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Former Communists Condemning Communism: Ethos, Legitimacy and Ad Hominem *Argumentation*

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Introduction

On December 18th, 2006, Traian Băsescu, elected president of Romania, held a speech in Parliament, in which he condemned the communist political system of Romania since 1945 until 1989 as illegitimate and criminal. The condemnation was based on an official document, the famous Tismăneanu Report, which thoroughly documented the criminal and illegitimate character of the Romanian communist regime.

However, one of the recurrent questions in the public debate generated by this action was: *How sincere and credible is the act of condemning the Romanian communist political system when it is done by a political elite dominated by former members of the Communist Party?* Behind this question seems to lay an *ad hominem* argument. Yet, *ad hominem* argumentation, a refuting strategy frequently encountered in the media, is quite controversial in contemporary theories of argumentation: in its standard interpretation, this type of argument is considered a fallacy, either in handbooks of logic and critical thinking, or in highly elaborated theories such as pragma-dialectics. On the other hand, there are authors who try to defend the use of this type of argumentation: in the 50s, Henry W. Johnstone Jr claimed not only that *ad hominem* argumentation is not fallacious, but that it is the only valid argument in philosophy; in contemporary debates, Douglas Walton considers this type of argument as not being fallacious in its every occurrence: it can be just a weak argument (as opposed to a strong one), or an insufficiently supported argument, or even a cogent argument. Much of the debate around the *ad hominem* argument, as far as its acceptability is concerned, focuses on terminology and identification of its historical roots; researchers are interested in distinguishing between its various forms, and in evaluating each form thus resulted.

The purpose of this paper is to make a connection between *ad hominem argumentation* and the problem of *legitimation*. The connection is suggested by a case study which will anticipate a common pattern of argumentation in the debates around the condemnation of the communist regime. Three fragments from editorials in important Romanian newspapers will be analysed, all having in common the problematic interaction between legitimation and credibility, on the one hand, and institutions and persons representing institutions on the other hand. Adopting Walton's view on *ad hominem* arguments as ethotic arguments, but reframing the concept of *ethos* in a rhetorical context, I will try to prove that in certain cases credibility and legitimation substitute each other, and that insights from argumentation theory might be relevant for the way legitimation is analyzed in critical discourse analysis.

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1. A case study about an anthological example

There is a famous passage in the New Testament which proves, I think, both the difficulties arising when approaching *ad hominem* fallacies and the connection between this argumentative strategy and the problem of legitimation. I will try to illustrate this by providing two alternative readings of this fragment.

(1)

8:1 Jesus went unto the mount of Olives.

8:2 And early in the morning he came again into the temple, and all the people came unto him; and he sat down, and taught them.

8:3 And the scribes and Pharisees brought unto him a woman taken in adultery; and when they had set her in the midst,

8:4 They say unto him: *Master, this woman was taken in adultery, in the very act.*

8:5 *Now Moses in the law commanded us, that such should be stoned: but what sayest thou?*

8:6 This they said, tempting him, that they might have to accuse him. But Jesus stooped down, and with his finger wrote on the ground, as though he heard them not.

8:7 So when they continued asking him, he lifted up himself, and said unto them: *He that is without sin among you, let him first cast a stone at her.*

8:8 And again he stooped down, and wrote on the ground.

8:9 And they which heard it, being convicted by their own conscience, went out one by one, beginning at the eldest, even unto the last; and Jesus was left alone, and the woman standing in the midst.

8:10 When Jesus had lifted up himself, and saw none but the woman, he said unto her: Woman, where are those thine accusers? Hath no man condemned thee*?*

8:11 She said: No man, Lord. And Jesus said unto her: Neither do I condemn thee: go, and sin no more. (John, 8, *my emphasis*)

On the one hand, this fragment could be read as a dialogue illustrating the lack of legitimacy of an institution ("the law of Moses"). Habermas defines legitimation crisis as a crisis of the input of the political system, which requires an input of mass loyalty as diffuse as possible: "a legitimation deficit means that it is not possible by administrative means to maintain or establish effective normative structures to the extent required." (Habermas 1988: 47) The legitimation crisis that Jesus is supposed to trigger in the judicial system of Pharisees has its source in the fact that even Pharisees, known for their strict observance of rites and ceremonies of the written law and for insistence on the validity of their own oral traditions concerning the law, could not have enough authority to apply the law, since they were not themselves without sin.

On the other hand, analysing the argumentation involved in the dialogue between Jesus and the Pharisees reveals a very interesting interaction: the Pharisees try, appealing to an *ex concessis* argument, to catch Jesus in a difficult situation. Jesus had made two previous public statements, which can be conceived as conceded premises in a dialectical game:

"Think not that I have come to abolish the law and the prophets; I have come not to abolish them but to fulfil them." (Matthew, 5.17)

meaning that He wouldn't contest the rules included in the law of Moses, and

"Judge not, that you be not judged. (...) Why do you see the speck that is in your brother's eye, but do not notice the log that is in your own eye. Or how can you say to your brother, `Let me take the speck out of your eye,' when there is the log in your own eye? You hypocrite, first take the log out of your own eye, and then you will see clearly to take the speck out of your brother's eye." (Matthew, 7.1-5)

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meaning that one should first be aware of his own defects before accusing others. The reconstructed *ex concessis* argument of the Pharisees, who were looking for a way of accusing Him (or so the Evangelist warns us), might be: If Jesus acted according to the law of Moses and condemned the woman taken in adultery, then He would contradict His previous claim *Judge not, that you be not judged*, meaning that He would be defeated in an argumentative game, in front of a wide audience, and that would be a serious face-loss which may result in a discrediting of Jesus in front of his followers; if Jesus didn't condemn the woman according to the law of Moses, then He would contradict his previous claim that He would not contest Moses' law, which would be both a defying of the law, hence a reason for having Him retained, and also a defeat of Jesus in an argumentative game, with the same consequences as in the first case.

In this difficult situation, Jesus seems to appeal to an apparent refutation, a *misconception of refutation* in Aristotle's terms (Aristotle *S.F.*: 1672a 20), or a shift from problem to person – i.e. an *ad hominem* argument of the *tu quoque* kind: "He that is without sin among you, let him first cast a stone at her" – meaning that He shifts the discussion from the initial issue (if the woman should be stoned or not – i.e. if Moses' law should be observed or not) to a different one (if the Pharisees had the moral authority to apply the law), so that He successfully avoids committing to any of the disadvantageous alternatives. Of course the Pharisees might have replied: "We have asked you to tell us if she should be stoned or not, we didn't ask who should carry it out." Instead, the evangelist just lets us know that Jesus' speech act was efficient: "And they which heard it, being convicted by their own conscience, went out one by one, beginning at the eldest, even unto the last."

Granted that my double reading is correct, this argument from the New Testament is interesting for several reasons. First, assuming the naïve point of view that *ad hominem* arguments are always fallacies, we should explain in what resides the apparent cogency of this argument. Second, we should question the putative fallacious aspect of *ad hominem* arguments. Third, we need to investigate the relations between *ad hominem* arguments and the discursive strategies for gaining or contesting legitimacy. And finally, we have to admit that the type of argument used by Jesus in this encounter has become a sort of *locus comunis* in argumentative strategies, universally accepted in various cultures either by adopting the quote from the Gospel as an adage or by providing local forms, like in the Romanian saying: *laughs the crock at the cracked pot*. [1]

But the most relevant aspect for this study is that much of the media debate on the condemnation of communism by president Traian Băsescu focused exactly on this type of argument, as the next examples, fragments from editorials and opinion articles published in major Romanian newspapers, could prove:

(2) In the Romanian Parliament, a moment of so-called condemnation of communism was consumed. It was:

An immoral moment. Was Traian Băsescu the most entitled character to take upon himself the condemnation of communism? Of course not.

