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JM13714

*Alexandra Mercescu**

https://orcid.org/0000-0002-7889-6412

THE COVID-19 CRISIS IN ROMANIA: A HYPOTHESIS AROUND PENAL POPULISM AND LEGAL CULTURE

Abstract. In this paper I seek to present a working hypothesis to be eventually developed in a future contribution, namely that the COVID-19 crisis exposed some problematic behaviours evocative of an authoritarian ethos on the part of both public authorities and citizens which suggest that a *penal populist* attitude might now be part or even embedded in the Romanian legal culture. Specifically, I will organize this contribution as follows: in the first part, I will briefly describe Romania's reaction (as evidenced both in the official measures taken and the attitude of citizens) to the first wave of the pandemic focusing on the role of penal and military means; I shall qualify this reaction as containing some traces of penal populism. In the second part I shall offer a tentative mapping of the factors that can explain this problematic cultural reaction. Importantly, among these I include the successful fight against corruption with the consequence that what appears to have very much consolidated the rule of law in post-1989 Romania could be shown to have had the unintended and paradoxical effect of undermining the very same ideal.

Keywords: COVID-19, Romania, penal populism, legal culture.

KRYZYS COVID-19 W RUMUNII: HIPOTEZA DOTYCZĄCA POPULIZMU PENALNEGO I KULTURY PRAWNEJ

Streszczenie. W niniejszym artykule staram się przedstawić hipotezę roboczą, która zostanie ostatecznie rozwinięta w przyszłym opracowaniu, a mianowicie, że kryzys COVID-19 ujawnił pewne problematyczne zachowania wskazujące na etos autorytarny zarówno po stronie władz publicznych, jak i obywateli, co sugeruje, że postawa populistyczna w dziedzinie prawa karnego może być obecnie częścią lub nawet elementem rumuńskiej kultury prawnej. W pierwszej części krótko opiszę reakcję Rumunii (przejawiającą się zarówno w podjętych oficjalnych środkach, jak i postawie obywateli) na pierwszą falę pandemii, skupiając się na roli środków karnych i wojskowych; zakwalifikuję tę reakcję jako zawierającą pewne ślady populizmu penalnego. W drugiej części zaproponuję wstępną mapę czynników, które mogą wyjaśnić tę problematyczną reakcję kulturową. Co ważne, zaliczam do nich udaną walkę z korupcją, której konsekwencją jest to, że to, co wydaje się bardzo umacniać rządy prawa w Rumunii po 1989 roku, może mieć też niezamierzony i paradoksalny skutek w postaci podważenia tegoż ideału.

Słowa kluczowe: COVID-19, Rumunia, populizm penalny, kultura prawna.

* West University of Timişoara, Faculty of Law; Centre for Legal Education and Social Theory, University of Wrocław; Nomos: Centre for International Research on Law, Culture and Power, Jagiellonian University; alexandra.mercescu@e-uvt.ro

1. INTRODUCTION

In the sea of uncertainty that we were navigating at the beginning of the COVID-19 crisis, at least one aspect seemed beyond doubt: countries responded for better or for worse with local answers to a universal threat. To recall that France decided to keep its wine shops open as they were considered indispensable to the life of the nation or that some states in the US did the same in relation to gun shops as they regarded them to be vital is merely to offer some anecdotical examples of how localism gained the upper hand in the handling of this crisis. As the pandemic unfolded it shed light on many well-known underlying social problems, common to almost all societies, some of which, like inequality, it definitively exacerbated. Nonetheless, if anything, the pandemic proved that culture – by which I understand received practices and beliefs – matters even in the face of a universal enemy. Specifically, in some instances, the crisis unearthed, like in the case of the country that I will examine here, Romania, some deep-seated manifestations of a culture that is not without critique and that have become more easily visible now, against the background of the pandemic and its corresponding legal and political consequences.

In this paper I seek to present a working hypothesis to be eventually developed in a future contribution, namely that the COVID-19 crisis exposed some problematic behaviours evocative of an authoritarian ethos on the part of both public authorities and citizens which suggest that a *penal populist* attitude might now be part or even embedded in the Romanian legal culture. Specifically, I will organize this contribution as follows: in the first part, I will briefly describe Romania's reaction (as evidenced both in the official measures taken and the attitude of citizens) to the first wave of the pandemic focusing on the role of penal and military means; I shall qualify this reaction as containing some traces of penal populism. In the second part I shall offer a tentative mapping of the factors that can explain this problematic cultural reaction. Importantly, among these I include the successful fight against corruption with the consequence that what appears to have very much consolidated the rule of law in post-1989 Romania could be shown to have had the unintended and paradoxical effect of undermining the very same ideal.

