

CONSIDERATIONS ON POLITICAL PARTIES

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Abstract

Political parties are the engine of social life, without which citizens would not be able to express political will. According to the law of political parties, they fulfill a public mission guaranteed by the Constitution. That is why, considering the subject very current, we considered it important to analyze in this study, in the notion of political pluralism: the concept of political party but also its constitutional dimension. To this end, the study shows the view of the doctrine combined with the jurisprudence of the Constitutional Court.

Keywords: *Constitution, political party pluralism, citizen, jurisprudence.*

1. Introduction

Political parties have had an overwhelming role in the modernization of political life¹. Strictly, parties are more than a century and a half old². According to Giovanni Sartori relationship between citizens and parties is defined as: "citizens in Western democracies are represented by the parties³". It is stated that the term *party* was used to designate factions that divided the ancient cities and clans of the Middle Ages and clubs of deputies from the revolutionary assemblies and committees which prepared the census election in constitutional monarchies⁴. In the U.K. political parties emerged in the form of affinity groups in Parliament, associated

with networks of relations in the country, groups that divided in terms of governance in fact⁵.

Therefore, we explain further, what the political parties are, combining doctrine, case law and the jurisprudence of the Constitutional Court of Romania. As rightly pointed out in doctrine, the concept of political party allows the correct interpretation of art. 8 of the Constitution in the sense that political parties contribute to defining and expressing the political will of the citizens⁶. We speak of this view of the special relationship that exists between the state and political parties. State expresses the community, while political parties express ideologies and interests of social groups that coexist within the nation⁷.

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¹ Cristian Ionescu, *Compared Constitutional Law*, Ed.C.H.Beck, Bucharest, 2008, p. 25.

² Dan Claudiu Dănișor, *Constitutional Law and Political Institutions*, Ed.Europa, Craiova, 1995, p. 93

³ Giovanni Sartori, *Representational Systems*, in International Encyclopedia of the Social Sciences, vol.13, 1968, p. 471.

⁴ Dan Claudiu Dănișor, *op.cit.*, 1995, p. 93.

⁵ *Constitutional documents of the United Kingdom of Great Britain and Northern Ireland*, Translation and notes E.S.Tănăsescu, N. Pavel, Ed. All Beck, Bucharest, 2003, p. 15.

⁶ Ioan Muraru, Elena Simina Tănăsescu, *Constitutional Law and Political Institutions*, edition 14, vol II, Ed. CH.Beck, Bucharest, 2013, p. 23.

⁷ Dimitri Georges Lavroff, *Les partis politiques*, Presses Universitaires de France, Paris, 1970, p. 101.

According to Dan Claudiu Dănișor there are two phases of the approach of defining political party⁸. A first phase insists on doctrinal element of the party and its function in the state or its base class. A second phase emphasizes more on the institutional element of the political party.

As far as we are concerned, we understand the parties as *associations*, social groups. Social groups are of two kinds: some voluntary as for example: companies and associations in general, whose role is so great today; others are natural, such as primitive tribe and clan which are naturally constituted, as was the Roman *gens*, like family, as are the nations today⁹.

According to the jurisprudence of the Constitutional Court of Romania¹⁰ in the sense of the constitutional text to which it is devoted, the *right of association* is a recognized prerogative of the citizen, whose exploitation is the expression of conscious and free will. The Court shows that association occurs by consideration of the common reasons that close associates and ensures communication between them, ideological or professional etc.; is essential the existence of a system of common values and interests as a premise and some final common goals. In addition, the argument held by the Court that: "the option of association is based on the conviction that achieving the desired purpose is only possible due to the concerted action of a organized and structured community, therefore, logical and functional." The conclusion of the above highlighted

decision is that "in a state of law is not possible to convert the right of association into an obligation."

2. Content

2.1. Doctrinal and legal definitions of the political party

Dimitrie Gusti said that "*political party* is one of the most suggestive and interesting collective personalities (...) is a free association of citizens, permanently united by interests and common ideas of a general nature, association which seeks in a full public light to reach the power to govern in order to create a social ethical ideal."¹¹

According to Vasile Gionea "*political party is an association of people who are organized based on common interests or views to conquer the power of state with the vote of the people.*"¹² Lucrețiu Pătrășcanu defined the party as "*a group of people who defend certain class interests and struggle for political power: the determinant element of its structure is the nature of the interests it represents and for whose satisfaction unfolds its entire activity. By their content, class interests determine also adherence or lack of adherence of a political body to a social or political system within which it works, as also all interests set their objectives pursued and the decide the means by which it intends to use to*

⁸ Dan Claudiu Dănișor, *op.cit.*, 1995, p. 93 and next.

