

POLITICAL PLURALISM AND MULTIPARTY

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Abstract

Political parties have made themselves noticed in history by competing for power and over time they have emerged as undeniable and indispensable realities in a political system regardless of its form. The Constitution of Romania recognised the role and historical importance of pluralism and political parties and dedicated them a place of honour in the general principles that establish our state as a democratic and social state of law. This article analyses the constitutional provisions on political parties, depicting the evolution of statutory regulations thereon over more than 100 years, during various political regimes. Last but not least, it also analyses concepts and points of view of the doctrine with respect to the subject matter, while also making references to the relevant constitutional jurisprudence. Finally, as a result of the analysis conducted, we will reveal any weaknesses of the legislation and we will make our conclusions.

Keywords: pluralism, political party, Constitution, law, multiparty

1. Introduction

Long considered the “engine of the political life” of a society, political parties are characterised by a fervent activity, in the forefront of political life. The state has an acknowledged relationship with the civil society, relationship that is lost in the mists of time. Thus, it is public knowledge now that civil society works on the state in many ways, while parties, together with the media or trade unions stand out as a major player in rendering the power relations more dynamic. Many times we, ordinary citizens, have witnessed the adoption of various legal acts by the legislative or executive body with the support of the political parties in power.

The French legal doctrine estimates that the state performs three basic functions:

a) Enactment of general rules – legislative function;

b) Application or enforcement of these rules – executive function;

c) Settlement of litigations arising in society – judicial function.¹

In recognition of the role played by the parties, they have been expressly regulated in the Constitutions of the states of the world. But, since the society has evolved in a dramatic rhythm, some Constitutions are required to be revised and adapted to times.

2. Paper content

2.1 Political parties and their constitutional regulation

On the national political scene, in addition to traditional political parties, such as for instance the Peasant Party or the Liberal Party, a series of alliances operated, such as the Alliance for Justice and Truth (J

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¹ M. Chantebout, *Droit constitutionnel et science politique (Constitutional Law and Political Science)*, Dalloz Publishing House, Paris, 1982, p.156.

& T Alliance) or the Social Liberal Union (SLU). Also a political force of the national minorities was noticed – Democratic Union of Hungarians in Romania (DUHR). What does this mean from the point of view of the subject proposed in this study? There is nothing simpler! If we refer to the classification of the system of parties in general, we notice that the best known classification refers to three classes, namely: single party, two-party and pluri-party or multi-party.

We present below, in constitutional terms, how the concept of political party was regulated in the Romanian Constitutions, as a historical analysis of successive Constitutions, starting from 1866, with more than 100 years of statutory regulation.

The *Constitution of 1866*² did not regulate anything with respect to the political parties, but stipulated among others the equality before the law or the right of association, which was set out in article 27 and read as follows: “*Romanians have the right to associate, complying with the laws that regulate the exercise of this right*”.

The Constitution of 1923, considered a modern Constitution for the time, was superior to the previous one by its much broader vision, but it also failed to include any provision on political parties.

Thus, we find provisions on the freedom of association in article 5, which states that: “*Romanians, regardless of ethnic origin, language or religion, enjoy the freedom of conscience, the freedom of education, the freedom of press, the freedom of assembly, the freedom of association and*

all the freedoms and rights established by laws”, while article 29³ (1) shows that: *Romanians, regardless of ethnic origin, language or religion, have the right to associate, complying with the laws that regulate the exercise of this right. It is also stipulated that the right to free association does not imply in itself the right to create legal persons and the conditions under which legal personality is granted shall be established by special law.*

The *Constitution of 1938* replaced the Constitution of 1923 and granted greater powers to the king. King Carol II imposed an authoritarian regime that did not last. The Constitution of 1938 has provisions only on the right of association, such as article 8(3): *no political association on religious grounds or pretexts, or during religious manifestations is allowed to anyone*, while article 25 reads as follows: *Romanian citizens have the right to associate, complying with the laws, and the right of association does not imply the right to create legal persons.*⁴

On 31 March 1938 the Decree-law for the abolishment of political parties was issued and published in the Official Gazette of 31 March 1938. Article I. stated that: “*all associations, groups or parties currently in existence and established in order to spread or achieve the political ideas are and remain dissolved.* At the time the National Liberal Party was in operation and its roots apparently dated from around 1875, when several liberal groups unified, but the

² Ioan Muraru, Gheorghe Iancu, Mona-Lisa Pucleanu, Corneliu-Liviu Popescu, *Constituțiile Române. Texte.Note. Prezentare comparativă (Constitutions of Romania. Texts. Notes. Comparative Presentation)*, “Official Gazette” Government Business Enterprise, Bucharest, 1993, pp. 35-40.

