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The Criminalisation of Informal Practices in the Danube Delta: how and why

Giulia Prezl Oltramonti and Mihnea Tanasescu

ABSTRACT: This chapter explores the informal practices of residents of the Romanian Danube Delta, particularly those connected to the most important local activity, fishing. We show that locals come under the scrutiny of a labyrinth of regulations, designed such that nobody can abide by all of them simultaneously. We argue that this regulatory complexity is the way through which the state controls marginal territories. Dissent is minimized by the possibility of always having one foot in illegality. This adds a new dimension to the scholarship on informality in Romania, bringing the Danube Delta into the debate on the proper relationship between legality, criminality, and informality.

In the Romanian Danube Delta, many activities involve some degree of concealment from state authorities. Residents live off strategies that are largely illegal, and authorities are largely in the business of making sure that everyone knows that most of their strategies are illegal. If the phrasing of the previous sentence sounds vague, it is because it is formulated to reflect the vagueness of the law and its implementation by the authorities, as well as the lack of certitudes that residents have regarding their daily activities – the only certainty being that it is almost impossible for them to abide by all formal regulations. Why is it so? If formal regulations are designed in a way that they cannot be abided by, what are they for? And what does this say about how governance is produced through formal institutions and informal strategies co-opted into those same governance structures?

In order to answer these questions, this chapter unpacks the case of the village of Sfântu Gheorghe in the Romanian Danube Delta and, more specifically, the issue of fishing. We focus on this activity in order to show how state presence and governance are shaped and what they mean to locals: a minefield of regulations that make it impossible for them not to fall into illegality and devise complex informal systems. The chapter is based on extensive field research, which took place during the course of three years (2014-2017).¹ The result is

1 This research was carried out as part as a larger project, funded by the Research Foundation Flanders (FWO), on the political and cultural implications of rewilding projects in the Danube Delta. It gathered data through participatory observation and unstructured in-depth interviews which took place over the course of three years and focused on different aspects of the residents' strategies in the Danube Delta. These interviews targeted, among others, authorities, law enforcement agents, fishermen, residents, and NGO

an insight into how the state forces residents of borderlands into illegality. Governance is based on the imposition of regulation and on the tacit understanding that such rules cannot be abided by. Why this is so and how residents respond to it is explained in the last section.

This chapter adds a new dimension to the exploration of informal practices in Romania. In fact, informality in Romania has been looked at in terms of a survival strategy in the framework of economic decline and insecurity, as a way to reduce tax burdens and therefore costs for businesses and individuals, or as a response to a wide distrust of the state (Djankov et al. 2003). This contribution shows that the state creates large areas of forced informality, and controls territory by criminalizing it.

Regulation, informality and the state as a partaker

There are endless ways of classifying human activities in relation to the law, moral codes, or a matrix of the two. It is worth noting that interpretations and perceptions of what pertains to each category vary between different actors, and also within specific societal groups. A multiplicity of distinctions can be sketched out, including those “between what states consider to be legitimate (‘legal’) and what people [...] consider to be legitimate (‘licit’)” (Van Schendel and Abraham, 2005, 4). While the two are not mutually exclusive, there are many cases when they do not overlap. As a response, people develop informal systems to skirt regulation and carry out activities that are necessary to their social and economic strategies.

What is undeniable is that informality is everywhere (Miształ, 2000); while often considered a marginal phenomenon, in this chapter we look at a case in which informal systems are actually mainstream. Looking at an Eastern European case, we could be lured into shoehorning it into a simplistic pattern of state collapse after 1989 (and hence growth of the informal sector) and modernisation of the state in the 2000s (which should entail a reduction of the informal sector). However, it is undeniable that informality soldiers on, notwithstanding modernisation and generous EU funds poured into state institutions in the last decade. This is because informality is not a prerogative of a weak or absent state, but can develop wherever there is a mismatch between the state’s regulation and people’s needs in terms of regulations. This is why, as shown by Morris and Polese (2015), an analysis of the management of informality tells us much on state-society relations.

