

THE LEGISLATOR'S VIEW ON THE NOTION OF A PARLIAMENTARY PARTY. SPECIAL VIEW ON LAW NO. 208/2015 FOR THE ELECTION OF THE SENATE AND THE CHAMBER OF DEPUTIES

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Abstract

The paper deals with the issue of political parties in the context of the parliamentary elections organized in the fall of 2024. I considered it necessary to review the various approaches made to this concept, starting with the sociological approach and continuing with the legal one. On this occasion, it was found that the Law for the election of the Senate and the Chamber of Deputies had an important addition in 2020 related to the notion of a parliamentary party. The legislative solution brings to the legal landscape an expanded vision of the notion of a parliamentary party, allowing a political competitor that did not participate in the previous legislative elections to acquire the status of a parliamentary party, if it meets certain conditions. It is known that, in the electoral process, the actors with parliamentary representation benefit from more rights than the other political actors, and one of them is the access to the electoral offices at the national level, from the constituency or polling station level. The article presents this legislative amendment and how it was applied exactly in the electoral process triggered for the parliamentary elections in Romania organized in 2024.

Keywords: *electoral legislation, parliamentary party, parliamentary elections*

Introduction

The notion of a political party is complex, with multiple interdisciplinary sociological, political, and legal implications, due to its interaction with the components of the social system.

Various definitions for this concept have been formulated over time. A sociological approach presents the political party as a free association of citizens, permanently united by common interests and ideas, of a general nature, an association that aims, in full public light, to reach the power to govern, for the realization of a social ethical ideal [1]. The political party has been defined by political scientists as "an organization whose objective is to conquer and exercise power in society" or "an organization formed by people who share the same ideological conception, subscribe to a common set of values and act to

conquer power, for the application of the own program through internal and external policies" [2].

From a legal point of view, political parties are forms of association, resulting from the exercise of citizens' freedom of association.

The modern concept of a political party

The emergence and affirmation of parties in political life [3] are processes closely related to the modernization of society and the consolidation of the democratic system. That is why political parties are considered indispensable in modern democracies, as they represent the specific organizations of the political scene through which the diversity of interests is expressed, but at the same time, options and policies that can determine the development directions of a society are promoted.

The participation of citizens in the political life of their own state is a *sine qua non* condition for the survival of the democratic system. Citizen participation legitimizes the power of the elected through voting, improves the quality of public policies, favors social consensus and increases the legitimacy of decisions associated with public policies [4].

It is a well-known fact that parties have a social and historical basis, in their activity the modernization processes and political developments in a country are reflected; they fulfill a series of important functions in political life. In the doctrine of constitutional law, several main functions [5] of political parties have been identified, functions that fall within the goals they pursue: *the function of representation*, in the exercise of which the parties appear as instruments for manifesting the political freedom of citizens; *the mediation function*, in which the parties appear as factors of formation and expression of the political will of the citizens; *the electoral function*: parties are the main actors of the competition for the conquest of political power; *the governmental function*, through which the parties assert their vocation of governance and assume the concrete implementation of governance relationships and the direction of the state's internal and external policy.

The existence and activity of political parties was approached by researchers from multiple perspectives, so that their definition was made from a social and historical, ideological and cultural, organizational and institutional point of view. By combining these

perspectives, they reached some common definitions and views, shared by most researchers.

Max Weber considered the political party "an association of free people, voluntarily established, necessary for society, with a certain program, with ideal or material objectives" [6]. In his definition, Max Weber emphasizes the institutional, organizational and program contribution, and less on the cultural or social dimension.

Thus, in the general sense, a political party is defined as an organization whose objective is to conquer and exercise power in society, distinguishing itself from other organizations that only aim to influence power without trying to exercise it. In another definition, the political party is a relatively durable organization formed by people who share the same ideological conception, subscribe to a common set of values and act to conquer power, to apply their own program through internal and external policies.

An analysis of the content of the definitions developed for political parties reflects the existence of three aspects: the political party is a voluntary association, established on the basis of a political project (ideology, doctrine, opinion), on whose behalf it acts to exercise it directly.

In Romania, political parties are regulated both by the Constitution in art. 8, art. 40, art. 146 lit. k), but also in laws such as: Law no. 14/2003 of political parties [7] Law no. 334/2006 regarding the financing of the activity of political parties and electoral campaigns [8], some provisions of the Electoral Laws. Starting from the fact that political parties are the driving force of any pluralist system, para. 2 of art. 8 of the Constitution particularizes this acceptance of the concept of pluralism, but also emphasizes the existence of its constitutional limits: subordination to essential values of the state, such as national sovereignty, territorial integrity, the rule of law and the principles of democracy.

