THE EVOLUTION OF THE ACCESS TO JUSTICE FOR PERSONS EXCLUDED FROM A POLITICAL PARTY IN THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT

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Abstract: *The dynamics of social life, the continuing challenges arising at different levels of society, normative pressure and the European jurisprudence determine the constitutional control court to reconsider its position on certain issues. It is the case of the art. 16, paragraph 3 of the Political Parties Law no. 14/2003 which the Constitutional Court initially considered to be consistent with the constitutional provisions, and later to limit the access to justice of the person dissatisfied with the decision of the party which made him/her lose the membership of a party, thus violating the Constitution. According to the Constitutional Court, the change of opinion is due to extremely serious consequences arising from the loss of membership of the party of a person who is also a local or county councilor, namely the termination of mandate for the local elected and the high number of requests addressed to the Constitutional Court, by the objection raised to the courts, on the mentioned legal text.*
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1. INTRODUCTION

The right of free access to justice of a person excluded from a political party has been the subject of numerous complaints of the constitutional court, and in most cases, the Constitutional Court dismissed these complaints considering the initiators' arguments of unconstitutionality as inconclusive and therefore, the access to justice of the person excluded from a political party not affected. Despite this situation, by Decision no. 530/ 12 December 2013 (DCC (952), 2009), on the plea of unconstitutionality of art. 16, paragraph 3 of the Political Parties Law no. 14/2003 (Law (14), 2003), the Constitutional Court has reconsidered its position, claiming that the evoked legal provisions are unconstitutional because they affect the very substance of the right of access to justice and they contradict the provisions of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court jurisprudence of Human Rights on the right to a fair trial.

The right of free access to justice is regulated in the Constitution in art. 21 which states that "any person can go to court to protect their legitimate rights, freedoms and interests", and that "no law may restrict the exercise of this right." The doctrine (Muraru *et al*., 2008) stressed that the rights, freedoms and legitimate interests shall be

ensured either by direct action in court or by any procedural means, including the exception of unconstitutionality. The change of attitude towards the access to justice for persons excluded from a political party will be analyzed in this article, with the highlight on Constitutional Court's both previous arguments, and those from their final decision which changed the jurisprudence on the topic.

2. PREVIOUS VIEW OF THE ROMANIAN CONSTITUTIONAL COURT ON THE ACCESS TO JUSTICE FOR PERSONS EXCLUDED FROM A POLITICAL PARTY

Constitutional Court, as the guardian of the constitutional provisions, is entitled to verify if the laws, ordinances or other legal provisions are in consonance with the constitutional text, otherwise the texts in manifest contradiction with the constitutional provisions being declared unconstitutional.

This role of the Constitutional Court was analyzed in the doctrine (Muraru *et al*., 2008) and it was considered that "within the constitutional justice, the justice organ *states the law*, like any other organ of jurisdiction, but not referring to the rights and interests of a person, which is characteristic for the jurisdiction court, but to the constitutional legitimacy of the law, its validity as a document subordinated to Constitution, depending on the manner in which the legislator has complied with the constitutional supralegality on which, in fact, it was based."

One of the situations in which the Constitutional Court "states the law" is when ruling on the objection raised before the courts. The exception of unconstitutionality enters the subsequent control of the Constitutional Court and concerns the control of laws and Government ordinances in force. It provides indirect access, mediated by the courts, of the legal issues to the Constitutional Court (Muraru *et al*., 2008).

Among the regulations that have constituted the subject to several unconstitutionality exceptions were those stipulated in the art. 16, para. 3 of Law no. 14/2003 on political parties, which stated that "the acquiring or loss of membership of a political party is subject only to the domestic jurisdiction of that party, according to their statute." These provisions were set prior to the adoption of Decision No. 530/ 12 December 2013, in an inadmissibility issue for all the applications to the court of the people who have lost their quality of party members.

The Constitutional Court was requested to pronounce in connection with the provisions of art. 16, para. 3 of the Law on political parties eleven times since 2009, in ten decisions arguing that these provisions are constitutional and, therefore rejecting the invoked unconstitutionality exception, whilst the eleventh revealed a fundamental change, the court embracing the author's argument exception.

Critical opinions on art. 16, paragraph 3 of the Law on political parties refer to the violation of art. 21 of the Basic Law on access to justice, sustaining that the solutioning of appeals against expulsion from the party of a member lies within the exclusive competence of judicial organs of the political parties, thereby excluding legal proceedings before courts.