How the above-mentioned mismatch is dealt with by states and people has already been a matter of enquiry for quite some time. Interestingly, it has been much easier to

workers. Unless otherwise specified, the information on the Danube Delta provided in this article is drawn from this research.

systematise the approaches that states adopt, while strategies put in place by people have been less adaptable to cross-cases generalisations, although not entirely so.

Polese states that “[i]n principle, once a state has identified an informal practice to get rid of, they have the power to do it” (2016, 26), although there are operational, social, and broader costs. There are nevertheless cases where the state does not regulate informal practices or, in other words, fails to implement the regulation that it has designed. In these cases informal practices abound just below the surface, with what appears to be a clear connivance from state authorities. Why is it so? Here, we leave aside cases where the state does not have the capacity or territorial control to regulate social and economic activity (as in Somalia, for example, or Abkhazia (Prelz Oltramonti, 2017)) and focus on a case drawn out of a specific area of Romania where the state has the capacity both to legislate and to enforce its laws.

As Polese points out (Morris and Polese, 2015), the state actually has three options with regard to social practices: “to regulate, to ignore or to repress”, or a combination of them. There actually is a fourth option, namely that of partaking, as shown in Prelz Oltramonti (2017). This chapter demonstrates that authorities can opt to govern through the imposition of a regulatory framework that makes informality inevitable and, hence, to a large extent, they are partakers of informality.

In theory, costs and opportunities are the determinants of the state’s choice among the options that it has in dealing with unregulated activities. The process of regulation is dictated by complex assessments carried out by various state bodies. This means that there might be variations in the appraisals of the various actors and therefore differing strategies might emerge. At the same time, there can be a wide gap between the state’s discourse and practice with regard to these options. This is why thorough analysis of specific case studies are needed, dispelling the notion, too often taken for granted, that states with sufficient capacity equal rule of law: “Open-minded, empirical studies of state-illegality relations enable us to transcend the stultifying assumption that states always uphold the law” (Heyman and Smart, 1999, 1).

Regulation does not mean that the state is fully invested in regulating a given social or economic practice. A state can *de jure* opt for regulation, passing laws or creating institutions that formalise a specific social practice, while pursuing a *de facto* strategy of ignoring the issue – by creating governing bodies with poor implementing capacity, for example. This is often done by exploiting the gap between criminalisation (or the law in its written form) and incrimination (or the decision the relevant authorities to act upon a given deed in accordance

of the law).² The tendency is to “regard as criminal those political, social and economic practices which are the object of a ‘primary criminalization’ either by the laws and other texts of the states which are under discussion or, more particularly, international law, or according to international organizations or acknowledged guardians of international morality” (Bayart, J.F., Ellis, S., Hibou, B., 1999, 15).

The lack of respect for state regulation does not mean that the social practices in questions are unregulated; on the contrary, there is a vast web of informal mechanisms of regulation, which include trust, threats, legitimacy, reputation, cooptation of formal actors, and thick ties between formal and informal practices that allow for the accommodation of formality into the dimension of regulated informality.

Before proceeding further, it is worth specifying that in this chapter we look at the state as a relatively centralized but far from unitary ensemble of institutions that both cooperate and compete for control over space and people. As shown below, the state finds its expression in numerous agencies and seats of power, with the specific commonality that is the ability to regulate.

Specificity of the Delta : centre-periphery and state control in borderlands

A study of the management of informality in the Danube Delta is a window on state behaviour in its borderlands. The area is poorly accessible from the centre(s) – whether the national capital, Bucharest, or the regional one, Tulcea – or anywhere else. It is geographically part of the Romanian borderlands (straddling Romania’s international borders) and it is treated not only as the margin of a state, but also largely as a frontier in terms of its local economy (in decline since the end of the Socialist period) and nation (it is inhabited by several ethnic minorities with their own customs and languages).³ The Danube Delta is perceived as the end of the known world by the state and the residents alike.