2. THE ROMANIAN RESPONSE TO THE FIRST WAVE OF THE PANDEMIC

At first glance, Romania did not do anything out of the extraordinary in its reaction to the first wave of the pandemic. Some of the measures that had been taken are typical and include the suspension of international flight, restrictions of internal travel, closure of entertainment places, banning of public gatherings, stay

at home requirements, curfews, obligation of mask wearing. However, from the outbreak of the pandemic in the country, one could observe a clear 'demand' on the part of the public opinion for the use of criminal legal tools and a corresponding 'supply' on the part of prosecutors in dealing with what started as a sanitary crisis but was soon to be transformed into a multifaceted phenomenon. Indeed, as soon as the crisis reached Romania it became clear that criminal law will be part of the arsenal put in place in order to contain the disease. People were placed under investigation or criminal files *in rem* were opened for such acts as negligent behaviour susceptible of transmitting the virus, lying about one's travelling history, corruption in relation to the buying of medical equipment, disclosing what was not yet public information about the shutdown of schools, a deed deemed susceptible of spreading the panic.[1] In fact, the media's initial coverage of the situation operated with two main indicators: the somewhat obvious number of cases/death toll and the number of criminal cases to be investigated in relation to the disease. In addition, the sometimes inexact rendition by the media of the criminal issue involved, coupled with the variety of behaviours which seemed to be punishable under criminal law, easily left the impression, in a typically Kafkaesque note, that one could be both prosecuted for doing X (for instance, going to work as a doctor who suspects that he/she might be infected) and for not doing X (for instance, refusing to go to work as a doctor).

Perhaps, nowhere was the penchant for resorting to penal means more troublesome than in its application to the medical system. To give just one example, when a hospital in the northern part of the country became a zone of high-rate infection with many members of the medical staff testing positive it was decided to dismiss the manager, open a criminal investigation and institute a military administration that was supposed to 'solve' the situation by bringing in the rigors of military rule. This generated an outrageous situation, indeed a borderline case of degrading treatment, which unfortunately did not seem to capture the public's attention. Allegedly, the regular doctors were made to shower collectively in special outdoor units of decontamination arranged by the provisional military manager and walk naked through the yard in the morning to their equipment rooms.[2] Needless to say, after the hospital's 'grand'

[1] As of 30 July 2020 more than 1000 criminal investigations had been opened out of which 400 have since been dismissed: https://www.digi24.ro/stiri/actualitate/justitie/de-ce-s-au-facut--degeaba-1–000-de-dosare-penale-pentru-raspandirea-covid-probatio-diabolica-1344800 [Accessed: 13 March 2020]. At the beginning of the pandemic, in April 2020, the General Prosecutor of Romania urged citizens to file complaints using the following language: "Give us information. We are watching everything!": https://www.dw.com/ro/procurorul-general-despre-anchetele-covid--veniti-cu-informatii-noi-stam-cu-ochii-pe-tot-ziarecom/a-53040174 [Accessed: 13 March 2020].

[2] https://www.libertatea.ro/stiri/medici-spital-suceava-general-ionel-oprea-2946349 [Accessed: 13 March 2020]; https://www.hotnews.ro/stiri-coronavirus-23772082-coronavirus-romania-avem-dreptul-judecam-medicii-care-dau-demisia-fata-pandemiei-covid-19.html [Accessed: 13 March 2020].

reopening under the 'exemplary' military management, other cases of COVID have been confirmed among the staff disproving the much-lauded disciplinary narrative.

Not only the voices condemning these oppressive measures went unnoticed but in the face of resignations by a number of doctors who were claiming to fear for their life or refused to go to work without having adequate PPE (personnel protection equipment), the authorities in charge of the crisis announced that they were taking into consideration to temporarily militarize all medical personnel so that doctors can be eventually accused of defection, placed under immediate prosecution and judged by Military Tribunals.[3]

Of course, the behaviour of a doctor who runs away when the people need them the most is morally condemnable. And, surely, it must be taken into account that the Romanian medical system fares the worst in the European Union and the system had to be defended from collapsing. However, while Italian and French doctors were being cheered for their wearing work, one can only wonder if, in Romania, efficiency was to be achieved by making doctors work under the pressure of being locked up in prison. Central and Eastern European countries are well-known for their citizens' lack of trust in institutions and among themselves (Kopecký 2003, 1–18). To encourage the public to expect criminal action as some sort of miraculous cure of all plagues (COVID included) is certainly not helpful for building social cohesion.