Traian Băsescu did not spend a single day in prison. The censorship did not reject a single book of his because he wrote none. Not for a moment was he forced to wash toilets although he had a faculty diploma. He never had a single moment of protest, a single moment of grumbling. During communism he made an exquisite career, which was denied to others of his colleagues: the youngest ship captain of the Romanian fleet, chief of office in Anvers, chief of the Inspectorate of the Civil Navigation, appointed in November 1989 with the consent of Elena Ceauşescu. According to his own statements, in December 1989 he had in his house the incredible amount of 60.000$, a sum equal to the budget of a steel plant. Traian Băsescu justifies his career and wealth as the result of his talent and

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education. Let's admit it. Doesn't he contradict the speech he delivered in Parliament which depicted communism as a criminal regime?

(excerpt from Ion Cristoiu, An Immoral and Useless Moment, *Jurnalul Național*, December 20, 2006)

(3) The day after Băsescu's speech. At calm.

anca: I cannot agree with you.

anca: I don't find Băse's initiative OK.

anca: maybe if it came from someone younger.

Costin: It could come even from Ceauşescu.

Costin: it would still be good. (…)

anca: as they say: one needs a thief to recognize a thief.

anca: and a mad man to reckon a mad man.

anca: at least as long as the communism still exists in Romania, hidden in bureaucratic structures as is ours.

(excerpt from Costin Ilie, On Condemning Communism on Messenger, *Cotidianul*, December 20, 2006)

(4) It's a communistic fallacy to qualify this speech as immoral or useless on the grounds that it is delivered by a successful product of communism, who, besides, has major deficiencies of demeanour. Even if it were uttered by one such as C. V. Tudor, were he to be elected president of Romania, the speech would not be less valid. Drunk or sober, thief or honest man, liar or sincere, Traian Băsescu is the elected president of the Romanian state. The condemnation of communism under the authority of the highest position in the state is important for the moral situation of Romania.

Nothing can obliterate that. Not the fact that Mr Băsescu lacks familiarity with and does not believe in many of the things he uttered. Not even the fact that he uses this moment to grossly insult the democratically elected leadership of SDP, interfering aggressively and arbitrarily in the internal affairs of a party. Nor the indiscriminate attacks towards the press. Mr Băsescu, as a person, is and remains a political animal, not a moral authority.

(excerpt from Cristian Tudor Popescu, The Word that Creates Thought, *Gândul*, December 21, 2006)

Ion Cristoiu's text shares important similarities with the fragment from the Bible. From an argumentative point of view, both texts are based on a supposed inconsistency: how can a person who has sinned condemn another? And how can a person who was privileged during the communist period condemn communism? That means that both the Pharisees and Traian Băsescu lack the moral authority to apply the law, respectively to condemn communism. Yet, in both cases there is a hidden *ad hominem* argumentation: the problem is shifted from the legitimacy of a law or official decision to the legitimacy of the person who occupies the relevant position to carry out that action. So, the more general question to be answered is: does a person need moral authority to legitimately engage in a moral act?

The other two texts might be viewed as replies to Cristoiu's argument (in fact, Popescu's article is an overt answer to Cristoiu). The article from Cotidianul tries to show that the value of the condemnation of communism should be assessed independently of the person who occupies the relevant position to do it, although Traian Băsescu's being a former communist might be considered an advantage for the success of the act ("one needs a thief to recognize a thief"). So, Cristoiu's *ad hominem* argument is turned against the initial claim, the very reasons used by Cristoiu to delegitimate the condemnation being thus used to legitimate it.

Popescu's answer is based on a distinction between the institution of presidency, which is sufficient to legitimate the condemnation of communism, and the person who holds the position of president, considering any remarks about Băsescu's person as not only irrelevant for the problem of legitimacy, but even fallacious.

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Ad hominem arguments are quite controversial in contemporary theories of argumentation and much of the controversy aims at identifying types of this argument and establishing standards for evaluating their fallacious character. In order to see the connections between the problem of legitimacy and the acceptability of *ad hominem* argumentation, we have to clarify the controversies regarding its typology and its reasonableness, controversies generated by different historical traditions that led to the contemporary perspectives about *ad hominem* argumentation.

2. History of ad hominem *arguments*

The first problem that arises when attempting a detailed analysis of *ad hominem* arguments is generated by the lack of terminological consistency in defining various subtypes of this argument. Confronting the bibliography provided in this paper, one could find no less than ten names for various subtypes, some of them redundant: abusive *ad hominem* (or *ad personam* argument), circumstantial *ad hominem*, *ex concessis ad hominem*, *ad hominem* argument based on a pragmatic inconsistency (roughly the same as *ex concessis*), *tu quoque ad hominem* (or *two wrongs*), bias *ad hominem,* "poisoning the well" *ad hominem*, and guilt by association. This terminological variety reflects a confusion in the typology of *ad hominem* arguments, confusion generated by the historical evolution of this type of argument. As the meaning of the term "*ad hominem* argument" changed throughout the history of logic, a brief outline of these changes will be relevant.

In his fundamental book, C. L. Hamblin identifies the first use of the term "*argumentum ad hominem"* in John Locke, in *An Essay Concerning Human Understanding*. (Hamblin 1970: 159-162) In a fragment often ignored by publishers and sometimes even by experts, in a parenthetical passage to the main discussion, quoted in full by Hamblin, Locke mentions "four sorts of arguments that men, in their reasonings with others, do ordinarily make use of to prevail on their assent, or at least, so to awe them as to silence their opposition" (*idem*: 159) The first one, says Locke, might be called *argumentum ad verecundiam,* and is used by those who, being modest, adopt the arguments of those who earned a certain reputation, instead of producing their own arguments. This case covers what we might call today argument from authority (either a relevant authority, or not). The second argument might be called *argumentum ad ignorantiam*, used when one requires his opponent to admit the argument already advanced or to produce a better argument for his thesis. The third one employs the strategy of "pressing a man with consequences drawn from his own principles or concessions. This is already known under the name of *argumentum ad hominem*." – notes Locke. (*idem*: 160) The fourth one is called by Locke *argumentum ad judicium,* employing "the using of proofs drawn from any of the foundations of knowledge or probability" (*ibidem*), the only arguments susceptible of producing progress in knowledge.