³ Ioan Muraru, Gheorghe Iancu, Mona-Lisa Pucleanu, Corneliu-Liviu Popescu, *Constituțiile Române. Texte.Note Prezentare comparativă (Constitutions of Romania. Texts. Notes. Comparative Presentation)*, op.cit., 1993, pp.71-76

⁴ Ioan Muraru, Gheorghe Iancu, Mona-Lisa Pucleanu, Corneliu-Liviu Popescu, *Constituțiile Române. Texte.Note Prezentare comparativă (Constitutions of Romania. Texts. Notes. Comparative Presentation)*, op.cit., 1993, pp.98-101

abovementioned Decree-law⁵ dissolved that party. The second largest party that operated in the interwar period, but that worked approximately from 1880 to 1918 was the Conservative Party. Therefore, one could say that in that historical period there were two parties that dominated the Romanian politics. Later the *single party*, the National Renaissance Front, was established and its originator was Armand Călinescu, intimate of King Carol II⁶.

The *Constitution of 1948* was no exception to the previous regulations and failed to stipulate anything on political parties, as it only included provisions on the right of association. Article 32⁷ stipulates that citizens have the right to associate and organise if the purpose is not against the democratic order established by the Constitution. Any association with fascist or antidemocratic character was prohibited and punished by law. It was also expressly stipulated for the first time that the legislative body of the Republic was the Grand National Assembly.

The *Constitution of 1952* was characterised by a different style, as it was a socialist statutory regulation and this time it included expressions such as: “working people” instead of Romanians, or the “victory over fascism” or “socialist system”

etc. What was different in the Constitution of 1952 was the very fact that for the first time it made reference to the notion of party as single party, namely the Romanian Workers’ Party. The right of association was the object of article 86, whose content was extremely well-defined and consistent with the socialist thinking of the authors of that Constitution.

According to article 86(1) “*in accordance with the interests of those who work and in order to develop the political and public activity of the masses, the citizens of the People’s Republic of Romania are guaranteed the right of association in public organisations, in professional trade unions, cooperative unions, women’s organisations, youth organisations, sports organisations, cultural, technical and scientific associations.* The prohibition of fascist or antidemocratic associations was maintained and the participation in such association was punished by law.⁸”

The Constitution of 1965 continued the previous conception on the right of association and referred to this in article 27 making use of a new expression, namely: “mass and public organisations”. The regulation of 1965 showed that: *The citizens of the Socialist Republic of Romania have the right to associate in trade unions,*

⁵ The National Liberal Party was restored after December 1989, with known personalities from various fields acting as leaders.

⁶ The text may be seen at the address <http://www.monitoruljuridic.ro/act/lege-nr-4-321-din-15-decembrie-1938-pentru-infiintarea-organizatiei-politice-a-frontului-renasterii-nationale-emitent-parlamentul-publicat-n-30588.html>, accessed on 9 April 2014

Law no. 4321 of 15 December 1938 establishing the “National Renaissance Fund” political organisation, published in the Official Gazette no. 293/16 December 1938

⁷ Ioan Muraru, Gheorghe Iancu, Mona-Lisa Pucleanu, Corneliu-Liviu Popescu, *Constituțiile Române. Texte. Note. Prezentare comparativă (Constitutions of Romania. Texts. Notes. Comparative Presentation)*, op.cit., 1993, p.125

⁸ Article 86 (3) stipulates that: “The most active and most aware citizens of the working class and the other categories of working people unite as the Romanian Workers’ Party, the vanguard detachment of the working people in the struggle to strengthen and develop the people’s democracy and to build the socialist society”, while paragraph 4 states that: “The Romanian Workers’ Party is the driving force of both the organisations of those who work and of state bodies and institutions. All the organisations of those who work in the People’s Republic of Romania gather around it.”

Ioan Muraru, Gheorghe Iancu, Mona-Lisa Pucleanu, Corneliu-Liviu Popescu, *Constituțiile Române. Texte. Note. Prezentare comparativă (Constitutions of Romania. Texts. Notes. Comparative Presentation)*, op.cit., 1993, p.156.