As such, it benefits from being looked at in light of a vast literature on borderlands and centre-periphery relations. Incidentally, this literature shows that borderlands are not always so remote as to need hours of navigation in order to reach them. Goodhand uses the term borderland as “non-state space” and differentiates between three distinct types of borderlands: classical borderlands situated on the edges of states, internal borderlands, and global borderlands (Goodhand, 2008, 228-229). The region of the Danube

2 These have been defined as following: “‘primary criminalization’ [...] is pronounced by an investigating body, and ‘secondary criminalization’ [...] occurs when a matter is effectively submitted by a due process of law.” (Bayart, J.F., Ellis, S., Hibou, B., 1999,13)

3 It is worth underlining that this was not the case until 1989, when the Socialist government invested considerably in the integration of the Danube Delta and of its economy into the larger Romanian sphere by providing infrastructure and services.

Delta clearly falls into the first category, although, as explained later, this borderland status was significantly lessened starting from the 1950s as the centre – Bucharest – was eager to exploit its resources and integrated it substantially into state networks.

Much of the research on borderlands focuses on the point of fracture between two or more borderlands, and on the interaction among them, largely in terms of flows. As shown by Donnan and Wilson, and corroborated by numerous studies afterwards, “[the] existence [of borders] as barriers to movement can simultaneously create reasons to cross them” (Donnan & Wilson, 1999, 87). There are significant gains to be made from crossing international borders, and economies of borderlands (whether formal or informal) often rely on connected services.

However, flows of people and goods across borders are not the only component of borderland economies, especially when a borderland expands into large areas away from a specific border, and many places in the borderland have little connection to the border itself. In this respect, the Southern part of the Danube Delta can be seen in terms of an internal borderland, whose defining feature is not the international border, but which is characterised by being on the margins of a power centre, and being an identifiable unit to itself (Zartman, 2010, 6-8). This might be due to physical characteristics, which make the establishment of state structures more cumbersome and costly, as in the case of the Danube Delta, which can be reached and crisscrossed only by navigation or air and where population density is low. While the image of “non-state space” is useful to understand an extreme case of borderland, in order to nuance the characterisation it is more appropriate to see borderlands in terms of a continuum, where informality wrestles the state of its regulatory prerogatives.

Whereas there are cases in which this results in non-state spaces, in the case of the Danube Delta the picture is more varied. As shown in the following section, the state has traditionally been very present in this Romanian borderland and, after a short hiatus in the 1990s, it is present again. The perception, however, of residents in the Danube Delta, is one of extreme distance from the seats of power and the rest of the country. This is due to a variety of factors, including cultural ones. Most of all, however, this perception is given by the time that it takes to travel in and out of the Danube Delta, which can be done exclusively by boat. The residents of the Danube Delta need to travel to the rest of Romania for higher education, medical visits and most interaction with the state (such as obtaining permits, documents, registering deeds, etc.) that is not of law enforcement nature. If looked at from this point of view, they live in a remote borderland. But the state, with its multiplicity of agencies, agency representatives, and legislation developed in the regional and national centres, is present on the ground and water in the Delta.

The Danube Delta can therefore be seen as a periphery of the state in terms of service provision; but in truth the state is present in the Delta, through an interesting application of regulation which we will explore below.

Agencies and Seats of Power: overlapping jurisdictions and conflicting regulation

We focus here on the web of regulation and informal practices in the village of Sfântu Gheorghe, in the Romanian Danube Delta. This location is chosen because it is the largest village in the Danube Delta, historically important for its exploitation of fish and reeds. During communist times, this village was the center of the sturgeon industry which produced caviar, a key Romania export⁴. It sits at the confluence of the Danube with the Black Sea, therefore also straddling a natural border. Lastly, and for all of the above reasons, it is the scene of overlapping jurisdictions and conflicting regulations.

The Danube Delta as a whole was significantly transformed during the communist regime. Though the beginnings of its anthropogenic transformation date from the end of the 19th century, large-scale and sustained efforts of modifying the whole deltaic environment started in earnest in the beginning of the 20th century and accelerated markedly from the 1950s onward (Constantinescu et al 2015). During this later period the goal of transformation was gaining access to the riches of the Delta, primarily its fish and reeds . Practically this meant the digging of numerous channels, the straightening of the main branches of the river (in order to decrease travel time), and the building of dams to protect and secure strategic locations.