Hamblin makes some important remarks about this fragment. First, one should notice that while "*argumentum ad verecundiam"*, "*argumentum ad ignorantiam"* and "*argumentum ad judicium"* are terms coined by Locke, hence not being used previously, about "*ad hominem"* Locke stipulates clearly that it is a term already in use. For explaining this fact, Hamblin refers to Latin translations of Aristotle's *Sophistical Refutations* and to commentaries of various medieval logicians about this text (especially Albertus Magnus). With the same purpose, in a more recent article, Graciela Martha Chichi points to a logic handbook appeared twenty-one years before

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Locke's *Essay,* namely *Logica Hamburgensis*, by Johannes Jungius, issued in 1638. (Chichi 2002: 333, 343)

Secondly, we should notice that Locke doesn't mention the term "fallacy" and does not qualify any of these arguments as wrong or illegitimate. The only thing he mentions is that, as opposed to the other three, only *argumentum ad judicium* can lead to a progress in knowledge. Hamblin recognises a certain Aristotelian trait in Locke's remarks about *ad hominem,* emphasising the similarity with Aristotle's dialectical arguments. Moreover, Hamblin points to places in *Sophistical Refutations* where Aristotle suggests, as a solution to specific fallacies based on division, to argue against the man, and not against the thesis as such (177b 33-35, 178b 20-25). Yet, the most significant fragment, to which the others should be related, is to be found in the fifteenth chapter, where Aristotle, discussing strategies used in sophistical refutations, claims: "Moreover, just as in rhetorical discourses, so also in those aimed at refutation, you should examine the discrepancies of the answerer's position either with his own statements, or with those of persons whom he admits to say and do aright, moreover with those of people who are generally supposed to bear that kind of character, or who are like them, or with those of the majority or of all men."(SR: 174b) In fact, according to the standards of Aristotle's dialectic, this type of argumentation based on revealing an inconsistency between the thesis advanced by a person and what was previously admitted in the dialectic game, or what is commonly accepted, is a legitimate argument, because both consistency and commitment to what is commonly accepted are guiding principles of Aristotle's dialectic. To exemplify this type of argument, Walton mentions the case of stoic and epicurean philosophers, who were accused of not leading their life in accordance with the precepts of their philosophy. (Walton 2001: 213- 215) Philosophy, in those times, was concerned with answering the question "how to live a good life?" and the biography of the philosopher was considered relevant for evaluating his philosophy: *"*The problem would be that if the philosopher is not living up with his principles, then there are doubts raised about how sincere an advocate that philosopher is concerning his philosophy." (*idem*: 213) Walton quotes a relevant fragment from Polyaenus, a follower of Epicurus: "When the test of the actions is consistent with the solemnity of the theories, we may speak of the doctrine of a philosopher. But when the theory promises great things and the life accomplishes not the least bit, what else do we have but boasting and the showing off of a sophist who wishes to impress the young?" (*ibidem*) Today we might classify these arguments as *circumstantial ad hominem,* without being necessarily fallacious. In those times, they were known under the name „*tu quoque*". Walton considers this specific example a sort of "meta-philosophical arguments that are quite legitimate, given the ancient view that a philosophy of virtue is not just an abstract theory, but is also meant to be a guide to how to live."(*idem:* 215)

Having outlined the Hellenistic and Latin sense of *ad hominem*, the question raises naturally: how did the modern significance of *ad hominem* argument evolve? Hamblin shows that the key name in this evolution is that of Richard Whately, who would reassess the role of *ad arguments* [2] in practical argumentation, relating them to the crucial concepts of "*presumption"* and "*burden of proof"*. These terms, borrowed from judicial logic, are opposites: "presumption" represents an accepted, uncontroversial position, to be taken for granted, while "burden of proof" belongs to the part which contests the presumption. For winning the debate, the party which has the presumption on his side needs just to refute the arguments brought against him. Starting from here, Whately would subsume *ad hominem* arguments to the fallacies of relevance, because this argument tries to shift the burden of proof to the

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opponent, while admitting, in a footnote, that this move is not always unjust. For Whately, *argumentum ad hominem* refers to that argument which points to particular circumstances, character, declared opinions, public or private behaviours, and which is valid only for that person, but not for the real problem, as in the case of *ad rem* arguments. The example that Hamblin selects from Whately is quite relevant: "When a sportsman is accused of barbarity in sacrificing hares or trout he may *safely* turn the table by replying *Why do you feed on flesh of the harmless sheep and ox?* (…) Such a conclusion is often both allowable and necessary to establish, in order to silence those who will not yield to fair general argument; or to convince those whose weakness and prejudices would not allow them to assign it its due weight (…) provided it be done plainly, and avowedly; (…) the fallaciousness depends upon the *deceit,* or attempt to deceive." (Whately, cited by Hamblin 1970: 174)

Two short remarks are to be made about Whately's approach: first, despite the broader definition of *ad hominem* arguments, which might indicate a shift towards the modern sense of this term, Whately's example continues the tradition from Aristotle to Locke. And second, Whately's comments are far more interesting than his example: *ad hominem* is only potentially fallacious, but might be as well used in a legitimate manner, against an opponent who himself is not a well-meaning person.

Finally, Graciela Martha Chichi points to a last reference to the Aristotle-Locke tradition, which is to be found in Schopenhauer's book *The Art of Controversy* (*Eristiche Dialektik*) where the Austrian philosopher talks about a trick which consists in *ad hominem* or *ex concessis* argumentation: "When your opponent makes a proposition, you must try to see whether it is not in some way – if needs be, only apparently – inconsistent with some other proposition which he has made or admitted, or with the principles of a school or sect which he has commended and approved, or with the actions of those who support the sect, or else of those who give it only an apparent and spurious support, or with his own actions or want of action. For example, should he defend suicide, you may at once exclaim, *Why don't you hang yourself*? Should he maintain that Berlin is an unpleasant place to live in, you may say, *Why don't you leave by the first train?* Such claptrap is always possible." (Schopenhauer, cited by Chichi 2002: 337-338). It is easy to see here the same Aristotelian tradition stemming from his *Topics*, disguised in Schopenhauer's terms of "concession of a subjective, relative truth" as opposed to "objective, absolute truth". But, more important, by his choice of words, Schopenhauer seems to be very aware that the acceptability of this type of argument is not obvious at all.

In the same book, Schopenhauer provides us the roots of what is meant in modern logic by *ad hominem* argumentation: "A last trick is to become personal, insulting, rude, as soon as you perceive that your opponent has the upper hand, and that you are going to come off worst. It consists in passing from the subject of dispute, as from a lost game, to the disputant himself, and in some way attacking his person. It may be called the *argumentum ad personam*, to distinguish it from the *argumentum ad hominem*, which passes from the objective discussion of the subject pure and simple to the statements or admissions which your opponent has made in regard to it." (Schopenhauer, cited by Chichi 2002: 339) [3]

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3. Modern approach of ad hominem *arguments*

The tradition of classical logic conceived *ad hominem* argumentation as aiming at revealing an inconsistency between one's assumptions in an argument and one's explicit claims. Whately and Schopenhauer made a shift towards the modern understanding of these arguments. In a modern perspective, "*ad hominem* is committed when a case is argued not on its merits but by analysing (usually unfavourably) the motives or backgrounds of its supporters or opponents." (Hamblin 1970: 41) Usually, two types are to be distinguished: abusive *ad hominem* and circumstantial *ad hominem*. The first category is equivalent of Schopenhauer's *ad personam*, and Hamblin considers that these arguments could hardly be properly named *arguments* – consequently, there is no doubt that they are fallacies (and this last move might be hasty). Regarding the circumstantial *ad hominem,* there are in fact two distinct arguments hidden under this term: both the *bias ad hominem* (suggesting that a person defends a point of view not because he has indeed arguments for that point of view, but because he has a hidden interest in defending it) and the one coming from Aristotle – Locke tradition. In both cases it is not very clear if these arguments are fallacies, or they might be accepted in argumentation. A good example for the bias *ad hominem* might be found in the next dialogue:

> A: In my view, it is highly questionable whether smoking really causes cancer; there are studies which deny it.
>
> B: Do you want me to accept that opinion from you? Everyone knows your research is sponsored by the tobacco industry.
>
> (van Eemeren, Meuffels, Verburg, 2000: 427)

In this case, B suggests that, since A's research is financially supported by the tobacco industry, A has an interest in defending this point of view, in order to keep the advantages thus gained. What's interesting about this case is that no matter what exactly the object of A's research is (be that the relation between smoking and cancer, or the market share of a certain tobacco company), B's argument bears the same weight, which remains to be evaluated.