⁹ Mircea Djuvara, *General Theory of Law. Rational Law, Origins and Positive Law*, Ed. All Beck, București, 1999, p. 298.

¹⁰ Decision of the Constitutional Court of Romania no. 83 from February 10, 2005, published in the Official Gazette no. 36 from April 27, 2005.

¹¹ D. Gusti, *Political Party in Doctrines of the Political Parties*, Romanian Social Institute, National Culture, Bucharest, 1992, p. 4.

¹² Vasile Gionea, *The Role of Political Parties in the State of Law, in Political Parties*, the Center for Constitutional Law and Political Institutions, Public Company "Official Gazette", Bucharest, 1993, p. 5.

achieve them, in relation to the existing rules of law."¹³

In another opinion is stated: "*political parties and groupings contribute to the expression of suffrage. They are formed and carry out their work freely. They must respect the principles of national sovereignty and democracy.*"¹⁴ A party consists of groups and individuals who perceive the need to orient a certain conception regarding government policy and are interested to guide the evolution of the global society in a certain direction.¹⁵ One author states that, whatever definition we embrace a common denominator is detectable in the ability of political parties to form the means by which citizens exercise their right to participate in the current policy configuration and administration of sovereignty.¹⁶

From the definitions of the political parties highlighted so far, stand off some features that once understood, will help us to deepen the concept of political party:

- political parties are associations or permanent groups of individuals united freely by common political beliefs and ideological affinities;

- political party is a legal entity (moral) has an independent organization; has corporate assets; works to achieve a legitimate aim;

- by definition, the political party tends to assume responsibilities in the exercise of power;

- parties are distinguished from mere political clientele, factions, clans or camarilla; parties differ in their willingness

to exercise power by pressure groups and clubs that do not participate in elections and parliamentary life, but pressure on parties, government etc.

- peculiarity of parties is to personify a trend, to make taking shape a conception of man and society and fight to conquer power by attracting voters;

- legally, the political party is an association and the incorporation and operation are subject to legal conditions set for any association; therefore any political party acquires legal personality from the moment of its registration.¹⁷

Political parties are defined in the Organic Law no. 14/2003: "*the political associations of Romanian citizens, with the right to vote, that participate freely in the exercise of their political purpose, fulfilling a public mission guaranteed by the Constitution*". The law also expressly states that political parties are public legal entities. Previously, in the Law no.27 / 1996 parties were defined as "*associations of Romanian citizens with the right to vote (....)*". Also, in the old regulation there was the provision that: political parties are public legal entities. Tudor Drăganu considered that the expression "*political parties are public legal entity*" is a legal nonsense because what characterizes public legal entities is that they can issue binding acts by way of unilateral expressions of the will, attribute lacked by the political parties.¹⁸

In addition, we note that in the Romanian Constitution political parties are not defined, but only mentioned, in the context of political pluralism. From this

¹³ Lucrețiu Pătrășcanu, *Fundamental Problems of Romania*, Ed. Socec, Bucharest, 1944, p. 24. apud Mihai Bădescu, *Constitutional Law and Political Institutions*, revised and enlarged second edition, V.I.S., Print, Bucharest, 2002, pp. 286-287.

¹⁴ Roger-Gerard Schwartzberg, *Sociologie politique*, vol. I, Ed. Lumina Lex, Bucharest, 1997, p. 315.

¹⁵ Daniel- Lewis Seiler, *La politique comparée*, Armand Colin, Paris, 1982, p. 94.

¹⁶ Ioan Stanomir, *Constitutionalism and Post-communism. Comment of the Romanian Constitution*, Ed. Bucharest University, 2005, pp. 19-20.

¹⁷ Mihai Bădescu, op.cit., 2002, pp. 287-288.