The anthropogenic intervention in the Delta has resulted in a highly anthropic environment that nonetheless maintains high levels of biodiversity and resources. From the 1950s onward, Sfântu Gheorghe village was crucial in extracting fish resources (Constantinescu and Tanasescu, manuscript). The fishermen were provided with state-issued boats and tools and were organized in fishing brigades that operated year-round. The local *cherhana* (fish processing plant), now a ruin, was the central node in a network that stretched into the Romanian export markets for processed fish and caviar. In this sense, the village was no longer on the periphery of the state, but rather crucial to the economic engine at the center of state power.

The collapse of the communist regime in December 1989 untethered the Delta, and Sfântu Gheorghe with it, from the state networks it was previously inscribed in. Instead, the Danube Delta became a biosphere reserve, marking a dramatic shift away from resource exploitation and toward environmental protection (Van Assche et al 2011a, Van Assche et al

4 Sturgeon fishing has been subject to a moratorium since 2006.

2011b, Van Assche et al 2014). This new status came with a new regulatory agency, the Biosphere Reserve Authority (ARBDD, created through law 82/1993), and with a new way of zoning the territory of the Delta into economic zones, buffer zones, and strictly protected areas where no activities whatsoever are allowed. The ARBDD has far reaching competences throughout the territory as it is the de jure and de facto administrator of the Delta region, sitting under the wing of the Environment Ministry. However, besides the ARBDD, there are other state agencies with jurisdiction over parts of the Delta, many of which intersect in and around the village of Sfântu Gheorghe.

As the status of the deltaic territory changed from absolute control from the center to a biosphere reserve, different agencies staked their claims to different areas. The planted forest protecting the village, though also part of the ARBDD jurisdiction, is under the management – and therefore partial jurisdiction – of RomSilva, the state forestry agency.

Similarly, the waterways of the Danube, which dominate the landscape and are the most effective and therefore used way of getting about, are under the jurisdiction of ARBDD, the National Agency for Fishing and Aquaculture (ANPA), and the Romanian Water Authority. Whereas this latter institution is tasked with water quality, the other two authorities are tasked with controlling the activities of fishermen. Though in theory ANPA is the one that grants fishing licenses, in practice ARBDD also has a say on the use of the license given its enforcement capacity⁵. A commercial fishing license comes with restrictions on the tools one is able to use, and therefore the tools the fisherman plans to employ during the fishing season need to be homologated. This means that both ANPA and ARBDD need to be in agreement over homologation. However, this is not always the case, leading to situations where fisherman have tools recognized by one authority and live in fear of controls from the other authority. This kind of overlap gets even more complicated when fishing in the Black Sea or the littoral areas of the Danube Delta. There, the Border Police Coast Guard also has jurisdiction.

A fisherman is not worth much in the Delta without a boat. And if one has a boat, one is subjected to a further series of checks and regulations, administered and enforced by other agencies. The Romanian Naval Authority (ANR), based in Tulcea, gives boat licenses and registers them. The Transport Police, however, gives permits for transporting the catch in a particular boat as opposed to another. These two agencies intertwine with the previous ones, which ostensibly have nothing to do with boats, because the boat registration and driving license of the fisherman appear on the fishing license. ARBDD also has competencies

5 Both agencies have an enforcement branch. For ANPA this is the Directia Politici si Inspectii Maritime (DPIM), and for ARBDD it is the Comisariatul de Control Integrat, a branch that reunites seven previously active branches of the ARBDD, each with enforcement and control capacities. This, according to a press release by ARBDD. On the ARBDD website portion dedicated to the new enforcement agency there is no information at all.

in restricting the access to certain areas to certain kinds of boats, defined by size and power of the outboard engine. It also has the power to restrict access and/or economic activities in the majority of the deltaic territory through its zoning prerogative.

The village of Sfântu Gheorghe is part of Tulcea county, which also has administrative jurisdiction over the territory. Finally, the municipality of Sfântu Gheorghe is responsible for municipal lands. Though on paper the various jurisdictions seem clear enough, in practice the mayor himself often doesn't know if an area is under his jurisdiction, that of the county, or of the Biosphere Reserve Authority. The seat of the county is in the city of Tulcea, 120km to the North, and only accessible by boat. Access is difficult in the winter, when the navigable branch of the Danube connecting the village to the city is often frozen. Despite these difficulties, locals wishing to renew their fishing license and their boat registration need to travel to Tulcea or Constanța to do so, as there are no facilities for this purpose in the village. There is a village office of ARBDD, but it does not accept permit applications. For tourists or visitors, getting a fishing permit is infinitely easier, as it can be done online.