This lack of trust calling for repressive statal action was also manifest in the number of fines the authorities applied, one of the highest in Europe at the time.[4] The public was largely supportive of these administrative measures and it mattered little that the Constitutional Court intervened to declare unconstitutional the law on the basis of which these fines were imposed.[5] While the law from 1999 regulating in detail the state of emergency patently infringed on the principle of legality and proportionality, at least some part of the population felt infuriated by the decision whose immediate consequence consisted in the possibility of annulment before a common judge of the individual fines applied up to that point.[6]

Another relevant point for my diagnosis of the Romanian (legal) culture has to do with the manner in which the patients were treated in the first phase of the pandemic. As soon as the virus started to spread on the Romanian territory as well, legislation was adopted to the effect that all patients who tested positive

[3] https://evz.ro/decizie-de-ultima-ora-pentru-medici-se-vorbeste-despre-mobilizarea-acestora--in-armata.html [Accessed: 13 March 2020].

[4] https://www.bbc.com/news/world-europe-52370421 [Accessed: 13 March 2020].

[5] Decision n 152/06.05.2020 of the Constitutional Court of Romania, published in the *Official Gazette* n 387/13.05.2020 available at http://legislatie.just.ro/Public/DetaliiDocumentAfis/225555 [Accessed: 13 March 2020].

[6] APADOR-CH, a human right ONG, declared that "following the Court's decision" the regime of the state of emergency was "chaotic": https://apador.org/decizia-ccr-pe-intelesul-tuturor/ [Accessed: 13 March 2020].

were to be hospitalized.[7] Moreover, they were not to be released until they presented two consecutive negative tests. Concretely, this measure meant that a person could have been made to stay in the hospital despite their will for several weeks in a row even if they displayed mild or did not display any symptom at all. While such a legal obligation might have been instituted out of concern for the patients themselves, their relatives and ultimately the population at large, it amounted to a *de facto* deprivation of liberty (by virtue of an order of the Public Health Ministry). Here, again, the Constitutional Court, had to step in in order to emphasize that such a deprivation of liberty cannot occur without the necessary legal guarantees (such as judicial authorization) even if the security of the country is threatened by a public health situation.[8] The Court also took issue with the measures of institutionalized quarantine and isolation at home arguing that the legislation on which they are based fails to meet the require criteria of legality, most notably the principle of predictability. The media's coverage of the decision did not necessarily depict it under a favourable light rather suggesting that the Court was to be blamed for the chaos most likely to ensue. In the same vein, the Prime Minister of the time declared sarcastically: "the Court decided that a patient infected with COVID-19 can walk away freely" and urged citizens not to take into account the Court's decision.[9] In a press communication of the Ministry of Internal Affairs (the Department for Emergency Situations) it was mentioned that the beneficiaries of the Court's decision were to be warned that if they do have the virus and infect others a criminal action could be triggered against them.[10]

The state of emergency reignited discussions about the legitimacy of a Hobbesian state where the absolute, unfettered sovereign is to take whatever measure is necessary to protect society (Runciman 2020). Paradoxically, in wanting to be a Hobbesian sovereign that protects citizens from each other (the *Other* being here the bearer of the virus), the Romanian state ended up instituting a war of all against all (patients vs. doctors, doctors vs. the state, doctors vs. doctors, first-order Romanian citizens vs. second-order Romanian citizens). Fighting nature, it brought back 'the state of nature'.

Leaving aside the presence of the military on the streets which was in any case not unique to Romania,[11] I believe it is possible to read in all these

[7] Health Ministry Order n 753/07.05.2020.

[8] Decision n 458/25.06.2020 of the Constitutional Court of Romania, published in the *Official Gazette* n 581/02.07.2020.