¹⁸ Tudor Drăganu, *Political parties are moral entities of public law?*, Public Law Journal no. 2/1998, p. 1 and next.

point of view, as shown by an author, constituent legislature consciously avoided a normative constitutional definition (*omnis definitio periculosa est*) of the political parties from at least two reasons:

a.) If political parties are the expression of the separation between state and society in a democratic political system, it requires a separation of the state and the party, the party-state is characteristic of totalitarian regimes. Therefore, a definition at the constitutional level would present many inconveniences, both to legislate subsidiary and for the existence and functioning of political parties to form party system in Romania.

b.) The political parties, even if they have a major influence on the exercise of state power as institutional structures, these remain in the civil society area, being the expression and even the most efficient carrier of pluralism (political) of society. Reason which does not justify a normative constitutional definition of the political parties.¹⁹

2.2. Political and constitutional dimension of the political party

As shown in doctrine, political parties are a product of representative liberal democracy.²⁰ The parties through their activities and actions, by the perception and exercise of the constitutional role these have, largely establish the constitutional regime and quality of life.²¹ Constant presence of associative phenomenon for political purposes to impose and develop scientific interest especially in the matter of modern parties, maintain aimed to unravel concerns: the distinct nature and sustainable

associations generally of the party type, in particular, based on their mode of formation; role and objectives of the parties, their concrete forms of involvement in the functioning of the state; factors that accredits parties as actors linking social body, coagulated state in the nation, the fundamental institution of the political system.²²

Position and location of parties in contemporary Constitutions have a great importance and has multiple meanings and not coincidentally in the Romanian Constitution, the concept of political parties appears in the title "*General Principles*" and in the context of supreme values of the political pluralism and in two fundamental constitutional principles of the organization of the state power: democracy and sovereignty.²³ Therefore, political parties are directly related to fundamental rights. According to art. 21 of the German Constitution, "parties will participate in the development of the peoples' political will." In the revised Romanian Constitution, we expressly find the notion of party, political party or other forms of association in articles such as art. 8 paragraph (2); art. 40 paragraph (3), art. 73 paragraph (3) letter b; art. 146 letter k; art. 9; art. 62 paragraph (62); 64 paragraph (5) and so on. According to art. 73 paragraph (3) letter b) of the Constitution, the organic law regulates: "*organization, operation and financing of political parties*".

The constitutional role of the political parties in our country is approved by the provisions of art. 8 paragraph (2) which states that parties *contribute to defining and expressing the political will of the citizens*.

¹⁹ Varga Attila, Some aspects of the constitutionality of political parties, Journal of Public Law, Supplement on 2014, pp. 123-124.

²⁰ Mihai Bădescu, op.cit., 2002, p. 294.

²¹ Varga Attila, op.cit., p. 122.

²² Constantin Nica, Parties- Vital Actors of Democratic Political Systems, Public Law Journal, Supplement on 2014, pp.116-117).

²³ Varga Attila, op.cit., p. 123.

If we interpret this text, we can conclude that the political will is the will of the citizens and the party is the mean that contributes to the defining and expressing of the political will. These goals of the parties to contribute to *defining and expressing the political will of the citizens*, determines otherwise and their constitutional status, i.e. the set of principles and rules governing the formation and the rights and obligations of the parties in a pluralistic and democratic state.²⁴

According to the jurisprudence of the Constitutional Court, the parties do not have a direct mission in forming or expressing the political will; general will as political will results from the vote and is expressed by the representatives and by referendum, and by voting is elected the parliament and not the parties, parties having only the role of mediation between the electorate and parliament for its establishment by the voters.²⁵ The characterization of the party as fulfilling a public mission guaranteed by the Constitution is not contrary to art. 8 paragraph (2).²⁶ "Defining and expressing the political will is a mission, as it refers to citizens in general can only be public. Party is a public legal entity and its mission can only be public, since regards a public interest and pursues the formation of a general political will of which it depend representativeness and legitimacy necessary to implement its political program."²⁷

