THE COURT'S COMPETENCE IN ADDRESSING APPEALS FOR THE DECISIONS OF EXCLUSION FROM POLITICAL PARTIES

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Abstract

This paper seeks to analyze the courts' competence in what concerns the litigation focusing on the exclusion from a political party. Given that the party is and can be assimilated, on the basis of the legal provisions, into a public legal institution, exercising public utility, it is obvious that the texts that it issues, if they have a potential impact in the public sphere in the ways outlined in this article, they shall be administrative documents. In this context, the analysis of such documents cannot be carried out in any other way than contentious administrative litigation by the specialized courts within the Municipal Tribunals. This article aims to draw attention towards case rulings as well, ones that infringe this notion, that we consider to be erroneous and contrary to the legal provisions.

Keywords: *exclusion, political party, administrative document, contentious administrative, civil, competent court*

JEL Classification: [K 41, K 16]

1. Introduction

Becoming the member of a political party in Romania is achieved in accordance with the statute that acts as groundwork for the founding and functioning of said political formation, but is also evidently rooted in the voluntary adhesion of the person who wishes to be part of said party based, in theory, on the similarity between their values and those of the party, on finding their own personal values among those of the party, on the adhesion towards these values, but also towards the public discourse of the party.

In order to keep this membership, all internal norms and regulations must be heeded, as well as any other regulations that concern the party, which are to be mandatorily communicated in due time and with maximum transparency to the members.

Of course, there are persons who, for various reasons, breach these rules, which entail, in most cases, the birth of the political formation's right to

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sanction said person. Based on the severity of the act, on the regulations and statute of the party, as well as other subjective aspects, the sanction may be anything from a simple reprimand or warning to the exclusion from the political formation, when the guilt of the person in question can be ascertained and the internal mechanisms allow to do so, as a maximum penalty.

Litigation of this sort is thus characterized by the presence of a natural person applicant who was excluded from a political formation that they were a member of and the presence of said political formation, respectively the local division (branch, etc.) that the applicant was directly a part of, but also the central institution, the party per se.

The purpose for litigation is to annul the documents drawn up to exclude the applicant from the political formation, both the principal ones and any subsequent ones, should they exist.

The following discussion shall address the courts of justice that can carry out such a litigation, an aspect that obviously depends on where the litigation can be categorized among the various types of legal cases.

2. A summary of the applicable legislation

Before we proceed to present the reasoning that we had in mind per se, we would like to underline the legal norms that are applicable in this case.

Obviously, the first normative document that is applicable here is Law no. 14/2003, the one regulating the activity of political parties, along with the „adjustments" brought to this law especially through CCR Ruling no. 530/2013 on the exception of unconstitutionality of the provisions in art. 16 par. (3) of the Law on political parties no. 14/2003, a decision that has a direct impact here and that we will refer to specifically later in this text.

Also as a normative aspect, but as an internal structure of the party, the court must take into account the statute and internal regulation of the party.

Then, they must also take into consideration the provisions of Law no. 554/2004, of the Civil Procedure Code (which in any case represents common law in terms of procedure), and, respectively, of the Civil Code, in order to verify to what extent the litigation is civil or administrative in nature.

Given what we have stated above, our coordinate to establishing the competent court of justice is, in fact, the question (along with its answer) regarding the nature, the characteristics of the document issued by the party, respectively if we are dealing with a civil or an administrative text. (Vedinaș, 2018, pp. 37-38)

3. Hypotheses concerning the competent court of law

Starting from the aspects we have pointed out above, we can thus see that, in the practice of the courts of law (and here we also include the case that

this study is based on) and in the practice of the doctrine, four hypotheses took shape, which we will summarily present in the following. In order to understand the situation, we must emphasize that the domicile of the applicant is different from the headquarters of one of the defendants. (Dragoş, 2005, p. 237 sq.)(Tăbârcă, 2013, p. 569 sq.)

3.1. Civil case falling under the competence of the Tribunal around which the applicant's residence is located.

The case, first assigned to the contentious administrative court (through the automatic distribution process initiated upon submitting the file), was passed on to the civil section of the same Tribunal.

The reasoning provided was that the challenged documents were not subject to the provisions of Law no. 554/2004, meaning that they were not administrative documents as they were defined in art. 2 of this normative document, which we will address in the following, and that the provisions of art. 8 of the same law were not applicable either.