[9] https://www.digi24.ro/stiri/actualitate/autoritatile-nu-ii-mai-pot-tine-pe-romani-in-izolare--si-carantina-pacientii-covid-au-inceput-sa-plece-din-spitale-incepand-de-vineri-1332925 [Accessed: 13 March 2020].

[10] https://www.digi24.ro/stiri/actualitate/autoritatile-nu-ii-mai-pot-tine-pe-romani-in-izolare--si-carantina-pacientii-covid-au-inceput-sa-plece-din-spitale-incepand-de-vineri-1332925 [Accessed: 13 March 2020].

[11] https://www.weforum.org/agenda/2020/04/coronavirus-european-armed-forces/ [Accessed: 13 March 2020].

problematic interventions a form of penal (or military) populism. Without exaggerating the need to squeeze the 'reality' into pre-established theoretical labels, there is indeed a sense in which what happened could be qualified as penal populism to the extent that penal populism is defined as "a way of ensuring that policy in this sphere is more reflective of the public will than values of criminal justice establishment" (Pratt 2007, 14). Even more problematically, for John Pratt and Michelle Miao, penal populism represents "an attack on the long-established link between reason and modern punishment" and view it as "only the prelude to the way in which a much more free flowing *political populism* now threatens to bring an end to Reason itself, the foundation stone of modernity" (2017, 3 – original emphasis).

Initially identified at the end of the 20th century as distinctive for the Anglo-American world given its high incarceration rates, penal populism has by now been discussed in relation to many countries (Pratt, Miao 2017). It has also been associated with phenomena as diverse as the war on drugs (Kenny, Holmes 2020), the cultivation of moral panic in connection to the arrival of immigrants (Minetti 2020) and terrorism or the rise of feminist rhetoric denouncing domestic violence (Grzyb 2019). Some of the measures attributed to a penal populist policy seem utterly absurd such as a "proposed law in Canada that would create a database specifically designed to embarrass judges who impose 'lenient' sentences. Every time a sentence was imposed a record would be made of the name of the judge, the sentence imposed, and the maximum sentence permitted according to the Criminal Code" (Roberts et al. 2003, 9). Others, like the imposition of legislation which severely undercuts judges' discretion in criminal law cases, seem less so and could be debated. In any case, what defines penal populism is not *per se* the objectionable character of the measure but the fact that its roots can be linked to popular opinion and this in disregard of the measure's actual consequences. Of course, it would be not only naïve but also counter-productive to expect politicians and experts to never respond to public opinion. There are however responses and responses and one has to bear in mind that the public can be simply mistaken (people systematically believe that the crime rates are escalating even when in fact they are decreasing) (Roberts et al. 2003, 21), confused (the answers they provide in a simplistic polls do not reflect the complex attitudes they harbour in reality) (Roberts et al. 2003, 25) or inauthentic (indeed, it is difficult to know exactly what the voice of the public is given that it is certainly distorted by various actors in the legal, political and journalistic field). Public opinion must indeed be recognized as a "nebulous concept" (Roberts et al. 2003, 25). From a more radical perspective, it can even be said not to exist (Bourdieu 1979).

Yet, for what it is worth, in the Romanian case it does indicate a tendency towards penal populism. Thus, according to a poll conducted by a newspaper on a lot of 1000 people more than 66% declared themselves in favour of the militarization of hospitals, which dovetails with the high levels of confidence the

public displays towards the army.[12] This statistical example, together with the other problematic measures which seemed to very much enjoy the support of the public, provide us with a picture in which penal populism occupies a certain space in Romanian (legal) culture.[13] Indeed, from the very start of the epidemic when hundreds of thousands of Romanians living and working abroad returned home (now the figure is estimated at more than 1 million), the Romanians 'inside' the country felt reassured in concocting a story of the *Other*, the foreigner, the no-longer-Romanian Romanian who brings the plague from across the pristine national borders. This legitimized once more the recourse to criminal means and highly constraining measures. Whether one can speak of an embedded attitude that could be hardly displaced is something that requires further scrutiny. Such an analysis will need to take into account the well-known distinction between *external* legal culture (the public's legal consciousness, that is its attitude towards law in general and the institutions of liberal democracy) and *internal* legal culture (the various perceptions of the legal community such as seen from the inside of the profession) (Friedman 1975). For the time being, the two seem to be converging towards a penal populism of sorts with prosecutors paying heed to the public's thirst for 'law and order' and the public demanding a harsh stance on unruly behaviour. I turn now to presenting some tentative explanation for why this penal populist ethos has pierced the veil of Romanian legal culture. As such, I will offer 'culture' as explanation, not as justification (culture does not excuse behaviour) (see, for instance, Honig 1999) nor as causation (the various factors identified below are to be understood as having *facilitated* not *caused* the relevant behaviours).