A classical example of the second case of circumstantial *ad hominem* is:

> The parent argues to the child that he should not smoke, because smoke is unhealthy. The child replies: what about you? You smoke! So much for you argument against smoking.
>
> (Walton 2000a: 182)

The child correctly notices the pragmatic inconsistency of his father, which diminishes his credibility as a spokesperson for an antismoker position, but on the other hand rejects a quite reasonable argument without any counter-argument. This example is typically labelled *tu quoque*.

The pragma-dialectical approach defines the *ad hominem* argument as a manoeuvre through which the opponent is attacked in an attempt to disqualify him as a serious participant in a critical discussion. Van Eemeren and Grootendorst reduce all *ad hominem* arguments to three major forms: a) the attempt to silence the opponent by "casting doubt on his expertise, intelligence, character or good faith" (van Eemeren & Grootendorst 1992: 111) is qualified as *abusive ad-hominem* (or *direct personal attack*); b) the attempt to depict one's motives for adopting a certain point of view as suspect or unreliable is qualified as *circumstantial ad hominem* (or *indirect personal attack*); one might argue that the opponent has a bias in defending or advancing doubts on a standpoint, his credibility thus being diminished; c) the attempt to find an inconsistency in one's opponent's expressed or unexpressed commitments, or between these commitments and his previous deeds, is qualified as

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tu quoque ad hominem, which occurs, typically, "when someone casts doubt on a standpoint of which he himself is an adherent". (*ibidem*)

Conceived in this manner, *ad hominem* argumentation is, generally, a violation of an implicit rule of a critical discussion: *parties must not prevent each other from advancing standpoints or casting doubts on standpoints* (first rule of the pragma-dialectical approach). This rule governs the *confrontation stage* of the critical discussion. There are, yet, some shortcomings of this approach. First, it is not always the case that *ad hominem* argumentation occurs in the confrontation stage of the critical discussion, the fragment from Schopenhauer quoted above suggesting that it may be employed at any step of the argumentative process. Second, the more general claim of the pragma-dialectical theory, that argumentation is to be conceived as a critical discussion, can be too restrictive; for instance, Douglas Walton identifies six types of dialogue in which argumentation might occur, and the fallacious aspect of argumentation is to be evaluated having in mind the aim of each type (see Walton 1995: 98-130). [4] Third, and coming to a more specific criticism, reducing the *circumstantial ad-hominem* to the bias-type might seem both too narrow and against common intuitions arising from the historical tradition of this argument. Fourth, subsuming any type of inconsistency to the *tu quoque* label seems an *ad hoc* move, especially since we have to distinguish between the mere proof of a person being inconsistent in his commitments, that being a reason for not accepting his position, and the more complex situation when the allegation of inconsistency is a proof of hypocrisy (or other negative character traits) and thus discrediting that person as a serious partner in a critical discussion. In the first case we continue the Aristotle – Locke tradition, in the second case we are talking about the modern meaning of *ad hominem*.

Douglas Walton, following a pragmatic approach, defines *ad hominem* argumentation as "the use of personal attack in a dialogue exchange between two parties, where one party attacks the character of the other party as bad, in some respects, and then uses this attack as a basis for criticising the other's party argument". (Walton 2000b: 102) Walton uses the term *ethotic arguments* as a synonym of *ad hominem,* referring to Aristotle's *Rhetoric*, where three types of proofs are described: those based on *logos* (logical proof, either real or apparent), *ethos* (moral authority of the character of the speaker) and *pathos* (a certain emotional disposition of the audience). (Aristotle *Rhet.*: 1356a) In this context, *ad hominem* argumentation is an argument directed against the moral authority of the speaker. The key element in Walton's approach is, consequently, this intermediary step where the *ethos* of the opponent is attacked, thus making a clear difference between *ad hominem* argumentation and mere pragmatic inconsistency (or argument from commitment, as Walton labels it). But this is exactly the difference between the modern sense of *circumstantial ad hominem* and Aristotle's sense. More clearly, Walton excludes from the sphere of *ad hominem* argumentation exactly the Aristotelian view, and this would be wrong: the Greek philosopher does not mention anywhere in his *Sophistical Refutations* that the argument directed against the questioner is aimed at attacking his credibility, but the aim is to find a solution to an apparent refutation. We shall return to this matter later.

Douglas Walton distinguishes between four major types of *ad hominem* arguments [5]:

I. *Direct attack* (or abusive *ad hominem*) – In this type of argument, the attacker claims that his opponent is a person of bad character, so, his argument should not be accepted. The scheme of the argument is the following (where *X* stands for a person, *a* stands for an argument and *A* stands for a proposition):

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1. *X* advocates argument *a*, which has proposition *A* as its conclusion;
2. *X* is a person of bad (defective) character;
3. So, X's argument *a* should not be accepted.

This schematisation emphasises the question of character. But, instead of character, an intellectual trait might also be involved: we might say not only that X is misogynist or aggressive or a liar, but also that he is uninformed or incompetent.

II. *Circumstantial ad hominem* – Walton considers that this type is always based on an allegation of inconsistency, used to accuse the character of the opponent as a justification for rejecting the thesis. The scheme of the argument might be:

1. *X* advocates argument *a*, which has proposition *A* as its conclusion;
2. X carried out a set of actions that implies that X is committed to nonA;
3. Therefore X is a bad person;
4. So, X's argument *a* should not be accepted.

Conclusion 3, generated from premise 2, might be particularised by appeal to morally bad traits of character like hypocrisy, insincerity or applying double standards (a common denominator might be *you don't practice what you preach*). This type of argument is not the same as *tu quoque* from the pragma-dialectical approach: in the *tu quoque* type, the intermediate conclusion 3 might be unnecessary. For instance, in Schopenhauer's example, when the defender of the suicide is asked *Why don't you hang yourself?* the hidden argument beyond this question could probably be reconstructed like this: since you pretend yourself to be a defender of the suicide and yet you haven't committed suicide so far, it means that you are not very serious in what you claim about suicide, so your arguments are also not to be taken seriously. The problem with this type of argument is that the third step is usually unexpressed, and it is not easy every time to account for its presence when reconstructing the argument. A good example in this regard is the next fragment of a conversation between Frederick W. de Clerk, president of South Africa in 1990, and a journalist who asked him if he had supported the doctrine of apartheid:

> I've been in Parliament for 17 years, and I have never defended the concept of apartheid.
>
> A response: But you were a prominent member of, and high office holder in, the Nationalist Party – the Party that developed and implemented the policy of apartheid!
>
> (de Wijze 2003: 39)

It is implicit in the journalist's argument that one couldn't hold a high position in the Nationalist Party without being committed to the official doctrine of the party, which was the apartheid doctrine. Yet, we don't have compelling reasons to claim that an accusation of lie was implicit in the journalist's argument. A sceptic might say that we don't even have here an *ad hominem* argumentation: de Clerk claims that he was a member of the Nationalist Party but he was not a supporter of the apartheid politics, while the journalist claims that it was not possible to be a member of the Nationalist Party and yet not to be a supporter of apartheid doctrine. Douglas Walton would consider this argument as an *argument from commitment*, not an *ad hominem,* and the general form of this argument might be:

1. *X* is committed to proposition *A* (based on what he did or declared in the past);
2. So, in this case, *X* should support *A*.