The court also noted that CCR Ruling no. 530/2013, which was invoked in the case, did not make reference to the competent court and that, in the absence of a derogation, the competence of the contentious administrative and fiscal section could not be presumed.

We can see here that we do not know any rule that applies to this case, from civil law, which states that the court found in the jurisdiction of the applicant's residence is competent in this situation, as the rule concerns the defendant's headquarters / residence, without the court applying this rule, however, and explaining what the derogation would be, if there were one. Thus, if we were to follow the judicial logic of the court, the case should have been sent to the court having jurisdiction over the headquarters of the defendants.

3.2. Civil case where the Appeals Court retaining jurisdiction over the headquarters of the political formation (the central organization) is competent.

The court that was initially passed the litigation also considered that they were not competent in presiding over the case that they were presented for judgment.

They did not object to the civil nature of the suit, but believed that it was not the Tribunal that was the competent court for the trial of litigation of this sort.

They invoked, when justifying their position, the provisions of art. 610 of the Civ. Pr. C. and the references concerning arbitration, which would entail the competence of the Appeals Court, from a material respect, located, in what concerns territorial competence, near the headquarters of the political formation, not the office of the local branch.

3.3. Civil case where the Appeals Court retaining jurisdiction over the main headquarters of the political formation (the central organization) is competent.

A somewhat similar point of view also provided the final solution, passed via the competence regulator, for this repeated negative conflict of competence, which would be the Supreme Court.

Thus, the court believed that this is a civil litigation (as the challenged documents exclusively regulated matters concerning the internal order of the party), that these documents were not, indeed, issued with a public power, and those they did not concern the contentious administrative sphere, but the civil one.

The court around the headquarters of the branch was believed to be competent from a territorial point of view (which is debatable, when we also take into consideration its possible lack of general legal competence). This ruling is also debatable given the denial, with no pertinent reasoning, of the statements made by one of the courts which were passed the case, sent through administrative channels (the Appeals Court, the contentious administrative section) or by one of the parties, of the aspects concerning the invoked administrative law matters. To conclude, it is difficult to say, in terms of territorial competence, why this court chose the court holding jurisdiction around the headquarters of the branch and not the headquarters of the central organization, both being involved in the procedure.

3.4. Contentious administrative case where the Tribunal retaining jurisdiction over the residence of the applicant is competent.

The final option in terms of material and territorial competence in trying this case is the one that one of the courts who was previously given the case believed to be most suitable, namely the Appeals Court holding jurisdiction over the headquarters of the party's central organization. (Vedinaş, 2018, pp. 278-284)

The case made it to this section of the Appeals Court by chance, probably due to the simple reason that, even upon filing the suit, it was believed that the litigation was of a contentious administrative nature.

The Appeals Court also believed that this is an administrative law case, in its classic form, which made it necessary for the file to be passed to the Tribunal, which was the competent court, holding jurisdiction over the applicant's residence, on the basis of the provisions of Law no. 554/2004 and the rules of competence that it institutes. The reasoning provided by the court was that in no case could the situation be seen as similar to an arbitration procedure, that the document issued was an assimilated administrative document and had to be treated as such.

This option is also our own for the reasons that we will provide in the following.

4. The political party – an institution of civil or public law?

4.1. The political party – a citizens' association

According to the normative documents regulating the activity of political parties, there are several regulations that indubitably lead to this interpretation.

Thus, in accordance with the provisions of art. 1 of Law no. 14/2003, which we have otherwise underlined previously, "the political party is an association of political nature of Romanian citizens who are eligible to vote, who freely participate in the formation and exercise of their political will (…)."

According to art. 2 of Law no. 14/2003, "through their activity, political parties promote national values and interests, political pluralism, contribute to the shaping of public opinion, participate in elections with their own candidates and in the constitution of public authorities, and stimulate the participation of citizens in elections, in accordance with the law," aspects that lead us to think of both private matters and public matters, but do not, however, sufficiently extend the scale of political parties' definition to be able to speak of their falling exclusively within the scope of public law.

4.2. The political party – a public law institution

Art. 1 of Law no. 14/2003 however continues the definition which would lead us to identify the political party as a simple association of citizens by underlining the purpose of these associations which "fulfill a public mission guaranteed by the Constitution. They are legal persons governed by public law."

This definition must also be correlated with the provisions of art. 2 par. 1 letter b) of Law no. 554/2004 which establishes as a public authority "any state body or any body of the administrative territorial units acting as a public power for the satisfaction of a public interest; assimilated to public authorities, for the purposes of this law, are the legal persons governed by private law who, according to the law, have obtained the status of public utility or are authorized to provide a public service."

