

Exclusion of a member of a political party. Unconstitutional provisions of the Law on political parties.

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Abstract:

The Constitutional Court is an independent judicial body that provides political and constitutional independence of the rule of law. It is the only institution ensuring the implementation of laws in accordance with the Constitution, thus preventing the violations of citizen fundamental rights. This paper aims to clarify the extent to which the Constitutional Court can intervene by the means of the exception of unconstitutionality in restoring order when it is violated through various actions or material acts or laws of the various bodies and institutions of the state.

The political parties law provision regarding the free acces to courts when trying to attack an internal decisions of exclusion of a member is unconstitutional.

Keywords: *Acts of Parliament, political parties, disciplinary control judiciary, political acts, access to justice*

1.Introduction

First, it should be noted that Decision. 530 of 12.12.2013 of the CCR was drawn up on the basis of unconstitutionality raised before as ordinary court. This is alongside the objection of unconstitutionality, one of the ways in which they Court can regulate the laws to make them consistent with the Constitution.

Subsequently, taking into consideration the theme, we appreciated as necessary to provide some insight into the Political Parties Act in order to better analyze the issue. Defining and considering provisions contained in the mentioned law allowed us to give a better understanding of the scope, the duties of these associations, their role and position within the context of the rule of law and the state. However, based on these two the Constitutional Court is making an interference in the political world once again, proving that it is not a judicial body, but a political-judicial body. Thus, it was noted that although there is a material independence between the two, they are also intertwined in the implementation of specific tasks, without this affecting the principle of separation of powers, nay, ensuring compliance and its implementation.

Constitutional Court Decision no. 530 of 12.12.2013 on art. 16, para. (3) of the Political Parties Law no.14 / 2003 governing the jurisdiction of the courts in relation to

the statute of the parties when they contradict is a very important decision. It has been established so that any limitations on the jurisdiction of the courts is unconstitutional. Examining the article of incorporation of these associations, they can not limit free access to justice. De Plano, the Court based its decision on two fundamental principles, namely free access to justice and the right to defense. While each association may adopt its rules of procedure they can not bring harm or limitations to the jurisdiction of the courts.

However, it was noted that the intervention of the courts to be an optimal one must be limited to checking the application of their own internal laws and not the decision the Political party made. The decision comes to elucidate this point, so we considered there is a necessary and in depth analysis of them.

2. Various aspects of the organization and functioning of political parties

Law No. 14/2003 regulates the organization and operation of political parties. Thus, under Article 1 states that "Political parties are associations of Romanian citizens that are able to vote, participating freely and exercising their political formation, fulfilling a public mission guaranteed by the Constitution. They are legal entities of public law". Under the same law, the second article states that they are intended to promote national values, political pluralism, help to form public opinion and stimulate citizens' participation in political life. Therefore, a crucial need for the parties to have a rigorous regulation in accordance with constitutional regulations for citizens' interests to take shape validly and effectively. The content of Article 9 states that each party must have its own statute and political program. This provision shows that it is organized and operates according to its statutes, acting independently, but always in accordance with the law.

Also in the art. 11 compulsory submission status and political program in writing and subject to approval by bodies authorized by statute. They must have a minimum number of members, have legal personality and a general meeting as required by management for a fixed period (4 years) . In the art.16 states that para. (2) "Members have the right to resign from the party at any time with immediate effect. (3) the acquisition and loss of membership of a political party is subject only to the party's internal jurisdiction, according to the statute. "

Political parties adopt decisions by a majority vote withheld by statute and the election of members shall be by secret ballot. Staff members shall include the right to political initiative and the possibility of examination within an organized framework.

By researching the chosen theme, aimed to highlight the importance incidents of law and political parties on practical cases, so directly on citizens, since parties are nothing but associations designed to promote the public interest and not to censor or jeopardize laws in any way . Therefore, national rules must necessarily be in agreement with the law, especially the Constitution as the fundamental law of the country.