The Difficulty of Fishing

From the perspective of locals, fishing is by far the most important activity in the Delta. In terms of traditional economic activities, reed gathering and cattle farming have also played an important role. Law 82/1993, which founded the ARBDD, gave it powers to restrict both reed gathering and cattle farming. However, art.8 guarantees the right of locals to continue traditional economic activities, without defining what these are. In practice, reed gathering today is highly restricted through the status of the territory as a biosphere reserve, and the social organization needed for efficient gathering has fallen apart. Similarly, the ARBDD has the power to issue licenses for cattle to graze in specific areas of the reservation. The grazing of cattle in strictly protected areas is always forbidden. In practice, cattle roam everywhere in the Delta and are an important safeguard for locals. They are not generally milked, and are used primarily for meat. This use of cattle is in part a result of regulatory and infrastructural pressures. There is no slaughterhouse within easy reach of the Delta⁶, and the local breed of cattle is not recognized as pure and therefore cannot be commercialized as easily as modern varieties. As important as cattle may be for lean times, by far the most important activity for locals today is fishing.

There are two relevant categories of fishing within which locals fit: commercial and familial. Inasmuch as one lives in Sfântu Gheorghe village, one can fish for subsistence. But

⁶ During the communist regimes, barges used to regularly visit villages and gather their cattle for slaughter, paying cash. The slaughterhouse in Tulcea has since closed.

this age-old activity is regulated through the granting of a familial fishing license by the ARBDD. At the time of writing, the familial fishing permit is nominal and given to each apt member of a family. It allows him⁷ to catch a maximum of 3kg of fish per day. If one happens to catch a single fish that is heavier than the designated amount, one can keep it but can no longer fish for that day. These permits are brought to the village every year by agents of ARBDD. Although the maximum catch allowed is written on the permit as 3kg, everyone we spoke to knows the limit to be 5kg. We will come back to the significance of this confusion.

Commercial fishing is the biggest economic activity of the village, only rivaled in recent years by tourism. The line between commercial and familial fishing is itself an administrative one. Informally they are always blurred, if they exist at all – what you don't eat, you sell. Sfântu Gheorghe is a fishing village, which means that most men, at one point or another, go fishing. But under the rules and regulations prevailing today, the informal relation to the capture of fish is de-legitimized and, in many cases, criminalized. For example, sturgeon used to be the most important local catch, and the state itself organized the capture and commercialization of both the body of the fish and its eggs (caviar). Since 2006, a moratorium on sturgeon is in place, and therefore anyone that is caught with a specimen is liable for criminal prosecution with significant prison sentences possible. Given the traditional importance of sturgeon, however, many local dishes, including the soup served each year for the Saint George celebrations (the village feast, one of the most important days of the year) is made of sturgeon. The capture of sturgeon for sustaining a traditional way of life, supposedly guaranteed by art.8 of law 82/1993, is criminalized. However, incrimination – the application of the law – is rare, and locals and enforcement agents alike feast on sturgeon soup of unknown provenance during the village celebrations.

Local fishermen must decide whether to fish on a family permit or commercially, a choice imposed by the administrative system itself. This choice leaves out a significant number of people that will nonetheless go fishing for subsistence purposes, but that cannot, for a variety of reasons, do so fully legally⁸. One can have a sports fishing permit, as tourists do, to complement the family's catch. This kind of permit is subject to the same restrictions as the familial one, and imposes certain catching techniques.

If fishing commercially, the fisherman needs to apply for a number of authorizations and permits, which cannot be done locally. At least one trip⁹ needs to be made to Tulcea

7 The use of the masculine pronoun reflects the local reality : only men fish.

8 For example, if one is old and only knows how to fish with tools by now forbidden.

9 It is highly unrealistic to think that one trip could acquire all the necessary permits. In practice, people either make the trip several times, or have to stay overnight in Tulcea, relying on informal networks or paying for a hotel room in the absence of such networks.