The definition of the notion of public interest is the one established in art. 2 par. 1 letter 1) of Law no. 554/2004, the interests that focus on legal order and constitutional democracy, on guaranteeing the fundamental rights, liberties and obligations of the citizens, the satisfaction of community needs, and the accomplishment of the public authorities' responsibilities.

Upon reading all of these legal norms that we have invoked earlier, it stands to reason, without a shadow of a doubt, that political parties are legal persons governed by public law, who serve a public interest and, thus, are and

can be subjected to the provisions of Law no. 554/2004 when the law allows for this or when all of the conditions established by this normative document are fulfilled in order to identify the context of a contentious administrative matter.

Starting from these definitions, it is obvious that political parties are and can be seen as public authorities, given that they are legal persons governed by private law and hold the status of public utility which is awarded to them by the law. (Tofan, 2005, pp. 90-103)

After having taken these aspects into consideration, it is clear that the documents that the parties can issue, through their various structures, denominated by case and statute, can be administrative documents or assimilated administrative documents, respectively administrative-jurisdictional documents. (Bogasiu, Legea contenciosului administrativ. Comentată şi adnotată, 2015, pp. 122-124) Of course, as any other public authority, public institution or legal person governed by public law, it is obvious that political parties can also have legal relations that are governed by civil law, a fact that cannot be contested.

5. The decision of exclusion from the political party – a document assimilated to administrative documents

However, in order to establish the nature of a document issued by a party, which thus has the capacity of public law person, we must establish whether the issued document is subject to the provisions of art. 2 par. 1 letter c) of Law no. 554/2004, which defines the administrative document thus, "administrative document – the unilateral document that is individual or normative in nature, issued by a public authority in order to enforce or organize the enforcement of the law, generating, altering or terminating legal relationships". (Georgescu & Bîrsan, 2008, pp. 97-98)

Thus, concretely, it must be established whether, in this situation, the document is administrative or civil in nature.

In this context, we must concretely identify, if the documents challenged fulfill these conditions, what happens in the case of a document that serves as an exclusion from a political party of a person who is also a local elected official.

Thus, the party, a public law institution assimilated to a public authority, has issued a series of documents which are, evidently, unilateral.

Furthermore, these documents are, obviously, in this situation, administrative in nature, because exclusion from the party clearly leads to an indisputable consequence, which is tied to public interest, which generates, alters and terminates certain legal relationships, which all fall within the scope of public law, from the sphere of public administration: the termination of

one's capacity of local councilor, with all of its consequences. (Vedinaş, 2018, pp. 354-361)

The documents challenged in the lawsuit are not simple sanctioning texts issued by the political organization, because their tangible and direct consequence is the termination of the applicant's capacity of local councilor. (Roş N., Îndrumar practic legislativ pentru aleşii locali, 2015, pp. 145-147)

The main concern in the case is, obviously, public interest, which is tied to the applicant's capacity of councilor, and not the private law aspect, which entails that the challenged documents are perceived as issued by a public power, and that the lawsuit has to do with contentious administrative law.

Moreover, the other conditions related to the administrative document are themselves fulfilled.

Thus, the document is, evidently, unilateral, individual in nature, issued by a public power, enforceable without the need for any other manifestation of will on the part of the applicant, defendant or any other state institution. (Fodor E.-M., Drept administrativ, 2017, pp. 175-176)

In fact, this is one of the main characteristics which confer the exclusion document the status of an administrative document, as this trait of enforceability is specific to administrative documents. (Iorgovan, 2005, p. 52)

The purpose for the issuance is, obviously, the enforcement of the law, with the normative document of reference being Law no. 14/2013 itself.

We will not insist on the legal effects produced, because they have already been outlined, but we will remind the reader of the loss of the possibility to be elected, and, especially for those who have already been elected as local officials, the loss of this capacity. (Vedinaş, 2018, pp. 319-321, 360-361)

Under these circumstances, it would appear that we are dealing with a unilateral administrative document that only a contentious administrative court can address.

6. CCR Ruling no. 530/2013

We believe that this decision serves to add to the previous statements, being a supplementary argument for our thesis, and addresses the exception of unconstitutionality in the provisions of art. 16 par. 3 of Law no. 14/2003. The initial iteration of this article did not even provide for the possibility of remedy, and, as such, the persons affected by an action similar to the one in our case did not even have the possibility to appeal it.