In fact, the juridical interference in politics always existed as state powers can not operate independently. The three branches are intertwined, generating both collaboration and support, but implementation and policy compliance while monitoring fundamental law underlying all state relations. The possibility of the compliance verification thus becomes mandatory in order to prevent possible abuses of laws and rights that could result from a completely independent political body. In fact, none of the state authorities could not justify the existence without this collaboration and would reach a point of unification, since no longer distinguish their respective duties. It is precisely this apparent interference of state authorities that ensures autonomy, separation and balance of powers. Thus the fundamental principle of "separation and balance of powers", introduced by Montesquieu, contains a central concept for the systematic functioning democratic state, namely the notion of checks and balances.

Social interest must prevail in a democratic state and therefore, the cooperation of the authorities should be calculated to ensure the event to prevent a monopoly of power concentrated in the hands of state authority.

Therefore, juridical interference in politics is equally a legal political interference, just as the powers and duties meet.

3. Background on the reasons

It violates the constitutional provisions of art. 24 "right to defense" which provides that "The right to defense is guaranteed" and the art. 30 "Freedom of expression" stating that "freedom of expression of thoughts, opinions, or beliefs [...] shall be inviolable" and that "Freedom of expression can not preserve the dignity, honor, privacy of person, and the right to your own image " .

Also, it is considered that it infringes Article 21 "Access to justice" which states that "Any person can go to court to protect the rights, freedoms and legitimate interests." In paragraph (1), continuing with par . (2) which states that "No law may restrict the exercise of this right."

Pending court opinion: Calarasi Court - Civil Division, where the exception of unconstitutionality was raised by the applicant, decided on the admission of the exception of unconstitutionality, "whereas the provisions of article 16 par. (3) of the Law no.14 / 2003 is a limitation in the functioning of the courts. " The court considers that allowing the application of sanctions by the governing bodies of the party, even in violation of its own statute, is a measure manifestly unconstitutional, which could lead to abuses. Therefore, believes that courts should be able to give judgement on such violations of the statute of a party.

It violates, in fact, the fullness of trial courts provided for by Article 126 para. (1) of the Constitution, without being given the argument that under Article 126 para. (2) of the Constitution, "The power of the courts court and trial proceedings are set only by law ". The provisions of Article 126 of the Constitution mean that jurisdiction is established by law, not that there are differences over which they can not decide, but in order to establish general jurisdiction courts to deal with complaints and appeals.

Therefore, any kind of authority can not establish jurisdiction even less can limit their authority. Even if the special law gives competence of solving a case is assigned to other organs (the administrative jurisdictional, for example), their solutions, without exception, can be challenged in court, thus respecting the right of access to justice. The right of access to justice is a fundamental right provided both by the Constitution and the majority pacts and treaties to which Romania is part of ensuring and while generating a number of other principles such as the right to defense, the right to trial fair, equal rights.

According to the very status of political parties, excluding judicial review of decisions of political parties in terms of their organization, it means, directly denying rights and freedoms in the Constitution and the law may lead to abuses of law in the party in breach of fundamental rights such as: freedom of opinion and free access to justice. Political parties are by definition even associations of citizens established to

achieve the general interests of society, relying on the equal rights of citizens to access public office. It follows undoubtedly that for a proper defense of rights and interests of members, they can appeal in court, as members or just as citizens, parties decisions affecting their personal status. These constitutional provisions can not be removed even by their own internal provisions institutions even if they reserve the right to resolve any issues that generate internal controversy. In a democratic state, the existence of general material bodies having jurisdiction to establish and ensure the independence and fairness of the authorities in a straight line between authorities and citizens, skew between state and society, correcting abuses or deviations from the rule of law.

4. Decision of the Court

The Constitutional Court declared that the provisions of article 16 par. (3) of the Political Parties Law no. 14/2003, republished in the Official Gazette of Romania, Part I, no.550 of 6 August 2012 which read as follows: "The acquisition or loss of membership of a political party is subject only to the party's internal jurisdiction, according to the charter party . " is unconstitutional since this provision infringes art. 21 of the Constitution which states that "(1). Anyone may apply to the courts for protection of rights, freedoms and legitimate interests .; (2) No law may restrict the exercise of this right "as well as those of art. 24: "The right to defense is guaranteed" and art. 30 of the Constitution "Freedom of expression [...] shall be inviolable".