(120km by boat) and, in case the fisherman plans to also fish at sea¹⁰, at least one trip to Constanța (140km by land from Tulcea). The fact that fishing at sea needs another set of permits, in a littoral village, also means that a spontaneous decision to venture out to sea to fish (according to natural patterns like weather and seasonal migrations) is surely a step into illegality. The decision to fish at sea needs to be premeditated in order for it to be inscribed in the legal framework.

The fisherman needs a license for himself and his boat. These are given by ANPA, ARBDD, and The Romanian Naval authority (ANR) respectively, all based in Tulcea. The characteristics of the boat are written on the fishing license. He also needs a permit, from the Transportation Police, to transport fish. This permit is given per particular boat, so it is not transferable to another boat the fisherman might be in. It is normal for locals, given the centrality of waterways, to have several boats, but not all of them will be allowed to transport fish. Given that the characteristics of the boat are inscribed on the fishing license, if an engine breaks half-way through the fishing season and needs to be replaced, the fisherman no longer has a valid registration and, therefore, no longer has a valid fishing or transportation license. In case he plans to fish at sea, he needs another set of permits for sea species, as well as a permit to navigate at sea, given by the Border Police, based in Constanța.

Lastly, he needs to have his tools homologated, a process with contradictory instructions coming from ARBDD and ANPA, each fighting to have more say over the territory. The homologation is inscribed through a plastic seal that is placed on his tools and that control agents can check when in the territory. Only certain tools are allowed, and which those might be changes frequently. Given the frequent change in legislation, it sometimes happens that fishermen will invest in one set of tools only to throw them away the following year. There is no compensation awarded for the lost investment, or any communication ahead of time about the authority's intentions. There is in fact no meaningful consultation on any of these policies.

The species that the fisherman can catch are strictly regulated. As already mentioned, catching sturgeon is always illegal. Besides this, there is a prohibition on fresh water fishing given yearly by the Environment Ministry through the ARBDD, for various periods of time in the spring depending on location in the Delta. There is a further prohibition on Pontic shad¹¹ fishing half-way through its spring migration. There is a quota on what the fisherman can

10 For the villagers of Sfântu Gheorghe, the sea is a natural place to fish in, given its proximity to the village, which is located literally at the mouth of the Sfântu Gheorghe branch of the Danube.

11 This species of migratory fish (it lives in salt water in the Black Sea but reproduces in the fresh water of the Danube) has become increasingly important for the local economy since the moratorium on sturgeon came into place. It is considered a high-value species and fishermen during the migration season of the shad will fish round the clock.

catch, which also changes yearly. There are no consultations for establishing the quotas and the fishermen don't know the mechanism through which they are established. Lastly, there are vast areas, some former village fishing grounds, which are now always illegal to fish in.

The above minefield of permits and regulations leads to extremely high frustration among the population. However, this frustration is kept in check by the deployment in the territory of control agents representing all of the different institutions with some jurisdiction over the territory. Interestingly, anyone can check anything. So the border patrol can check the fishing license of a fisherman 20km from the sea (because the whole Danube Delta is considered a border region), and an ARBDD agent can check the homologation of the tools as well as the boat registration and the transportation permit. Given that the territory itself (ecologically speaking) and the practices that inhabit it are not as clear-cut as administrative rationality would have it, there are many situations when the fisherman is outside the bounds of legality despite having followed, to the best of his ability, the regulatory requirements.

The village of Sfântu Gheorghe being a littoral one, it has direct access to the area where fresh and salt water meet, a dynamic space that changes constantly following climatic and environmental conditions. Because of this dynamism it is also a good place to fish. Given the blurring of the border between fresh and salt water, a fisherman that deploys nets in this area is liable to being charged with fishing with the wrong tools. An agent (of whichever institution) can claim that the fisherman is using fresh water tools in salt water, or vice versa, and write a fine or confiscate the tools. The power that the agents in the territory wield can also lead to abuse, such as when agents control tools deployed in water only to remove the fish caught in them and take it for themselves. The fisherman, in all of these instances, knows to likely be on the wrong side of the legal system.