Referring to another interpretation that we can make to art. 8 paragraph (2) of the Constitution, in accordance with the

provision that *political parties contribute to expressing the political will of the citizens*, we show that we should corroborate with art. 30 on freedom of expression to shape this constitutional role of political parties. The Constitutional Court jurisprudence has established that "the party expressing the political will of citizens, according to art. 8 paragraph. (2) of the Constitution is the political realization of freedom of expression provided for in art. 30 of the Constitution. Otherwise, it would mean that this freedom is different as exercised by citizens in an associative structure or outside such a structure, which is contrary to art. 30 of the Constitution".²⁸

According to the doctrine²⁹ the contribution that parties have in defining and expressing the political will of the citizens is not only a right of the parties but also an obligation. Therefore, the author shows that the law allows the Bucharest Court to declare the termination of the party if it does not designate candidates, alone or in alliance in two successive legislative election campaigns, in at least 18 constituencies or did not have any general meeting for 5 years, according to article 47 of the law on political parties. These directives were judged by the Constitutional Court as being compliant with the Constitution, because the purpose of the party is defining for it and includes inter alia, the obligation to participate with candidates in the election, such an activity is the natural result of institutional expression of the political will of the members of that association, not to exercise that power entails the impossibility of the

²⁴ I. Muraru, E.S. Tănăsescu, *Romanian Constitution. Comment on articles*, Ed. C.H. Beck, Bucharest, 2008, pp. 84-85).

²⁵ Romanian Constitutional Court Decision no. 46/1994, published in Official Gazette no. 131/1994.

²⁶ Constitutional Court Decision no. 35/1996, published in Official Gazette no. 75/1996.

²⁷ Romanian Constitutional Court Decision no. 35/1996 cited above.

²⁸ Romanian Constitutional Court Decision no. 59/2000, published in Official Gazette no. 418/2000.

²⁹ Claudiu, Dănișor, *Pluralism and Political Parties under art. 8 of the Constitution of Romania*, *Pandectele Române Journal* no.5 / 2008, p. 58.

association to have the status of a political party.³⁰

As shown unduly in the doctrine, there can be identified two dimensions of the relationship, connection of the parties with the fundamental rights: freedom of establishment and functioning of political parties and the purpose of political parties.³¹ The earlier Organic Law of Political Parties, was Law no. 27/1996 which was amended by Law No.14 / 2003.³²

Chronologically speaking, however, we mention that prior to 1989 there was no law on political parties, as it exists today. All modern type political systems in Romania were characterized in terms of institutional and functional plan – except the period between January 21, 1941 and August 23, 1944, by: existence of party pluralism and free competition between them (during 1865 – February 11, 1938 August 23, 1944 and December 30, 1947, December 28, 1989-present); the exclusively constitutional role of the single party (between December 1938 / January 1939- September 5, 1940, September 6, 1940 - January 20, 1941, December 30, 1947 – December 22, 1989).³³

However, Decree Law No. 8 / 31.12.1989 on the registration and operation of political parties and public organizations in Romania³⁴ was the first bill after the 1989 Revolution which have paved the way for multi-party system, though it had only a number 5 articles. This bill is closely related to the Decree-Law no. 2 / 12.27.1989 regarding the establishment, organization and functioning of the

National Salvation Front Council. In 1996 with the adoption of the political parties law no. 27/1996, Decree-Law No. 8 / 31.12.1989 was recalled. We can talk about at this time of reactivation of historical parties, such as the National Liberal Party or Christian Democratic National Peasants' Party or Romanian Social Democratic Party, which were registered at the Bucharest Court or the establishment of other new parties such as: Romanian Ecologist Party or Democratic Union of Hungarians in Romania etc.

The Decree-Law No. 8 / 31.12.1989 on the registration and operation of political parties and public organizations in Romania is expressly stipulated in article 1 that: "*In Romania the formation of political parties is free*". It also provides an exception that refers to fascist parties or those that spread ideas contrary to the constitutional and legal order in Romania. Therefore, this act does not state the definition of a political party but specifies that the registration and operation of political parties shall be made in accordance with the provisions of this Decree-Law.

The Political Parties Law no.27 / 1996 has established more stringent legal conditions, among other things, on the establishment of political parties, which led to a sensible reduction in their number.³⁵ On the other hand, art. 8 paragraph. (2) in conjunction with the appropriate constitutional text of freedom of

³⁰ Constitutional Court Decision no. 147/1998, published in Official Gazette No. 85/1999.