A typical example for an argument from commitment might be identified in the following conversation:

> Bob: Ed, you are a communist, aren't you?
>
> Ed: Of course, you know that.
>
> Bob: Well, then you should be on the side of the union in this recent labour dispute.

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(Walton 2000a: 185)

Analysing these two last examples, we can see that de Clerk's case is just the reverse of the medal in an argument from commitment. On the other hand, if Bob's last line would have been: "Well, then you should be on the side of the union in this recent labour dispute. But you are on the side of the employers – don't you think you are contradicting yourself?" then we might have had an Aristotelian case of *ad hominem*. So, Walton's approach to *ad hominem* argumentation leaves aside a very important type of this argument.

III. bias *ad hominem* – It represents the argument that van Eemeren and Grootendorst have labelled as *circumstantial ad hominem*. The general form of this argument might be:

1. Person *X*, the proponent of argument *a,* is biased.
2. Person X's bias is a failure to take part honestly in a dialogue in which he is a part.
3. Therefore X is a bad person.
4. Therefore X should not be given as much credibility as it would have without the bias.

What seems surprising in the conclusion of this argument is that it is no longer the acceptability which is contested in this last statement, but X's credibility. But the very essence of *ad hominem* argumentation consists in attacking the credibility of a person with the aim of rejecting the argument advanced by that person. Moreover, the step from the second premise to the third one is problematic: we could expect that X might be considered dishonest, sleight or devious, and the fallacious character of the argumentation rests on the presupposition that a person who has an interest in supporting a point of view cannot take part honestly in a debate on that point of view. But the step from 2 to 3 cannot be made every time, and there are situations when *X* might declare frankly that he has a personal motive for adopting *A,* but he asks his collocutors to ignore this fact and to evaluate the arguments he advances just by themselves. I consider that a better reconstruction of this type of argument might be the following:

1. Person *X*, the proponent of argument *a*, is biased.
2. Person X's bias is a failure to take part honestly in a dialogue in which he is a part.
3. Therefore X should not be given as much credibility as it would have without the bias.
4. Therefore X's argument A should not be accepted.

By this schematisation we turn back to the common intuition that *ad hominem* argumentation refers to the rejection of an argument by criticising not the argument, but the person who advances it.

IV. Poisoning the well *ad hominem* – In this type of attack the proponent is accusing the opponent that he is rigidly and dogmatically committed to a position, so that he would never be able just to evaluate an argument on its merits, but he would always try to force the acceptance of his position. A classic example mentioned by Walton is that of the Cardinal Newman's position against abortion. He was accused that as a Catholic, he always reverted to the Catholic position on any political dispute on any subject, and therefore could never be trusted. The fallacious character of this argument is subtly revealed by Cardinal Newman's answer:

> such an attack, if taken seriously, meant that he, as a practicing Catholic, could never take part in any political debate, on any issue, with any credibility.

(Walton 2000a: 184).

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This type of argument is based on a publicly declared commitment of the arguer, or on a social role. Following this strategy, any public figure can be discredited because of his commitment to a religious or political orientation which prevents him from having an open attitude in a debate. It is obvious that this type of argument is a generalised form of bias ad hominem, yet with slight resemblances of circumstantial *ad hominem*. Walton's general description of this argument is the following:

1. For every argument a in a dialogue, X is biased.
2. X's bias is a failure to take part honestly in a type of dialogue that X is part of.
3. Therefore X is a bad person.
4. Therefore X should not be given as much credibility as it would have without the bias.

Since Walton's analysis of the poisoning the well *ad hominem* follows the previous analysis of bias *ad hominem,* the same remarks I advanced there are also valid here.

4. Ethos and evaluation of ad hominem *arguments: when are they acceptable in discourse?*

Walton's idea to connect *ad hominem* argumentation with Aristotle's concept of *ethos* sheds new light on the debate around this type of argumentation. Yet, Walton is more interested in the concept of *character* as developed by Aristotle in his *Nicomachean Ethics* and less in his *Rhetoric* [6]. More than that, he seems to ignores the wider tradition of this term in Greek and Roman rhetoric.

Canonical studies in the history of rhetoric distinguish between a Greek tradition of *ethos* as a persuasive appeal and its Roman counterpart. Aristotle's references to *ethos* in his *Rhetoric* are scarce and not always very clear. Usually the following fragment is quoted: "The orator persuades by moral character when his speech is delivered in such a manner as to render him worthy of confidence; for we feel confidence in a greater degree and more readily in persons of worth in regard to everything in general, but where there is no certainty and there is room for doubt, our confidence is absolute. But this confidence must be due to the speech itself, not to any preconceived idea of the speaker's character." (Aristotle *Rhet*: 1356a 5-10). In Aristotle's view, *ethos* is the most effective proof in topics where certainty is not possible, but *ethos* has to be created through discourse – so Aristotle's concept does not point to a reputation pre-existent to the speech, but to a credibility which is continuously created through speech, and Aristotle puts it clearly: credibility consists in proving yourself through your speech as having prudence, good will and virtue. (Aristotle *Rhet*: 1378a 5-10). So, to put it briefly, for Aristotle, *ethos* is an image of the orator, created through his discourse.

From Isocrates, Aristotle's contemporary, stems a different tradition of conceiving *ethos*: as a previous reputation that the orator had in a particular audience. This manner of conceiving *ethos* became dominant in Roman Rhetoric, as is the case with Cicero, and extended so widely as to cover the whole family of the orator: "Character in this sense can be passed from one generation to another; Romans respected the customs of the ancestors (*mos maiorum*) and revered authority". (Olmsted 2006: 30)

The concept of ethos was seriously contested by the Cartesian tradition and especially by the Enlightenment, Mill's *On liberty* being a typical example. Yet, this

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concept revived in various disciplines studying language, such as stylistics, pragmatics, discourse analysis or conversation analysis (Amossy 2000: 68-69). Accounting for ethos, in this view, would amount to studying all the means by which a self-image is interactively created through discourse in a certain context.

Summing up both insights from classical rhetoric and contemporary interests coming from discourse analysis, we can distinguish four sources of *ethos* as an image of the speaker, supposed to give credibility to the discourse. On the one hand, we should have in mind the distinction between what the speaker expresses directly about him in front of his audience (not just using the first person, but also through gesture, tone of voice, clothing) and what is implicit (what the audience already knows about the speaker or can infer from the speech). On the other hand, we have to distinguish between extradiscursive ethos (contextual information about the speaker) and intradiscursive ethos (an image of the speaker created through discourse).