3. A CULTURAL MAPPING OF PENAL POPULISM

In comparative legal studies, Pierre Legrand has been advocating for reading foreign law (its texts and underlying culture) "*à la trace*," that is by bringing to the surface its many invisible traces that pertain to "infinitely complex networks of enmeshment" in history, ideology, language, economics, politics, etc. (2011, 626–627). An interpreter mindful of these myriads of traces shall not be content to read law from law, that is from law as it is posited as positive law but will supplement law with "deconstructive scrupulosity" and thus will accept it as the "hyperlaw that is" (Legrand 2011, 626–627). The fact the one finds herself before one's own national law does not dispense one with the task of tracing. Being aware that no account is total (indeed, law cannot be exhausted neither in practice nor as

[12] https://www.bursa.ro/sondajul-bursa-doua-treimi-in-favoarea-militarizarii-spitalelor-o--treime-contra-81713934 [Accessed: 13 March 2020].

[13] Additionally, the acceptance of violence towards Roma people for 'correcting' misbehaviour speaks of another feature of Romanian society, namely its ethnonationalism.

explanation) I can nonetheless begin to trace here what I have previously identified as a Romanian variant of penal populism such as it took shape in the specific context of the COVID-19 crisis:

– a long history of "connivance between law, politics and military" that goes back to the "devaluation of liberal regimes of legality during the interwar and at least in the early years of the postwar period" (cf. Cercel 2021);

– a self-deprecating ethos that has been haunting Romanian society since time immemorial: we are 'savages' who know of no discipline and who therefore have to be governed by pure force;

– a precarious state of the public health system which needed to be defended at all costs;

– a lack of trust in government among citizens specific to Eastern and Central European countries;

– a high rate of confidence on the part of the public towards the Army;

– the notion of 'moral panic';

– the recent protests whose zeal was often premised on the idea that all politicians are either incompetent or corrupt/ that politics is always dirty;

– the legacy of a successful fight against corruption.

While other 'traces' can and must certainly be added, I want to discuss here briefly the last point which could appear as the most surprising in the enumeration. For years, Romania strived to build for itself an image of a country that finally resolved to efficiently fight corruption. Indeed, under the patronage of the European Union which monitors the progress made by the country, in the last decade Romania assumed anti-corruption as one of its main goals and therefore implemented a series of measures to that effect. Consequently, the independence of the judiciary became much stronger than in the aftermath of the Revolution and prosecutors felt encouraged to go after high-profile politicians who were long suspected of crimes involving public money. The chief of the National Anti-Corruption Prosecuting Office (Laura-Codruta Kövesi, who was recently elected head of the newly formed EU Prosecutor's Office) and the prosecutors working under her direction were soon made into public heroes. Kövesi's abusive dismissal from office by the former ruling party in 2018 was a matter of high concern at the time not only among liberal elites but in society in general (see Mercescu 2021). With prosecutors perceived as the nations' saviours, a significant part of the public came to perceive penal justice as the solution to all evils.[14] There was and there still is a sense in which prosecuting and convicting represented more than

[14] While the contexts remain very different, the Romanian story of perceiving judges as saviors and criminal law as a solution to all evils is reminiscent of the "centrality and hyper-inflation of penal law in Italian life" associated with the so-called *Tangentopoli* period when "judges managed to translate their theoretical independence into effective action against seemingly impregnable politicians" (see Nelken 1996, 197). I am indebted to one of the anonymous reviewers for suggesting this analogy. On Italian penal populism, see: Anastasia, Anselmi 2018; 2020.

delivering justice; they were seen as setting the country straight, bringing order and efficiency where politicians were unable or unwilling to do so. Indeed, in penal populist rhetoric, the crimes one is supposed to combat are often represented as "'the most important problem' facing the country" (Roberts et al. 2003, 22). As far as corruption is concerned, such a claim is relatively easy to make. Indeed, in the case of Romania the "threats to national security [were] understood from 2005 onward to include high and medium-level corruption" (Iancu 2020). It is unsurprising then that many Romanians saw the fight against corruption as crucial, worthy of any sacrifices. Let it be reminded that former President Traian Băsescu was propelled into power on an anti-corruption agenda that proved immensely popular[15] and whose effectiveness was later on, in a bitter irony for him, to turn against his own protégés.