*cooperative, youth, women's, social-cultural organisations, creative unions, scientific, technical and sports associations and other public organisations.*⁹ Article 27(3) expressly stipulates that: *mass and public organisations ensure the broad participation of masses in the political, economic, social and cultural life of the Socialist Republic of Romania and in the exercise of the public control – expression of the democracy of the socialist system. Through the mass and public organisations, the Romanian Communist Party establishes an organised connection with the working class, the peasants, the intellectuals and the other categories of working people and mobilises them in the struggle for the completion of the construction of socialism.* Also, article 29(2) prohibits fascist or antidemocratic associations. Participation in such associations and fascist or antidemocratic propaganda are prohibited by law.

The Constitution of 1991 ended the long line of socialist Constitutions and it stood out as a liberal Constitution that established in article 1 that: *“Romania is a democratic and social state of law, in which the freedom of people, the rights and freedoms of citizens, the free development of human personality, the justice and **political pluralism** are absolute values and are guaranteed”*. Therefore, the Constitution of Romania of 1991 expressly regulated the political pluralism. Also, the political pluralism and parties were enshrined in article 8, which has two paragraphs in its structure and is contained in Title I, entitled *“General principles”*, but references to political parties may be found in other constitutional provisions as well.

According to article 8(1) “pluralism in the Romanian society is a prerequisite and a guarantee of constitutional democracy”. Under article 8(2), “political parties are established and conduct their activity under the conditions of the law and they contribute to defining and expressing the political will of the citizens, respecting the national sovereignty, the territorial integrity, the rule of law and the principles of democracy”. It should be mentioned that article 8 kept its form as a result of the revision of the Constitution of 2003.

Also, the Constitution of 1991 regulated the right of association in article 37 and this time one could talk about the fundamental rights, freedoms and duties, stipulated in Title II. As a result of the revision of 2003, this article became article 40, following the renumbering of articles, but its content was not changed.

In essence, this article provides that citizens may freely associate into political parties, trade unions and others forms of association, while secret associations are prohibited. Its second paragraph expressly stipulates that parties or organisations that, by their purposes or activity, militate against the political pluralism, the principles of the state of law or the sovereignty, integrity or independence of Romania, are unconstitutional. The analysed text refers to the prohibition according to which judges of the Constitutional Court, ombudsmen, active members of the army, policemen or other categories of public servants established by organic law may not be members of political parties.

Last but not least, regarding the political parties, letter h of the Constitution of 1991, when referring to the powers of the Constitutional Court, points out that it settles

⁹ Ioan Muraru, Gheorghe Iancu, Mona-Lisa Pucceanu, Corneliu-Liviu Popescu, *Constituțiile Române. Texte. Note. Presentare comparativă (Constitutions of Romania. Texts. Notes. Comparative Presentation)*, op.cit., 1993, p.170. Article 27(2) stipulates that: “the state supports the activity of the mass and public organisations, creates conditions for the development of the material base of these organisations and protects their property”.

the disputes that cover the constitutionality of a political party.

Thus, this is a picture of the Romanian Constitutions during 1866-2013 that shows how the notions of political pluralism or political party were stipulated, whereas the majority of said legal acts failed to provide these two values. The only act that truly dealt with the recognition of the importance of the role played by the political parties in a society was the Constitution of 1991, revised in 2003 by Law no. 429/2003¹⁰.

2.2. Reflections on the Constitutional Court of Romania and its role in the constitutionality of a political party

The Constitutional Court has stood out in the recent years of activity by its undeniable involvement in the protection of fundamental rights of citizens. Its jurisprudence is extremely rich on this matter and the grounds of its decisions directly follow the arguments of the European Court of Human Rights. Thus, in Germany, considering that the fundamental rights are intended to protect the individual against the state, the fundamental law enshrines an objective order of the fundamental rights, establishing a system of values centred on the free development of human personality and the principle of

protection of human dignity, a system directly applicable by all branches of the power: legislative, administrative, judicial authorities.¹¹

In the realisation of the fundamental rules, law no. 14/2003 stipulates in article 1 that political parties are political associations of Romanian citizens with voting rights who participate freely in the formation and exercise of their political will, fulfilling a public mission, guaranteed by the Constitution. They are legal persons of public law.¹²

As previously shown, according to article 144(1) (i): The Constitutional Court of Romania settles the disputes that deal with a political party. This provision will be put in conjunction with the organic law of the political parties¹³, as follows: “The Constitutional Court settles the disputes that cover the constitutionality of a political party, according to the provisions of article 30(7), article 37(2) and (4) and article 144(i) of the Constitution, with the procedure laid down in Law no. 47/1992 on the organisation and operation of the Constitutional Court.”¹⁴

According to doctrine, although it resembles the control of the constitutionality of the law because they belong to the scope of the constitutionality control, there are still aspects that differentiates them: the control