The ruling does not expressly award competence to a certain court of law, but, upon reading the motivation behind it, it is clear that they perceive the appeal of the actions in question as administrative actions, as a problem that relates to public interest and the capacity of public power, as political parties are assimilated to public authorities regardless.

In the aforementioned ruling, the Court stated that "according to art. 8 par. (2) of the Constitution, political parties are constituted and carry out their activity in accordance with the conditions set forth by the law. They contribute to defining and expressing the political will of the citizens, respecting national sovereignty, territorial integrity, legal order and the principles of democracy".

The decision also similarly refers to the provisions of art. 1 and 2 of Law no. 14/2003, but also the legislations of other European states (Hungary, Portugal), which all regulate the same procedure of public utility in what concerns political parties.

In its reasoning, the Court also maintains that "At the same time, the dispositions of art. 37 of the Constitution, which provide for the right to be elected, must be corroborated with the dispositions of art. 15 par. (1) of the Constitution, according to which "the citizens benefit from the rights and liberties enshrined in the Constitution and other laws and have the obligations provided by them," and, thus, the local elected official must also benefit from their right to serve, without any hindrances, in the position that they have been chosen for through the votes of the electorate. Taking into account that, in the case of local councilors, without distinguishing whether the loss of membership of the party is or is not imputable, the measure of exclusion from the party produces an extremely serious judicial effect – the termination of the councilor's term, the Court maintains that the impossibility to contest such a measure, arranged without verifying whether the statute and statutory procedures were heeded, before a court of law goes against the right to access to a court of law and thus renders the stated rights devoid of their legal content guaranteed by a democratic state found under the rule of law."

Consequently, the Court's reasoning was built on administrative law grounds and underlined the clear character related to public interest, public office and membership of a local autonomous administration that the party member – judicial councilor has, which entails, as an additional argument, that the entire case is a contentious administrative law matter.

Obviously, this decision is legally binding for all courts of justice and for all of the institutions and rulings to follow.

7. The problem of jurisdiction

The solutions that can be reached by the courts are varied, and the practice is, obviously, not unitary. Thus, there are courts that can consider a matter such as the one that this study centers around to be subject to civil litigation, but there are multiple examples of courts of justice that can consider it to be administrative in nature.

Thus, Civil Sentence no. 103/2016 of January 27, 2016, passed by the Tribunal of Sibiu, the Second Civil Section, dedicated to contentious

administrative and fiscal matters stated that the lawsuit for the annulment of the documents for the exclusion from the applicant's political party was accepted.[1]

Civil Ruling no. 331 of 23.09.2014, passed by the Appeals Court of Craiova[2], established that the competence for resolving the lawsuit for the annulment of the documents excluding the applicant from their political party fell within the scope of the Contentious Administrative and Fiscal Section of the Tribunal, stating that „in this suit, the exclusion from the political party also led to the termination of the applicant's tenure as local councilor, the public interest prevailing over the private interest, as it is defined in art. 2 letter r of Law 554/2004: „r) legitimate public interest – the interest that focuses on legal order and constitutional democracy, the guarantee of citizens' fundamental rights, liberties and obligations, the satisfaction of community needs, the public authorities' accomplishment of their responsibilities," with the decision leading to the exclusion engaging a constitutional right – the right to associate, but also the accomplishment of a public authority's responsibilities.

The Court, while also basing its arguments on the definition of the political party as a legal person governed by public law, maintained that „it can be assimilated to a public authority, as it is defined in art. 2 letter b of Law 554/2004 „any state body or any body of the administrative territorial units acting as a public power for the satisfaction of a legitimate public interest." Given these reference points, and taking the provisions of art. 1 of Law 554/2004 into account, "Any persons who believes that they have been deprived of a right or legitimate interest by a public authority through an administrative document or through failure to resolve a claim by its legal deadline can address the competent contentious administrative court for the annulment of the document, the acknowledgment of said right or legitimate interest, and the rectification of any damage the applicant may have incurred as a result of said document."