³¹ Varga Attila, op.cit., p. 123.

³² Political Parties Law no. 27/1996, published in the Official Gazette no.87 / 1996, amended by Law no.14 / 2003, published in the Official Gazette Part I, no. 25/2003 and republished in the Official Gazette no. 347 / 12.05. 2014.

³³ Constantin Nica, op.cit., p. 116.

³⁴ Decree-Law No. 8 / 31.12.1989 on the registration and operation of political parties and public organizations of Romania, published in Official Gazette no. 9 / 31.12.1989.

³⁵ Ioan Muraru, Elena Simina Tănăsescu, op.cit., 2013, p. 32.

association, political parties are introduced as topic of constitutional order.³⁶

3. Conclusion

Political parties were born from the need to express human desires and

aspirations outside of each of us, ordinary people, for a better life. Along the way, political parties have gained recognition and legal protection. As shown in this study, political parties have not only a political dimension but also constitutional protection, being the form of expression of political pluralism.

References:

- Mihai Badescu, *Constitutional Law and Political Institutions*, revised and enlarged second edition, V.I.S. Print, Bucharest, 2002.
- Tudor Drăganu, *Political Parties are Moral Persons of Public Law?* *Journal of Public Law* No.2 / 1998.
- Dan Claudiu Dănișor, *Constitutional Law and Political Institutions*, Ed. Europa, Craiova, 1995.
- Dan Claudiu, Dănișor, *Pluralism and Political Parties under Art. 8 of the Constitution of Romania*, *Pandectele Române Journal* no.5 / 2008.
- Mircea Djuvara, *General Theory of Law. Rational Law, Origins and and Positive Law*, Ed. All Beck, Bucharest, 1999.
- Cristian Ionescu, *Compared Constitutional Law*, Ed.C.H. Beck, Bucharest, 2008.
- D. Gusti, *Political Party in Doctrines of the Political Parties*, Romanian Social Institute, National Culture, Bucharest, 1992.
- Vasile Gionea, *Role of Political Parties in the State of Law*, in *Political Parties, the Center for Constitutional Law and Political Institutions*, Public Company "Official Gazette", Bucharest 1993.
- Ioan Muraru, Elena Simina Tanasescu, *Constitutional Law and Political Institutions*, edition 14, volume II, Ed. CH.Beck, Bucharest, 2013.
- Muraru, E.S. Tănăsescu, *Romanian Constitution. Comment on articles*, Ed.C.H. Beck, Bucharest, 2008.
- Constantin Nica, *Parties –Vital Actors of the Democratic Political Systems*, *Public Law Journal*, Supplement on 2014.
- Lucrețiu Patrașcanu, *Fundamental Problems of Romania*, Ed. Socec, Bucharest, 1944.
- Ioan Stanomir, *Constitutionalism and Post Communism. A comment on the Constitution of Romania*, Bucharest University Press, 2005.
- Varga Attila, *Some Aspects of the Constitutionality of Political Parties*, *Journal of Public Law*, Supplement in 2014.
- Dimitri Georges Lavroff, *Les partis politiques*, Presses Universitaires de France, Paris, 1970.

³⁶ Ioan Stanomir, op.cit., 2005, p. 19.

- Giovanni Sartori, Representational Systems, International Encyclopedia of the Social Sciences, vol.13, 1968.
- Roger-Gerard Swartzenberg, Sociology politique, vol. I, Ed. Lumina Lex, Bucharest, 1997.
- Daniel- Lewis Seiler, La politique comparée, Armand Colin, Paris, 1982;
- Romanian Constitution.
- Political Parties Law no. 27/1996, published in the Official Gazette no.87 / 1996, as amended by Law no.14 / 2003, published in the Official Gazette Part I, no. 25/2003 and republished in the Official Gazette no. 347 / 12.05. 2014.
- Decree-Law No. 8 / 31.12.1989 on the registration and operation of political parties and public organizations of Romania, published in Official Gazette no. 9 / 31.12.1989.
- Constitutional documents of the United Kingdom of Great Britain and Northern Ireland, translation and notes E.S. Tănăsescu, N. Pavel, Ed. All Beck, Bucharest, 2003, p.15.
- Decisions of the Constitutional Court of Romania.