ETHOS	Expressed	Implicit
Extradiscursive	1 Corporality Gesture and posture Tone of voice	2 Reputation: previous knowledge of the audience about the speaker
Discursive	3 Statements about one's own person or deeds: self-presentation, self-criticism, self-praise	4 Rhetorical persona: built through arguments, style, expression of emotions

Table 1: *Sources of ethos*

Hence, there are four sources of ethos: the first one is generated by the mere presence of the speaker (either directly or mediated) and consists in non-verbal and para-verbal behaviour, physical traits, outfit, other factors that might evoke a physical presence; the second source consists in the reputation of the speaker – based on his position in government or in society, previous actions, popularity etc. (the equivalent of the Roman view about ethos) but also expressed commitments in previous speeches or through previous actions, known by the audience; the third source consists in explicit or implicit self-describing statements: these statements may be intended to reinforce, to change or to build the speaker's reputation; they might be direct self-praise or narratives from which the audience could infer the character of the speaker; and the fourth source of ethos is the rhetorical persona (roughly the equivalent of authorial persona in literary criticism or the equivalent of Aristotle's ethos): by providing arguments, the speaker might inspire prudence, by making concessions he might prove himself benevolent, by committing himself to moral maxims he might prove his virtues; yet, not only arguments build the rhetorical persona, but also the style (for instance, by choosing between various semantic registers, the speaker might increase or diminish the distance between him and his audience, thus creating an image of a friendly person or a distant "expert") or the use of emotional appeal not just to influence the audience, but also to create a certain image about oneself – for instance "renaissance interprets the orator's feeling emotion himself as a sign of authenticity". (Olmsted 2006: 31)

This systematisation of the sources of ethos has several theoretical advantages: for the purpose of this paper, it indicates "topics of invention" for *ad hominem* arguments – more exactly, where to find inconsistencies exploitable in *ad hominem* attacks. More generally, it suggests that the speaker's credibility might be based on

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the coherence of all these elements building ethos, and this hypothesis is susceptible of empirical verification. We can turn now to Walton's typology of *ad hominem* arguments and reshape it according both to these observations about ethos and to previously expressed criticism:

I. Ex concessis *ad hominem* (Aristotle – Locke tradition):
1. *X* advocates argument *a*, which has proposition *A* as its conclusion.
2. *X* carried out a set of actions that implies that *X* is committed to non*A*.
3. So *X* cannot advance a coherent position regarding *A*.
4. So *X*'s argument *a* should not be accepted.

II. Direct *ad hominem,* or abusive *ad hominem*, or *argumentum ad personam*:
1. *X* advocates argument *a*, which has proposition *A* as its conclusion.
2. *X* is a person of bad (defective) character; (premise usually based on the second source of ethos).
3. So, *X*'s argument *a* should not be accepted.

III. Indirect *ad hominem*, or circumstantial ad hominem, or tu quoque:
1. *X* advocates argument *a*, which has proposition *A* as its conclusion.
2. *X* carried out a set of actions that implies that *X* is committed to non*A*.
3. So *X* cannot advance a coherent position regarding *A*.
4. So *X* is a person of bad (defective) character (inferred directly or through intermediary steps from 3).
5. So, *X*'s argument *a* should not be accepted.

IV. Bias *ad hominem*:
1. Person *X*, the proponent of argument *a*, is biased; (premise based on the second source of ethos).
2. Person *X*'s bias is a failure to take part honestly in a dialogue in which he is a part.
3. Therefore *X* should not be given the credibility he would have without the bias.
4. Therefore *X*'s argument *a* should not be accepted.

V. Poisoning the well *ad hominem*:
1. *X* advocates argument *a*, which has proposition *A* as its conclusion;
2. *X* is committed to a group or a doctrine which supports *A*; (premise based on the second source of ethos).
3. Therefore *X* should not be given the credibility he would have without this commitment.
4. Therefore *X*'s argument *a* should not be accepted.

It is clear from this typology, an amended version of Douglas Walton's view, that the major difference between Aristotle's tradition regarding *ad hominem* arguments and the modern circumstantial *ad hominem* lies in the way the accusation of inconsistency is used. The historical account about theorisation of ad hominem argumentation aimed not only at explaining the terminological diversity of this type of argument, but also at providing a base for my systematisation. In the first type of argument, this accusation represents a sufficient reason for rejecting *X*'s argument, while in the third type this accusation is taken as a ground for revealing a deficiency in *X*'s character. Moreover, all arguments except the first one are ethotic arguments, so the value of these arguments is to be assessed relative to those situations where ethos plays an important role. We have already seen that Aristotle considered ethos the most effective persuasive appeal in those situations where certainty is not possible – i.e. deliberative rhetoric. And if so, it means that ad hominem arguments might not be always fallacious, as the standard treatment of fallacies considers them.

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The first to seriously investigate the nature of *ad hominem* arguments and to refute their fallacious nature was Henry W. Johnstone Jr, in 1952. Starting from the use of pragmatic inconsistencies in philosophical argumentation [7], Johnstone would get to the bewildering claim that all genuine philosophical argumentation is ad hominem argumentation. His backing for this radical claim resides in the distinction borrowed from Whately between *ad hominem* and *ad rem*. But, since in philosophy, argumentation *ad rem* is not possible because philosophy is the most general field of knowledge, the only desideratum of philosophy, as well as the first principle of polemic, concerns self-referentiality. And the attack against a certain philosophy would amount to showing that it doesn't meet its own standards, thus proving that its own principles are unintelligible. Hence, *ad hominem* argumentation is not only valid in philosophy, but is the most genuine argumentative strategy for this field.

While recognising Johnstone's merits in triggering debates which would finally lead to disambiguating the complex concept of *ad hominem* argumentation, Douglas Walton points that Johnstone's thesis "makes sense when one defines the argumentum *ad hominem* in Lockean fashion, as argumentation from other party's commitment (…) in a Lockean sense philosophy is a kind of *argumentum ad hominem*." (Walton 1998: 40) But this type of argument is valid by itself, although it might be used in a fallacious manner.

When evaluating ethotic *ad hominem* arguments, Douglas Walton admits that even these arguments are neither fallacious nor non-fallacious *per se*. *Ad hominem* arguments might be just insufficiently supported arguments (weak arguments) or even reasonable arguments in certain contexts. So, in evaluating *ad hominem* arguments one should pay special attention to the type of dialogue these arguments are employed in (persuasion, inquiry, negotiation, information seeking, deliberation or eristic), to the specific type of *ad hominem* argument used, and to the topic of the dialogue (political, ethical, scientific, domestic etc). Once these established, the evaluation proceeds through critical questions. For instance, for the abusive type of *ad hominem*, these would be the relevant critical questions:

1. How well supported is the premise that *X* is a person of bad character?
2. Is the issue of character relevant in the type of dialogue in which the argument was used?
3. Is the conclusion of the argument that *a* should be (absolutely) rejected even if other evidence to support *a* has been presented, or is the conclusion merely (the relative claim) that *a* should be assigned a reduced weight of credibility, relative to the total body of evidence available? (see Walton 1998: 250)

Evaluation of arguments through critical questions requires a well trained mind, able to adapt general principles to particular contexts. It is not a mechanical procedure (like some used in formal logic) and by no means can an exhaustive list of critical questions be learned by heart.

