 February 2013]. For taping over kindergarten students' mouths in an attempt to quiet them, a kindergarten teacher was only symbolically sanctioned by the School Inspectorate with a warning. There is a real risk of children being subjected to inhuman treatments. Between October 2007 and December 2009, two foster parents subjected a 4 years old girl and an 8 years old girl to inhuman treatments [G. Ghidovăt, *evz.ro*, 2 March 2012 - <http://www.evz.ro/detalii/stiri/asistentele-maternale-din-ilfov-care-au-maltratata-copii-la-judecata-969453.html>]. Such anecdotal evidence proves the disfunctionality of the child protection system. The cruel acts perpetrated against the two girls lasted for two years: the foster parents, social services workers, psychologists, doctors responsible for their well-being covered up the behaviour.

## **6. Conclusions: anarchic democracy and the opportunistic society**

Contradictory, variable, confusing, unpredictable institutional behaviour is characteristic to a substantial part of Romanian decision-making. Some of the causes are the subjectivity of decision-makers (as priority is given to personal feelings, beliefs, and desires) and individual opportunistic behaviours (as conscious policies and practices of taking selfish advantage of circumstances). Organisms like the Prosecutor's Office and the Police, the NAC and the NCCD have issues of professionalism and are subject to factors, some of them political, that together contribute to the incoherence, variability and unpredictability of their activity. A key issue is the convergence of opportunistic functioning and popular attitudes. The civil society is itself the source of unpredictable messages,

and is unable to provide a restraining environment that, in time, could impose on institutions a reasonable and hence coherent behaviour. Therefore, confusion and unpredictability become stable characteristics. Opportunistic institutional behaviour is one component of the 'opportunistic society'.

A second key issue is the separation between the systemic variable and contradictory behaviours and the levels of power. The institutional functioning showcased here is opportunistic, but not corrupt. The latter is characteristic of anarchic democracies. Anarchic democracies are those democracies in which minority interests prevail over the common good irrespective of electoral transitions, without dismantling the poliarhic character of the political system [16]. The typical symptoms of anarchic democracies include: special pensions for law and order institutions, members of Parliament, judges and diplomats, a monopoly over the political sphere through prohibitive requirements, ethnic businesses, parasitical individuals or organizations within public institutions etc.

Internal or international pressure can fix more easily the dysfunctionalities of an anarchic democracy than of an opportunistic society. In line with similar concepts (anarchical society, decent society, deliberative democracies, pre-emptive democracies, etc.), the opportunistic society is the expression of a need to differentiate among democracies in terms of their performance. The opportunistic society is not unique to Romania, but a comparative study of institutional systems of other countries was not the object of this study.

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