The reasons for the decision are motivated by the provisions of art. 146, item. d) of the Constitution which provides, inter alia, that one of the powers of the Constitutional Court is to "d) to decide on objections of unconstitutionality of laws and ordinances, brought up before courts of law or commercial arbitration" and of art. 1 para. (2) of Law no. 47/1992: "The Constitutional Court is the sole body of constitutional jurisdiction in Romania" of art. 2:

The Constitutional Court ensures the constitutionality of laws and international treaties, regulations and orders of Parliament the Government. The Constitutional Court decides only on the constitutionality of the acts brought before it without being able to amend or supplement the provisions under review. Constitutional Court's powers are established by the Constitution and the law of functioning. In the exercise of his duties Constitutional Court is only entitled to decide on its jurisdiction. The jurisdiction of the

Constitutional Court, established under the Constitution and law can not be challenged by any public authority ", Article 10 of the law refers to the cases provided for by art. 146 of the Constitution, and Article 29 of Law no. 47/1992 on the procedural aspects of the introduction of the exception of unconstitutionality. All these legal proceedings give the fundamental competence of the Constitutional Court to settle the exception of unconstitutionality brought before it.

The exceptions of unconstitutionality was promoted against article 16 para. (3) of the Political Parties Law no.14 / 2003, republished in the Official Gazette of Romania, Part I, no.550 of 6 August 2012 on the acquisition and loss of membership of a political party that excludes any legal control over how the application of the statutory provisions and limit the domestic jurisdiction of that party.

Although CCR rejected in a previous case the exception of unconstitutionality brought under the same provisions of Law party, by reconsidering the legal consequences that the exclusion from the party has on the mandate of local elected officials, consisting of its termination and the large number of complaints concerned It was considered necessary to clearly distinguish between the normal rules of ethics and containing their rights and obligations, penalties for violations and procedures that have no legal basis.

At the same time, the court is entitled and competent to verify fulfillment of the conditions necessary for the legal establishment of political parties status application to specific parties and statutory procedure which takes only party policy. The fact that such issues are governed by legal rules therefore involve possible development of judicial review and the adoption of legal decisions and not political acts. As a result of these considerations the Court considers it necessary to reconsider the case law, and grant exemption under the general principles of Article 1. (3) of the Constitution.

While political parties have an internal organization independently based on its statute, which once approved has the force of law for members of the party, they can not restrict or eliminate judicial review because of verification of compliance regarding the observance of these bodies has its own status, as it would prevent access to justice, a fundamental principle laid down by the constitutional norm. Moreover, approval of

such measures could lead to abuses of domestic law of party members not deducted any impartial judge.

The court will therefore analyze and control only how they are applied the statute and the regularity of such the proceedings in front of their internal bodies and not on the opportunity of sanctions. The court will examine, in concreto, the proportion that were respected and the rights of the defense review.

"In light of these considerations, the Court found that the regulation infringes the constitutionality of Article 21, under which no law may restrict the exercise of the right of everyone to the courts for protection of rights, freedoms and legitimate interests because, according to article 16 par. (3) of the Law no.14 / 2003 request of the member of the party to which an exclusion from the party penalty can never be effectively examined by an impartial and independent judge. So, in this matter, free access to justice is not only limited but completely annihilated. The Court held that it infringes the full jurisdiction of the courts, as it is governed by Article 126 para. (1) of the Constitution. Even if the special law competence of solving such a case is assigned to other organs (a jurisdictional arbitration court, for example), their solutions can be challenged in court, thus respecting the right of access to justice". The Court therefore has jurisdiction to ascertain the right of access to court in conjunction with the provisions on rights of defense and their own opinion provided for by the Constitution and by article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and ECHR jurisprudence on the right to a fair trial. "The right to defense concerns the exercise of legal remedies against findings of fact or law, or the solutions taken by a court".

Furthermore, the Constitution Court retains the provisions of art. CR 37 "right to be elected" in conjunction with Article 15 on the rights of citizens stating, a fortiori, stating that a local representative must be able to exercise the function undisturbed as he or she was elected by the vote of the people.