Notwithstanding the undisputable merits of the criminal justice system, a part of the population, including many legal professionals, were ready to admit, more or less serenely, that at least some of these achievements were probably obtained at the price of excessive if not dubious investigative methods, including perhaps illegal mass surveillance techniques (still a matter of controversy). For instance, constitutional law scholar Bogdan Iancu summarizes the various critiques in a contribution, which highlights that the rule of law recipe concocted at the higher European level, was bound to "go native and/or develop pathologies" in Central and Eastern Europe:

> In Romania, over the past 15 years, the EU-driven need to produce anticorruption conviction quotas demonstrating success, in synergy with more "strategic" domestic drives, has resulted in a version of "penal populism." Surveillance of all kinds spiked, with quasi-unanimous judicial approval of wiretap warrants. Perp-walks have moved high-stakes trials into the "court of public opinion", with many wiretap transcripts leaked by anticorruption prosecutors, Brazilian-style, in the friendly press. More worrisome still, protocols between apex judicial institutions with the Romanian Intelligence Service (SRI) have surfaced, including references of close collaboration on files, between the SRI and anticorruption prosecutors (Iancu 2020).

All in all, these problematic undertakings denote an authoritarian drive (even though in many respects different than the one perceptible in the early '90s which was a direct translation in practice of the Criminal Procedure Code itself and of a legacy according to which the prosecutor was playing an exacerbated, all-powerful role in the criminal trial). However, in line with the 'law and order' rhetoric, the public did not seem particularly bothered by these potential transgressions of the rule of law. Outcomes and institutional commitments mattered more than procedural justice. And so the public retained "a strong preference for security over either freedom or democracy" (Iancu 2020) which seems to have translated into a penal populist attitude on the occasion of the sanitary crisis.

[15] One of his campaign mottos read in a typically hilarious Romanian language that remains untranslatable as such "stick it to the corrupted."

In fact, some might argue that a mild form of penal populism can constitute an advantage in the fight against corruption. Thus, it can be that penal populism helps strengthen the rule of law at least in some post-authoritarian contexts by providing the actors of the judicial system with the necessary psychological support and by putting additional pressure on a massively corrupted political class who resists reforms. If this is so, one can nonetheless further claim that the 'positive' penal populism risks converting into 'negative' penal populism, affecting the rule of law in times of crisis when the country tends to be governed by exceptional powers, including military ones as in the case of the pandemic's management. It should be pointed out that a 'positive' penal populism is different from a 'benign' penal populism. The latter is defined as the situation when "politicians […] pursue the right policies (effective crime policies) but for the wrong reasons (to be popular)" (Roberts et al. 2003, 5). We can notice from this definition that the effectiveness of the policy does not depend on the popular will. By contrast, with 'positive' penal populism, the effectiveness becomes dependent on popular support. Both positive and benign populism can slide towards 'malign' populism, that is "the promotion of policies which are electorally attractive, but unfair, ineffective, or at odds with a true reading of public opinion" (Roberts et al. 2003, 5).

4. CONCLUSIONS

This brief paper cannot be the place to discuss whether the positive penal populism of the Romanian anti-corruption agenda outweighs in the end the negative penal populism associated with it/that sprang from it. Rather, I aimed at drawing attention to some problematic features of present day Romanian legal culture that have been exposed during the pandemic. I hypothesized that these characteristics might have something to do with the recent legacy of the anti-corruption fight. Now, the exact role of the politicians, of the media, of the legal community and of the public is certainly to be ascertained in more detailed contributions that will have to build on empirical data as well.

Until then I proposed this contribution as a working hypothesis that is not to be read as an indictment of local solutions. Politically speaking, the pandemic is after all a national, regional or even local affair and there is for sure no right answer in tackling the crisis (moreover, to be fair, the restrictions imposed in Romania were not even among the harshest). But hard times have the great merit of laying bare some of our deep-rooted assumptions, convictions, inertias. In the Romanian context, penal populism, together with nationalist discourses, emerged as particularly problematic aspects in addressing the coronavirus crisis bearing traces of old (authoritarian) and newer (anti-corruption) history that does not cease to mould the public's understanding of state power.