Prior to Decision no. 530/ 12 December 2013, the Constitutional Court has developed a jurisprudence which argued that the provisions of art. 16, paragraph 3 of the law on political parties do not violate Constitution. Constitutional Court Decision 952/ 25 June 2009 (DCC (952), 2009), Decision no.1.255/ 6 October 2009 (DCC (1255), 2009), Decision no. 197/ 4 March 2010 (DCC (197), 2010), Decision no. 399/ 13 April 2010 (DCC (399), 2010), Decision no.958/ 6 July 2010 (DCC (958), 2010), Decision no.1.461/ 8 November 2011 (DCC (1461), 2011), Decision no.283/ 27 March 2012 (DCC (283), 2012), Decision no. 649/ 19 June 2012 (DCC (649), 2012), and Decision no. 65/ 21 February 2013 (DCC (65), 2013) provide the following reasons: courts are not entitled to carry justice regarding breaches of internal discipline within political parties, as their responsibility is not governed by legal rules of common law, but by their own ethics rules; courts do not have the power to censor the decisions of the so-called "domestic jurisdiction of parties decisions", which are political acts; when checking the conditions required for the legal establishment of political parties, the court may determine whether the statutory procedures regarding sanctions provides the person dissatisfied with a party decision the right to effectively and efficiently support their cause. Thus, in Decision no. 197/4 March 2010, the Constitutional Court argued that political parties are associative groups operating under their own statutes containing rules created and supported by their members and that courts are not entitled to exercise their function of justice regarding breaches of internal discipline within political parties, as their responsibility is not governed by legal rules of common law, but by their own rules of ethics and deontology, which their members have been committed to respect ever since they freely consented to joined this type of political associations. The Court also notes that "it is natural that the disciplinary responsibility of the party members to be determined by internal organs, which are the only ones to appreciate, depending on the ideology that directs the actions of that party, to what extent the behaviour of its members is consistent with the statutory rules outlining the specific role that they decided to play in the social and political life of the country and whether this behaviour is consistent with the specific modalities of action agreed by each party, and thus by each of its members.

It is not without interest that the constitutional control authority specified that the defining function of the courts is to ensure compliance with the law, the term "law" being understood in a broad sense, not just as the act adopted by the Parliament under this title, but any normative act, which therefore has a legal content. The Court considered that the rules contained in the statutes of the political parties do not have legal nature in the sense discussed, but they represent internal rules of conduct whose observance is necessary for the proper functioning of the party associative structure. This is why the courts have no power to censor the decisions of the so-called "domestic jurisdiction" of the parties, decisions that are political acts, issued under their own statutes.

As regards the complaints related to the existence of certain limits to the right of the access to justice, the Court states that the solution of appeals against the exclusion of a member of a party is the exclusive attribute of arbitration commissions, which are covered by parties statutes, excluding legal procedure before courts whose jurisdiction, under Article 126, paragraph. (2) of the Constitution, is provided only by law, which is not, however, to prejudice the free access to justice. This is because art. 21 paragraphs (1)

and (2) of the Constitution should be interpreted in a broad sense, i.e. prohibiting only the restrictions that would break the very substance of the free access to justice, without excluding the possibility that, by law, to set certain conditions for the its exercise. Moreover, the European Court of Human Rights stated in its jurisprudence that free access to justice is not an absolute right, but it requires, by its very nature, a regulation from the state, which has a certain appreciation extent in setting some limitations, as long as they do not affect the very substance of this right.

The conclusion of the allegations of the Constitutional Court prior to the adoption of Decision no. 530/ 12 December 2013 is that the provisions of the art. 16, paragraph 3 of the law on political parties is constitutional and therefore not in breach of article 21 of the Constitution on free access to justice. Constitutional Court in their ten decisions insist that documents from the governing bodies of the political parties, including those applying sanctions, are political acts resulting from the political will of those governing organs and, therefore, a possible analysis of their legality can only be made by the internal jurisdiction organs of the parties, their censorship by the court leading to a mixture of justice in the activity of the political parties.

3. CURRENT VIEW OF THE CONSTITUTIONAL COURT RESULTING FROM DECISION NO. 530/ 12 DECEMBER 2013 ON THE ACCESS TO JUSTICE OF A PERSON EXCLUDED FROM A POLITICAL PARTY

By Decision no.530/12 December 2013, the Constitutional Court has fundamentally changed their view on the access to free justice for the person who has lost, by expulsion, their party membership and has determined that the provisions of art. 16, paragraph 3 of the law on political parties are unconstitutional, thus enabling the person dissatisfied with the decision of expulsion from the party to appeal to the administrative court in order to annul the decision which (s)he considers unfair and unfounded.