Noting that, if local councilors, the exclusion from the party produce legal effects severely respectively Retiring Court notes that impossibility to challenge before the court such a measure ordered without checking compliance status and statutory procedures contrary to the right access to a court and makes the rights enunciated be free of legal content guaranteed by the rule of law and democratic by virtue of these

provisions declared unconstitutional the provisions of article 16 par. (3) of the Political Parties Law no. 14/2003, republished in the Official Gazette of Romania, Part I, no.550 of August 6, 2012.

The rule of law implies respect for the principles imposed over evolutionary time necessary for the functioning of society and its principles have been enshrined in international treaties that ensure coexistence of peoples and the equal rights of their citizens and they are made. Just imposition of such general rules of conduct made possible the establishment of democracy in most countries, especially a regime based on the equal rights of men. Romania is party to all these treaties and constitutional forcing it to compliance. To be insured it is required by the state to impose mainly the classical tripartite separation of powers: legislative, executive and judicial. However, it is well known that such a separation does not require absolute their removal as it would result in the specific loss of function of each. Moreover, they are interdependent and independent simultaneously. This incongruity has its rationale and motivation, however, that each other's work deduct its duties by interacting frequently to establish equitable relations with citizens. However, by establishing an independent judicial organ of the three state authorities, in this case, the Constitutional Court has ensured a fair and ample of the legal authorities intended to apply and enforce the law.

The decision in this case tends to reveal precisely this interference welcomed in the state where the rule of law applies. Thus, although each institution has its own status and well-defined operating rules, it is and must be possible to have outside control in order to prevent abuses of power by law.

Art. 16 of the Political Parties Law no. 14/2003 "The acquisition or loss of membership of a political party is subject only to the party's internal jurisdiction" have generated controversy and have been challenged in this case to amend the unconstitutional aspects. Interpreting by a grammatical analysis that provision is observed that the adverb restrictive "only" excludes directly possibility of members of a political party to contest any decision considered improper thereof, which in our opinion constitutes an abuse of power in violation manifestly constitutional provisions of art. 21 "Access to justice" of art. 16 para. (2) "No one is above the law", (3) governing equal opportunities, art. 24 "right to defense" and of art. 126, paragraph (2) states explicitly

that "The jurisdiction of the courts and the judging procedure shall only be stipulated by law." To eliminate subjective decisions required to contest them.

5. Conclusion

The Constitution guarantees the express right to defense, "the Constitutional Court arguing constantly that the observance of this right shall ensure the constitutional right of citizens to go to court to protect the rights, freedoms and legal interests" and access to justice, which "has the meaning a right that must be provided to all judicial structures and no law may restrict the exercise of free access to justice "By resolving the objection of unconstitutionality of these provisions, the Constitutional Court established a uniform regulatory and legal framework for adoption of such decisions.

Incidentally, in a case just based on the ratio decidendi of this decision, a member of the political party wrongfully excluded from the function did not have the possibility of contesting the decision to exclude. The member, in the absence of concrete problems with the party received an exclusion decision, which was challenged to the arbitration panel but remain unresolved. The applicant also pointed out that the judgment under appeal is devoid of substantive items on the validity and did not include any penalty or peculiar elements of the person was referring to. In defense, the defendant, political party, brought among other things the general objection that the courts could not hear the case, the exception being rejected just under decision no. 530/12.12.2013. The court reached the judgment the court found that it was manifestly abusive, does not contain any exposure of the facts, deviations and no legal basis to determine the extent of exclusion, thus it appeared that this act was completely unmotivated. The judgement was very similar to that of an administrative court, taking into consideration that the competence started from the Tribunal and was appealed at the Court of Appeals.

In accordance to Decision nr.530 / 12.12.2013, the court found that the decision of exclusion is necessary that the decision on this measure to be justified in terms of compliance with statutory rules, the court is also required to verify that the person had access to a defense and opinion and this was effectively ensured. In light of these provisions the court found that the applicant's case were not complied with these requirements arising from the decision no. 530 and appreciated this kind of behavior

from the political party as issuing a decision of exclusion is illegal and upheld the applicant's civil action. This decision was appealed against by the political party concerned that the trial court exceeded the limits of the possibility to nullify an internal decision.

But the conclusion is that the courts can only nullify decisions not on their merits, but on grounds of illegality for not respecting the statute of the party.