Political parties are defined in Law no. 14/2003 - the law of political parties, as associative entities with a political character of citizens with the right to vote, expressing their political will. They emphasize very well the freedom of association enshrined at the constitutional level. By the way in which they are regulated and by the mission entrusted to them in the Romanian constitutional system, political parties are entities with a special constitutional and legal status, different from other forms of association. [9]

In general, in the electoral legislation, political parties are considered parliamentary political parties if they participate in the legislative elections, pass the electoral threshold, acquire deputies' and senators' mandates, and they constitute themselves in parliamentary groups. Sometimes the status of a parliamentary party was also recognized for that party that did not run for the parliamentary elections, but attracted during the parliamentary term the necessary number of parliamentarians to constitute a parliamentary group. In both situations, however, the respective political formation had to respect the constitutional rules and go through the procedure established by the parliamentary regulations for the formation of a parliamentary group. Both the Senate [10] and the Chamber of Deputies [11] carry out their activity based on their own regulations, internal documents that regulate the way of forming a parliamentary group. Parliamentary groups are structures of the Chambers of the Parliament, and "the manifestation of the will of some parliamentarians to constitute themselves in a parliamentary group is subject to compliance with constitutional and regulatory rules", according to the jurisprudence [12] of the Constitutional Court.

The notion of a parliamentary political party based on the provisions of Law no. 208/2015

During election periods, political competitors aim to maximize their chances and are constantly looking for tools that the legislator makes available to achieve this goal. Because the electoral regulations favor parliamentary parties, in the sense that it recognizes more rights compared to political competitors located outside the Parliament, certain non-parliamentary political parties participating in the 2024 legislative elections sought to capitalize on a provision established by Law no. 202/2020 [13] for the amendment and completion of some normative acts in electoral matters, a provision that allows them to acquire the status of a parliamentary political party, if they meet certain conditions.

Practically, by Law no. 202/2020 supplemented Law no. 208/2015 for the election of the Senate and the Chamber of Deputies [14] with a legislative solution that led to the expansion of the scope of the notion of "parliamentary political party".

With the additions made in 2020, Law no. 208/2015, with subsequent amendments and additions, regulates, in art. 118.1, para. 1, two hypotheses in which a party is considered parliamentary.

In the first hypothesis, the party must participate in the last parliamentary elections and meet, alone or in an alliance, the electoral threshold and obtain mandates as deputy or senator. In the second hypothesis, the status of a parliamentary party can be acquired, even if this competitor did not participate in the last parliamentary elections, in the situation where it proves that on the date of the triggering of the electoral calendar for the parliamentary elections, it has 7 senators in its composition or 10 deputies.

If the first hypothesis contained in art. 118.1 paragraph 1 of Law no. 208/2015 we find it also regulated in other normative acts in the electoral field, with certain nuances, in the sense that in certain cases the condition of the existence of a parliamentary group is also imposed, the second hypothesis in which the status of a parliamentary party can be acquired is specific to this normative act. This second hypothesis became attractive to certain non-parliamentary parties, which entered the competition for the Parliament and sought to fulfill the condition of the minimum number of senators or deputies and to prove the existence of this number at the date of the triggering of the electoral calendar. We mention that the authority that sets the electoral calendar is the Government. In the case of the electoral calendar for the 2024 parliamentary elections, the Government of Romania adopted Decision no. 1034 of August 21, 2024 [15]. Acquiring the status of a parliamentary party brings a number of benefits for the political competitor, one of which is to have representatives in the electoral offices (central electoral office, constituency offices, polling station offices).

The non-parliamentary parties that capitalized on this legal provision attracted at least 10 deputies to their ranks and provided proof of their membership at the time of the election calendar, which, in the case of the 2024 parliamentary elections, was September the 2nd, 2024.

An aspect worth highlighting is that the Central Electoral Bureau, set up for the parliamentary elections, adopted Decision no. 5H/20.09.2024 by which he interpreted the provisions of art. 118.1 para. 1 of Law no. 208/2015 and established that the minimum number of parliamentarians from the moment the electoral calendar is triggered must be

maintained throughout the electoral period. In support of the decision, the Central Electoral Bureau showed that maintaining the minimum number of parliamentarians throughout the electoral period leads to the achievement of the purpose for which the legal norm was adopted, namely ensuring the representativeness of the parties holding mandates in the Parliament, within the new electoral process.

From the decision of the Central Electoral Bureau, it follows that it is not enough for a party to prove the fulfillment of the condition of the minimum number of parliamentarians at the time of the start of the electoral calendar, in order to preserve its status as a parliamentary party, but this condition must be fulfilled until the end of the electoral period. If the number of parliamentarians falls below the legal threshold, the party loses its status as a parliamentary political party.

Conclusions

The status of a parliamentary political party can be acquired, according to Law no. 208/2015, both the parties that participated in the parliamentary elections, passed the electoral threshold and acquired mandates of deputy or senator, as well as parties that did not participate in the parliamentary elections, for example non-parliamentary parties, but which prove, at the moment the electoral calendar starts, that they have a minimum number of 10 deputies or 7 senators, with the mention that this number must be kept throughout the electoral process.

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