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BIBLIOGRAPHY

Anastasia, Stefano. Manuel Anselmi. 2018. "Penal Populism in the Multi-Populist Context of Italy." In *Multiple Populisms: Italy as Democracy's Mirror*. 164–178. Edited by Paul Blokker, Manuel Anselmi. London: Routledge. https://doi.org/10.4324/9781351115742-10

Anastasia, Stefano. Manuel Anselmi. 2020. "Populist Punitiveness in the Italian Populistic Yellow-Green Government." *PArtecipazione e COnflitto* 13(3): 1470–1486. https://doi:10.1285/i20356609v13i3p1469

Bourdieu, Pierre. 1979. "Public Opinion Does Not Exist." In *Communication and Class Struggle 1*. 124–130. Edited by Armand Mattelart, Seth Siegelaub. New York: International General.

Cercel, Cosmin. 2018. *Towards a Jurisprudence of State Communism*. London: Routledge. https://doi.org/10.4324/9781315544113

Cercel, Cosmin. 2021. "Law, Politics and the Military: Towards a Theory of Authoritarian Adjudication." *German Law Journal* (forthcoming in October 2021).

Friedman, Lawrence M. 1975. *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation.

Grzyb, Magdalena. 2019. "Penal populism: Negotiating the feminist agenda. Evidence from Spain and Poland." *European Journal of Criminology*, November 1, 2019. https://doi:10.1177/1477370819882912

Honig, Bonnie. 1999. "My culture Made Me Do It." In *Is Multiculturalism Bad for Women?* 35–40. Edited by Susan Moller Okin. Princeton: Princeton University Press. https://doi.org/10.1515/9781400840991-005

Iancu, Bogdan. 2020. "Status Quo Hegemony? Conflicting Narratives about the 'Rule of Law'." *Verfassungsblog*, October 6, 2020. https://verfassungsblog.de/status-quo-hegemony/ [Accessed: 17 June 2021]. https://doi:10.17176/20201006-124931-0

Kenny, Paul. Ronald Holmes. 2020. "A New Penal Populism? Rodrigo Duterte, Public Opinion, and the War on Drugs in The Philippines." *Journal of East Asian Studies* 20(2): 187–205. https://doi:10.1017/jea.2020.8

Kopecký, Petr. 2003. "Civil Society, Uncivil Society and Contentious Politics in Post-Communist Europe." In *Uncivil Society? Contentious Politics in Post-Communist Europe*. 1–18. Edited by Petr Kopecký, Cas Mudde. London: Routledge.

Legrand, Pierre. 2011. "Siting Foreign Law: How Derrida Can Help." *Duke Journal of Comparative and International Law* 21: 626–627.

Mercescu, Alexandra. 2021. "Non sequiturs in Constitutional Adjudication: Populism or Epistemic Deficit?" In *Populist Challenges to Constitutional Interpretation in Europe and Beyond*. 194–216. Edited by Fruzsina Gárdos-Orosz, Zoltán Szente. London: Routledge. https://doi.org/10.4324/9781003148944-14

Minetti, Marta. 2020. "The Facilitators Package, penal populism and the Rule of Law: Lessons from Italy." *New Journal of European Criminal Law* 11: 335–350. https://doi.org/10.1177/2032284420946837

Nelken, David. 1996. "A Legal revolution? The judges and *Tangentopoli.*" In *The New Italian Republic: From the Fall of the Berlin Wall to Berlusconi*. 191–206. Edited by Stephen Gundle, Simon Parker. London: Routledge. https://doi.org/10.4324/9780203431443_chapter_12

Pratt, John. 2007. *Penal Populism*. London: Routledge. https://doi.org/10.4324/9780203963678

Pratt, John. Michelle Miao. 2017. "Penal Populism: The End of Reason." *Nova Criminis* 9(13): 71–105.

Roberts, Julian. Loretta Stalans. David Indermauer. Mike Hough. 2003. *Penal Populism and Public Opinion*. New York: Oxford University Press.

Runciman, David. "Coronavirus has not suspended politics – it has revealed the nature of power." *The Guardian*, March 27, 2020. https://www.theguardian.com/commentisfree/2020/mar/27/coronavirus-politics-lockdown-hobbes [Accessed: 17 June 2021].