Yet, in which situations are *ad hominem* arguments to be accepted in a confrontation? Given Walton's emphasis on their ethotic character, they might be reasonable when credibility of the agent is as important as the critical discussion he is engaged in. The most obvious case is that of the witness in a trial. Moreover, it is also the case wherever deliberative choice or practical reasoning are involved, such as in politics, because the character of the politician might represent, for instance, a guarantee that promises would be kept. Finally, since any successful argumentative interaction presupposes some traits and commitments of the participants (open-mindedness, sincerity, the will to get to a solution, even politeness), appealing to direct *ad hominem* attacks (but in a polite manner) might result in getting a derailed

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dialogue back on its track, or at least in a motivated retreat from a dialogue which could lead nowhere.

5. Legitimacy and ad hominem *argumentation*

Teun A. van Dijk remarked that although the problem of legitimation has generated a huge literature in political philosophy, "in discourse analysis it is much less studied than, say, politeness or persuasion, although legitimation is a prominent function of language use and discourse" (van Dijk 1998: 255). According to van Dijk, legitimation is the institutional equivalent of justification in everyday informal talk and it has an interactional dimension, being a discursive response to a real or anticipated challenge of one's legitimacy. Pragmatically, legitimation is related to the speech act of defending oneself, "but it's not an illocutionary act at all, but (like argumentation and storytelling) a more broadly defined communicative act that usually requires more than the utterance of one single proposition. Legitimation may be a complex, ongoing discursive practice involving a set of interrelated discourses." (*ibidem*) As legitimation is closely related to norms and values shared or contested between competing social groups, van Dijk connects legitimation with ideologies, and since ideologies are usually in competition through discourse and want to gain hegemony in the public space, it becomes clear why one cannot speak about legitimation without speaking about delegitimation: "legitimation is a complex social act that is typically exercised by talk and text. Strategies of legitimation and delegitimation are similarly discursive, and involve the usual moves of positive self-presentation and negative other-presentation" (*idem*: 260). Usual objects of legitimation or delegitimation might be: membership to a group, actions of that group, its goals, its norms and values, social position or access to social resources for members of a certain group. A special object of legitimation or delegitimation, considers Van Dijk, is the discourse itself. Usually, delegitimation of the discourse itself employs "strategies focused on the context of production, on access and use of discourse, for example by challenging the legitimacy of communication participants (who has the right to speak, or to speak for others?), speaker roles, setting, goals, knowledge, expertise, and so on." (*ibidem*) In the last few lines we can already recognise various ways of violating the first rule of the pragma-dialectical model of argumentation.

In a recent article, Theo van Leeuwen has outlined a descriptive framework for analysing the manners in which language can be used to legitimise or critique. He distinguishes four major categories of legitimation:

1. *Authorisation*: legitimation by reference to the authority of tradition, custom and law, and of persons in whom institutional authority of some kind is vested.
2. *Moral evaluation*: legitimation by direct or implicit reference to value systems.
3. *Rationalisation*: legitimation by reference to the goals and uses of institutionalised social action and to the knowledge society has constructed to endow them with cognitive validity.
4. *Mythopoiesis*: legitimation conveyed through narratives whose outcomes reward legitimate actions and punish non-legitimate actions. (van Leeuwen 2007: 92)

As Van Leeuwen puts it, "in contemporary discourse, moralisation and rationalisation keep each other at arm's lengths." (*idem*: 100) In fact, modern bureaucracies tend to be characterised by rational and authoritative legitimation,

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while in premodern societies legitimation was mainly based on moral evaluation and mythopoiesis.

It becomes apparent now that *ad hominem* argumentation is a frequently used strategy for delegitimation, more specifically moral delegitimation, at least as long as a link between the person attacked and the institutional context is provided. Yet, discourse analysis being a descriptive (or at best critical) study of language use, systematisations thus provided can't go much further regarding the rational acceptability of the (de-)legitimation strategies used in public communication. So, theories like pragma-dialectics and informal logic, which claim to approach argumentation both from a descriptive and a normative perspective, can push the analysis further, offering a way to answer the problem of acceptability by appealing to certain standards of reasonability. In the following analysis I will reconstruct the arguments from the excerpts presented in the second part of this paper and try to systematically relate the use of *ad hominem* arguments with discursive strategies.

Cristoiu's complex argument might be reconstructed as follows:

The act of condemning communism is immoral because:

a. Traian Băsescu, the person condemning communism, is not the most entitled to do it, since he was one of the privileged of this regime (*implicitly* a collaborator of this regime, so a communist);

b. communism was condemned on the grounds that it was a criminal regime, but a striking counter-example to this claim is exactly the person who condemned communism, because Traian Băsescu made an exquisite career during communism, based only on his merits, which (implicit assumption) would not be possible in a criminal regime;

c. there might be also an implicit argument, masked by the mark of concession *Let's admit it* (which means that the concession is only provisional): if Traian Băsescu is not sincere in his justification, it means that both his career and his wealth during communism are due to his privileged collaboration with the communist regime, which again does not entitle him to condemn communism.

Both the first and the third argument contain a hidden *tu quoque ad hominem*:

1. Traian Băsescu claims that the communist regime in Romania was illegitimate and criminal, so he claims that this regime should be condemned for those reasons.

2. Traian Băsescu was a privileged person in the communist regime, a fact impossible without him being a supporter and collaborator of the Communist Party.

3. So, based on his past, Traian Băsescu cannot advance a coherent position regarding the condemnation of communism.

4. So, Traian Băsescu is not the most entitled person to condemn communism.

5. So, condemnation of communism by Traian Băsescu is immoral.

Thus reconstructed, the argument does not fit exactly into the proposed scheme, yet the *ad hominem* character of this argument is obvious: the accusations *you don't practice what you preach* stems from the second premise. The third premise, left implicit in the argument, is based on the ungrounded assumption that once committed to communism, Traian Băsescu could not sincerely and entirely abandon this commitment, and this assumption breaks an implicit presumption of sincerity (the equivalent of the legal presumption of innocence in Grice's terms of maxim of quality). Yet, the argument would stand even without this premise. The jump from premise 2 to premise 4 might be reasonable: indeed, a person who suffered political oppression during communism would have had much more credibility when condemning communism. The real problem with Cristoiu's argument is the jump from 4 to 5: from the mere fact that Traian Băsescu is not the most entitled person to condemn communism, it does not follow that condemnation of communism by Traian

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Băsescu is immoral. The assumption on which this hasty argumentative jump rests – the condemnation of the communism would not be immoral only if it were performed by the most entitled person – is certainly unacceptable.

So, Cristoiu's text is based on *ad hominem* argumentation, but the argument is not fallacious (or at least not in this regard); instead, the argument is very poorly supported in its final stage: it is a weak argument but it is not fallacious. Evaluating this text from the legitimation perspective, it represents a delegitimation attempt, based on moral evaluation in van Leeuwen's terms. But the moral evaluation appears in the conclusion of the argument and the argument fails in supporting this conclusion. The objects of delegitimation in Cristoiu's text were the goal of the action (further in his editorial Cristoiu asserts that Traian Băsescu's real purpose was to settle accounts with his political enemies) and the discourse itself, contesting the legitimacy of Traian Băsescu to perform the speech act (Traian Băsescu is not entitled to condemn communism).