By this decision the Constitutional Court qualify the act of excluding a person from a party as a legal act, status conferred by the party statute as well. If prior to the adoption of Decision No. 530/2013, the political party status and the acts of the political party governing bodies considered political acts, acts that include ethical norms of the political parties, by the mentioned decision the nature of the acts is hereinafter regarded as also legal, not just political. The Court argues that the rules contained in these documents are legally binding and fall within the definition of "law", as an autonomous concept shaped according to the European Court of Human Rights.

The Constitutional Court also cites in support of their solution the procedure that a political party must follow at its registration, which includes the obligation to attach to the registration application sent to the instance the statute of the party, a document that, in case of admission of the registration application, becomes binding law and must be strictly respected by the members of the political party and by its governing bodies. In

case the rules contained in the statute are violated, there arises the responsibility of applying penalties, the most severe one being the exclusion from the party.

The Court finds that the provisions of article 16, paragraph (3) of Law no. 14 /2003, establishing the exclusive competence of the party's jurisdictional organs to appreciate the statutory compliance by their party members, eliminate, in fact, the judicial control on the compliance of these organs of their own status, thus preventing free access to justice. As a matter of fact, the Court sustained that the question of constitutionality of the provisions of article 16, paragraph (3) from Law no. 14/2003 must be approached with the utmost stringency, since the loss of membership of a party can be the expression of subjective assumptions or of the arbitrary. The loss of the party membership also draws, if that person is a local elected as well, the termination of their mandate as locally elected officials, according to art. 9, paragraph 2, lit. h¹) from Law no. 393/2004 (Law (393), 2004) on the status of the elected officials, which leads to the conclusion that the exclusion from a party triggers extremely serious legal outcomes, namely the termination of the mandate. Therefore, the impossibility to litigate before court such a measure, without checking the compliance with the statute and statutory procedures, is contrary to the right of free access to court, which makes the enunciated rights be free of the legal content guaranteed by the law and democratic states.

The change of the view is substantiated also by invoking the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the jurisprudence of the European Court of Human Rights. In this regard, the Court considers that the provisions of art. 16, paragraph 3 of the law on political parties affect the very substance of the right of free access to justice and they are in total contradiction with the provisions of art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and of the European Court of Human Rights on the right to a fair trial (ECHR, 1983; ECHR, 2005).

By granting the exclusive competence of the party's jurisdictional bodies to analyze the acts of sanctioning its governing bodies, thus eliminating the judicial control of these acts, i.e. their effective examination by an impartial and independent judge, free access to justice is not only limited, but completely annihilated.

Based on this argument, as well on the fact that the number of unconstitutionality exceptions having as object art. 16, paragraph 3 of the law on political parties has increased considerably, the Constitutional Court appreciated, by Decision no. 530/2013, that the analyzed provisions are unconstitutional, as the complaint of the member who was sanctioned with expulsion from the party can never be considered by a court, thereby breaching the art. 21 of the Constitution, which provides that no law may restrict the exercise of the right of every person to go to court to protect their rights, freedoms and legitimate interests, and the provisions of art. 126, paragraph 1 on the jurisdictional plenitude of the courts.

The Court states that judicial control can only apply to the statute and to the regularity of conducting statutory procedure before the jurisdictional organs of the party, and not to whether the penalty imposed is fair or not. Thus, the court invested to solution a complaint challenging the penalty of exclusion from a party is to analyze the compliance with statutory norms on establishing and applying the sanction and to verify

if the right to defense and opinion was actually provided. In addition, prior to the effective realization of the judicial control, the plaintiff must first follow the procedure of the domestic courts of the party, solicit the party organs to comply with statutory provisions and, only if (s)he considers that these organs have violated the statute, further address to the court.

4. CONCLUSIONS

The change of view of the Constitutional court on the access to justice for persons excluded from a political party has practical consequences, materialized in the increasing number of litigations against the political parties who took the measure of excluding their members, in most cases those persons being also locally elected officials (local and county councilors), but also in the way parties actually apply sanctions, i.e. aiming to fully comply with their statutory procedures when penalizing a member. Most requests ask the court just to annul the sanctioning act, only few of them requesting compensation for moral damages.

It can be concluded, from the present analysis, that the approach of the Constitutional Court regarding access to justice for persons dissatisfied with their exclusion from the party evolved from limiting the access only to domestic jurisdiction of the political party to the possibility of the person affected to exercise their right to address court and not just the internal bodies of the political parties.

Therefore, Decision no.530/12 December 2013 can be considered as a judicial turnaround or, on the contrary, as an adaptation of the Constitutional Court approach to the requirements of the European law, based on normative, jurisprudential acts.

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