¹⁰ Law no. 429/2003 revising the Constitution of Romania, published in the Official Gazette, Part I, no. 758/2003. Under paragraph 79 of the single article of this law, the Legislative Council caused the publication of the Constitution as amended and completed, with updated names and renumbered texts, in the Official Gazette of Romania, Part I, no. 767/31 October 2003

¹¹ H.G. Rupp, *Objet et portee de la protection des droits fondamentaux. Tribunal constitutionnel federal allemand*, in *Cours constitutionnelles et droits fondamentaux (Purpose and Scope of Protection of Fundamental Rights. German Federal Constitutional Court*, in *Constitutional Courts and Fundamental Rights*), Provence, Economica, PUAM, Paris, 1982, p. 245, apud. Bianca Seleşan Guţan, *Excepția de neconstituționalitate și constituționalizarea dreptului*, in *Ioan Muraru-Liber Amicorum (Exception of Unconstitutionality and Constitutionalisation of Law*, in *Ioan Muraru-Liber Amicorum*), Hamangiu Publishing House, Bucharest, 2006, p. 201

¹² Decision of the Constitutional Court of Romania no. 530/2013 on the admission of the exception of unconstitutionality of the provisions of article 16(3) of the law on political parties, published in the Official Gazette no. 23/2014

¹³ Law no. 14/2003 on political parties, published in the Official Gazette no. 25/2003

¹⁴ Law no. 47/1992 on the organisation and operation of the Constitutional Court, republished in the Official Gazette no. 807 /2010

of the constitutionality of the law does not settle a conflict of particular interests; the control of the constitutionality of a political party concerns the group interests of the party in question, not in the sense that it does not interest the national community as well, but in the sense that it directly concerns the party in question whose legal existence is denied by the dispute filed against it.¹⁵ The authors of the relevant notice may be the presidents of one of the Chambers of the Parliament or the Government, while the Constitutional Court reviews the substantive fulfilment of the conditions concerning the activity of the political party included in article 40(2) of the Constitution.

The legal effects of the decision of the Constitutional Court on the unconstitutionality of a political party consist in removing the political party from the records of the legally established parties.¹⁶

3. Conclusions

Throughout the constitutional history of Romania, political parties have had a winding route, marked by two types of situations, despite the fact that in terms of state structure the country was a monarchy and then a republic, more precisely, there was either a democratic regime in which several political parties operated, or a royal dictatorship, referring mainly to the time of Carol II, or a socialist authoritarian regime characterised by the existence of the single party. Today, we can speak of a constitutional democracy and of the existence of several parties.

The Romanian Constitutions, heavily inspired by the European Constitutions, promoted values such as the right to free

association, equality before the law, etc., and we refer to the Constitutions of 1866 and 1923, and in 1938 an authoritarian regime was established, which suppressed the liberal democratic regime. It was only in 1991 that there was a traditional resumption of values promoted at first by the authors of the modern Constitutions. Multiparty is the most common form in modern societies.

The existence of diverse and competing interests is the basis for a democratic equilibrium, and is crucial for the obtaining of goals by individuals. A polyarchy – a situation of open competition for electoral support within a significant part of the adult population – ensures competition of group interests and relative equality. Pluralists stress civil rights, such as freedom of expression and organization, and an electoral system with at least two parties. On the other hand, since the participants in this process constitute only a tiny fraction of the populace, the public acts mainly as bystanders. This is not necessarily undesirable for two reasons: (1) it may be representative of a population content with the political happenings, or (2) political issues require continuous and expert attention, which the average citizen may not have.

Pluralism is, in the general sense, the acknowledgment of diversity. In democratic politics pluralism is a guiding principle which permits the peaceful coexistence of different interests, convictions and lifestyles. One of the earliest arguments for pluralism came from James Madison in “The Federalist Papers”. He posits that to avoid factionalism, it is best to allow many competing factions to prevent any one dominating the political system. Pluralism in this sense is connected with the hope that

¹⁵ I.Muraru, N.Vlădoiu, A.Muraru, S.G.Barbu, *Contencios constituțional (Contentious Constitutional Matters)*, Hamangiu Publishing House, Bucharest, 2009, p. 169.

¹⁶ I.Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice (Constitutional Law and Political Institutions)*, volume II, XII edition, C.H.Beck Publishing House, Bucharest, 2005, p.265.

this process of conflict and dialogue will lead to a definition and subsequent realization of the common good that is best for all members of society. This implies that in a pluralistic framework, the common

good is not given a priori. Instead, the scope and content of the common good can only be found out in and after the process of negotiation, i.e., *a posteriori*.

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