As noted before, the article in *Cotidianul* might be conceived as a reply to Cristoiu's argument, trying to legitimate Traian Băsescu's speech by a reverse moral evaluation: the condemnation of communism is good, even if it were Ceauşescu the one to carry it out. Here the *ad hominem* argumentation is just suggested by means of a dialogue through Yahoo Messenger, and the argument is advanced in an indirect manner, only to be withdrawn later. Anca's initial argument is difficult to reconstruct, due to its elliptic expression, so I will try a maximal reconstruction [8] of this argument:

1. Traian Băsescu is not young enough to not have been involved in politics before 1989;

2. The act of condemning communism would have had more credibility if it were accomplished by someone young enough not to have been involved in politics before 1989;

3. So Traian Băsescu, assuming the responsibility of condemning communism, discredited the act of condemning communism;

4. So Traian Băsescu's initiative is not OK (is immoral).

Although thus reconstructed the argument seems quite strong, it is not accepted by the antagonist, who forces the acceptance of his point of view by mere reiteration of his standpoint and by indirectly warning that unexpressed premises in Anca's argument are irrelevant to this debate: *even if it came from Ceauşescu, it would still be good*; Anca's reaction to this aggressive advance seems a compromise between accepting her initial *ad hominem* argument and accepting Costin's standpoint, transforming the counter-argument in a pro-argument: one needs a thief to recognize a thief (and a communist to recognize and condemn the crimes of communism, we might add). In fact, there is an interesting shift in legitimation strategies used by Anca: from a delegitimation strategy based on moral evaluation to a legitimation strategy based on rationalization (the choice of the appropriate means to a certain end, in a certain context).

Finally, the fragment selected from Cristian Tudor Popescu's editorial is an explicit answer to Cristoiu's argument. Here a strict distinction between the question of legitimacy and the question of character is operated. Traian Băsescu has condemned communism as president of Romania and hence the legitimacy of authorisation is sufficient for gaining loyalty to this decision. Yet a lot of negative statements about Traian Băsescu are advanced in this article, and one might recognize here the typical arsenal used in *ad hominem* argumentation: Traian Băsescu lacks familiarity with the things he condemned (direct *ad hominem*), Traian Băsescu is not in fact committed to his statements (circumstantial *ad hominem*),

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Traian Băsescu is aggressive and impolite etc. – although they are not used to reject a standpoint advanced by Traian Băsescu. At this point a more general question arises: how can an institution gain legitimacy if the person who represents it is delegitimised by the same discourse that legitimises the institution? One might be tempted here to warn that we can talk about legitimacy only in institutional contexts, not about persons. Here the concept of *ethos* provides the necessary link: since *ethos* has a reputational dimension and occupying a public office requires certain virtues, the person occupying that office can be delegitimised. Where character is relevant for the topic of the debate, like in politics, credibility and legitimacy can substitute each other and can interact. So, Cristian Tudor Popescu's argument might backfire: the authority of the highest position in the state might lose its legitimacy as long as the person occupying it loses credibility constantly.

Final remarks

To sum up, the hidden issue in the debate about condemnation of communism is one concerning a supposed credibility of the condemner: in order to be successful (i.e. sincere and moral), the condemnation of communism should be undertaken by someone who has (merely) the institutional authority to do it, or by someone who is both in the institutional and the moral position of doing it? Is the credibility of the condemner only a supervenient condition, or a necessary one? If we assume the first answer, then any recourse to ad hominem argumentation is fallacious – and this is the position adopted by Cristian Tudor Popescu; if we assume the second answer, to which Ion Cristoiu seems to be committed, then there are opportunities for legitimate use of ad hominem argumentation, but Cristoiu fails to build his case cogently. From a critical discourse analysis perspective, the debate about condemnation of communism is a clash between different types of legitimation: Cristian Tudor Popescu supports this act through authority legitimation, while Ion Cristoiu contests it through moral delegitimation, by appeal to ad hominem argumentation. More generally, from a descriptive point of view, ad hominem argumentation can be an instrument for contesting legitimacy. Yet, normative insights from argumentation theory can go beyond the descriptive limits of critical discourse analysis, raising the question about the appropriateness of legitimation strategies used in public debates – for instance, in the case of condemnation of communism, the appropriateness of moral delegitimation by means of ad hominem arguments.

Ad hominem argumentation can be more than just a deceitful argumentative device which blocks the process of argumentation, as it is described in the pragma-dialectical approach to argumentation. In certain contexts it might be a reasonable course of argumentation, and is a frequently used strategy for legitimation and delegitimation. Although modern bureaucracies are characterised by rational and authoritative legitimation (specific to modern societies, as opposed to archaic societies where legitimation is mainly based on moral evaluation and mythopoiesis), yet the practical reasoning involved in politics and deliberation leads us back to the concept of *ethos*. Conceiving *ethos* rather in a rhetorical manner than in an ethical one, it is possible to account for those situations when credibility and legitimation substitute each other and *ad hominem* argumentation might have effect not only on persons, but also on institutions.

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Notes

[1] The English equivalent idiom of this Romanian proverb is *the pot calling the kettle black*. In the Romanian culture, there is also a reverse proverb for this one: *do what the priest preaches, not what he does*. Proverbs tend to function similarly to the topics of invention in classical rhetoric – they provide general patterns or starting points in argumentation. In fact, one could conceive paremiology not just as a collection of popular wisdom, but also as a repertoire of rhetorical topics of invention specific to each culture (for a distinction between dialectical topics and rhetorical topics, see Keinpointner 1997: 228)

[2] *Ad arguments* is an abbreviated phrase employed by Hamblin to refer to all arguments with Latin names which are not to be found in Aristotle's *Sophistical Refutations*.

[3] There are commentators of Aristotle who suggests that the origin of this argument is to be found in Aristotle too, in his Topics, book VIII § 11, 161: "Accordingly it sometimes becomes necessary to attack the speaker and not his position, when the answerer lies in wait for the points that are contrary to the questioner and becomes abusive as well: when people lose their tempers in this way, their argument becomes a contest, not a discussion." Yet it is not very clear in Aristotle's text what "attack the speaker and not his position" actually means, nor is there much consensus between commentators on this fragment. (Chichi 2002: 335)

[4] It is beyond our aim in this paper to present and evaluate Walton's critique of the pragma-dialectical approach to argumentation.

[5] This presentation reconstructs and synthesises Walton's typology, elaborated in Walton 1998, 2000a, 2000 b, 2001.

[6] Yet he provides a thorough analysis of the relation between character and deliberation in Walton 1998: 200-203.

[7] Or pragmatic paradoxes; Johnstone defines a pragmatic paradox as "a proposition whose credibility is undercut by the act of uttering it" (Johnstone 1952: 491), like in the common example *I never use correct English*. A similar example from philosophical argumentation, provided by Johnstone is: The naturalist considers the statement *All knowledge is merely the function of the adjustments if the organism to its environment.* But now the naturalist must assume that his own account of nature is true, and since his own statement represents knowledge, it means that his own statement is "merely the function of the adjustments if his organism to its environment", meaning that his own statement has no more significance than any other adjustment of the organism, so I do not have to assume this statement as true, or as representing knowledge. This entire conception about knowledge refutes itself, but the most significant aspect of this paradox is its pragmatic dimension (there is no logical or formal inconsistency to be found in this paradox): this view about knowledge simply fails to meet its own standards.

[8] By *maximal reconstruction of an argument*, I refer to a strategy of reconstructing arguments with unexpressed premises similar to what Van Eemeren and Grootendorst call *pragmatic optimum* (see van Eemeren & Grootendorst 1992: 60-72).

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