Fishermen know that they are always at risk of being fined or having their tools confiscated or being prosecuted. This knowledge is key to understanding the overall logic of a seemingly dysfunctional system: whenever the fisherman does not get incriminated, he feels lucky, as if he got away with something. This mentality, cultivated through regulation and criminalization of economic activities, encourages him to grant favors and privileges to the officials tasked with enforcing the law. Inasmuch as he does not get fined he feels like the authority is granting him a favor, which he has to repay and maintain through granting the state representatives favors in return (free meals, cheap or free fish, silence when witnessing abuse, and so on).

Discussion: controlling territory and resisting control

So far we have focused on fishing because of its centrality to life in the Delta. But the formal system does not only criminalize informal practices related to fishing; it criminalizes

most subsistence economic activities predominant in the region. For example, after powerful storms come through the area – a relatively common occurrence in the cold seasons – driftwood is washed on the wide sandy beaches of the village. Villagers gather this wood to use for heating during the winter. Technically speaking, this is not allowed, because the beach is in the administrative territory of the Biosphere Reserve, and nothing can be removed or added to it. Similarly, boar hunting in the nearby forest is not allowed, for similar reasons. Allowing a cow to decompose where it died is also illegal, because it needs to be cremated by the owner, regardless of there being no facilities for doing this. Allowing cows to roam freely, which is in line with traditional husbandry in the area, also leads one into illegality, because cows know not the border between a strictly protected and a buffer area. Burning reeds, another traditional activity, is not allowed without a permit, which is never given.

We could continue through most of the villager's activities, but the point is that the current regulatory system has been incredibly successful at criminalizing traditional practices under the guise of protecting them and the environment on which they depend, while only making the step to incrimination relatively rarely. Locals know to always be on the edge of illegality, and this engineered state of affairs is a very good way of controlling the territory and exercising power. The sentiment of always being out of synch with the authorities is reinforced by the convoluted nature of the regulations affecting the villagers' activities and their poor communication in the territory. Most residents of the Delta do not know exactly what regulations they are supposed to follow, or what their exact content is – which is why the familial fishing permit gives rights to one quota on paper, and another one in practice. Locals have devised ways of circumventing the contradictory and overlapping regulations which are supposed to rule their lives. They fish at times when controls are unlikely, coordinate among each other via mobile phones continuously, and have developed an extensive informal system for carrying out banned activities. These range from fishing practices to grazing cattle in protected areas to gathering firewood from the beach.

Informal practices are a way for residents to resist the state. There is no political opposition to the state, but an attempt to live with it and in spite of it. And this is a considerable level of resistance, given that the state is, in the end, encouraging an exodus from the Danube Delta. In fact, it uses the complex web of regulation and the tool of illegality as a way to make it increasingly hard for residents to live there, so eventually expelling them. The mere act of enduring in an environment that is both ecologically challenging and administratively forbidding can be seen as an act of resistance.

After withdrawing most services to the population, the state granted locals the right to traditional economic activities, but these have nowhere been defined. There is of course a huge difference between what the locals themselves consider to be traditional activity and

what the authorities regulate, de-legitimize, and criminalize. There is no local consultation for establishing what the right to traditional activities might entail, and therefore the state is seen as using its power arbitrarily at best, or as a tool for demonizing traditional activities at worst. Traditional activities as understood by locals are rendered illegal, as shown above, but are also vilified. For example, boar hunting is undeniably a traditional subsistence activity, but the authorities refer to it as poaching, which not only has an implication of illegality, but also a connotation of immorality.

Similarly, on all other aspects pertaining to the residents' lives, no consultation is ever carried out. Fishing quotas or fishing tools are not determined in consultation with local fishermen, though they have acute ecological knowledge and are best placed to define their own needs. The switch, in the early 1990s, from state exploitation of resources to ecological protectionism, offered an ideal cover for the progressive marginalization of local informal practices. Among all of the various institutions with local authority, the Biosphere Reserve Authority looms largest. But the most important institution in the Danube Delta has a specific mandate to protect the wetland, over and above its inhabitants. We have shown that, despite the inclusion of a guarantee to traditional lifestyles, in practice ARBDD criminalizes local practices. The environmental protectionism dominant at the ideological level in the Danube Delta functions as the perfect excuse for the criminalization of informal practices. In truth, it is much easier for external investors to operate in the Delta – for example large tourist or agricultural companies based in Bucharest – than for locals.

It would be tempting to think of the convoluted system of regulations described in this chapter as the result of state incompetence. Our analysis shows that a more credible interpretation sees it as a deliberate way of controlling a marginal territory and inscribing it within networks of state power. If the regulatory system that chokes local practices is successful in deterring locals from living in their home, then the Delta is free for the taking for external powers. If the system in place does not manage to eliminate locals, it ensures that the only form of resistance they are capable of is survival. Being always on the edge of incrimination, locals are rendered politically innocuous.

References

- Bayart, Jean-François, Stephen Ellis, and Béatrice Hibou. 1999. *The Criminalization of the State in Africa*. Oxford: James Currey
- Constantinescu, Ș., Achim, D., Rus, I. and Giosan, L., 2015. Embanking the Lower Danube: From natural to engineered floodplains and back. In *Geomorphic Approaches to*

- Integrated Floodplain Management of Lowland Fluvial Systems in North America and Europe* (pp. 265-288). Springer New York.
- Constantinescu, Ş., and Tanasescu, M., manuscript. *Simplifying a Deltaic Labyrinth: anthropogenic imprint on river deltas using a cartographical diagnosis.*
- Djankov, S., Lieberman, I., Mukherjee, J. and Nenova, T., 2003/ Going Informal: benefits and costs. In Belev, B. (ed.) *The Informal Economy in the EU Accession Countries.* Sofia: Center for the Study of Democracy, 63-80
- Donnan, H. & Wilson, T.M., 1999. *Borders: Frontiers of identity, nation and state*, Oxford: Berg Publishers
- Goodhand, J., 2008. War, peace and the places in between: Why borderlands are central. In Pugh, M., Cooper, N., and Turner, M., (eds.) *Whose peace? Critical perspectives on the political economy of peacebuilding.* Basingstoke, UK: Palgrave Macmillan
- Heyman, J., McC. and Smart, A., 1999. States and Illegal Practices: an Overview. In Heyman, J., McC. (ed.) *States and Illegal Practices.* Oxford and New York: Berg
- Misztal, B. A. 2000. *Informality: Social Theory and Contemporary Practice.* London: Routledge
- Morris, J. and Polese, A., (Eds.), *Informal Economies in Post-Socialist Spaces: Practices, Institutions and Networks*, Basingstoke, UK: Palgrave Macmillan, 2015
- Polese, Abel. 2016. *Limits of a Post-Soviet State: How Informality Replaces, Renegotiates, and Reshapes Governance in Contemporary Ukraine.* Stuttgart: Ibidem Verlag
- Prez Ultramonti, G., 2017. Conflict protraction and the illegality/informality divide. *Caucasus Survey*, Vol.4, No.3, 2017
- Van Assche, K., Duineveld, M., Beunen, R. and Teampău, P., 2014. Circumscribing locals. *The Bio-Politics of the Danube Delta: Nature, History, Policies*, p.403.
- Van Assche, K., Raoul Beunen, Joren Jacobs & Petruta Teampau, 2011. Crossing trails in the marshes: rigidity and flexibility in the governance of the Danube Delta, *Journal of Environmental Planning and Management*, 54:8, 997-1018
- Van Assche, K., Martijn Duineveld, Raoul Beunen & Petruta Teampau, 2011. Delineating Locals: Transformations of Knowledge/Power and the Governance of the Danube Delta, *Journal of Environmental Policy & Planning*, 13:1, 1-21
- Van Schendel, Willem, and Abraham, Itty, 2005. *Illicit flows and criminal things: states, borders, and the other side of globalization*, Bloomington: Indiana University Press
- Zartman, I. W., 2010. *Understanding life in the Borderlands*, Athens: University of Georgia Press