The Joint Contentious Administrative, Fiscal, Labor Conflict and Social Security Section of the Tribunal of Cluj also, in numerous litigations, favorably resolved lawsuits for the annulment of political party-issued documents. For example, we can refer to Civil Sentence no. 2413/2015 of 07.07.2015, but also Civil Sentence no. 773/2015 of 06.03.2015[3]. We can also remind here the Civil Sentence no. 2340/18.05.2018 and the Civil Sentence no. 2344/18.05.2018, both by the Civil Section of Appeals Court of Bucharest.[4]

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[1] Civil Sentence no. 103/2016 available at https://www.avocatura.com/speta/453135/anulare-act-administrativ-tribunalul-sibiu.html accessed on 23rd of February 2019, 20.00.

[2] Civil Ruling no. 331/2014 available at: https://www.jurisprudenta.com/jurisprudenta/speta-x3s5zx7/ accessed on 23rd of February 2019, 20.30.

[3] Both sentences are available at: http://www.rolii.ro/ accessed on 23rd of February 2019, 20.40.

[4] Both available on https://idrept.ro/DocumentView.aspx?DocumentId=00170908accesed on 9th of March 2019, 18.27, subscription required.

The Appeals Court of Cluj also went the same way, trying a similar litigation with file no. 6052/117/2017, addressing the nullity of the documents in a contentious administrative setting (the Civil Ruling No. 3882/2018 of 27 September 2018 by the Contentious Administrative and Fiscal Section of the Appeals Court of Cluj, unfortunately not available online).

Moreover, there are contradictions even within the same court. Thus, litigations where the annulment of the prefect's order issued subsequently to the decision of exclusion from the political party was requested saw some courts believing this claim to be unfounded (reasoning that the prefect could no longer carry out any verification concerning the issued documents).

Even so, the court underlined in the reasoning behind their ruling that they perceive a request to suspend the effects produced by the documents for the exclusion from the political party as a suitable remedy, which is not possible unless the court believes these documents to be administrative, since suspension, based on the provisions of Law no. 554/2004, is exclusively possible for administrative documents (Civil Sentence no. 388/2018 by the Joint Contentious Administrative, Fiscal, Labor Conflict and Social Security Section of the Tribunal of Cluj, upheld definitively by Civil Ruling no. 2209/2018 of April 4, 2018 by the Contentious Administrative and Fiscal Section of the Appeals Court of Cluj is a good reference in this sense, but not available online).

Conclusions

It is, thus, clear, from our demonstration, that both the legal provisions, and the manner in which Romanian courts interpret them are far from consistent.

It is clear that, as with any other institution or authority or legal person governed by public law, the political party can enter into relationships governed by civil law. Nobody is denying this aspect, which is more than transparent.

However, when confronted with the aspects presented in our demonstration, we believe that the decision to exclude a person from a political party, especially if said person holds a public office or was elected to a public office, can, obviously, no longer be perceived as a private law issue.

As long as such a decision affects the life of a public authority, regardless of which one it is, by establishing / creating a situation of incompatibility for said person or even through

Upon reading all of the abovementioned legal norms, it is without a shadow of a doubt that political parties are legal persons governed by public law, serving a public interest and who, consequently, are also subject to the provisions of Law no. 554/2004, when the law allows for it or when the conditions established by this normative text are fulfilled in order to fall within the scope of the contentious administrative sphere.

These definitions make it evident that political parties are and can be assimilated to a public authority, given that they are legal persons governed by private law and bear the status of public utility, which is given to them by the law.

Given these aspects, it is just as evident that the documents that the parties can issue, through their various structures, denominated by case and statute, can consequently be administrative, assimilated administrative or, respectively, administrative jurisdictional documents, especially where the exclusion from the political party also leads to the termination of one's position as local councilor.

However, in order to establish whether the document issued by the party is administrative, we must establish whether the issued document is subject to the provisions of art. 2 par. 1 letter c) of Law no. 554/2004, which defines the administrative document as "the unilateral document that is individual or normative in nature, issued by a public authority in order to enforce or organize the enforcement of the law, generating, altering or terminating legal relationships."

In this context, when appealing the documents for the exclusion from a political party, we must concretely identify whether the appealed documents meet these requirements, which is obviously true in the analyzed situation.

Thus, the political party, an institution governed by public law and assimilated to a public authority, issues a series of documents which are, evidently, unilateral. Furthermore, these documents are, in our situation, administrative in nature, since the exclusion from the party clearly leads to an undisputable consequence, which is linked to public interest, generates, alters and terminates certain legal relationships, which all fall within the scope of public law, the sphere of public administration, namely: the termination of one's capacity of local councilor, with all of its consequences. Moreover, these exclusion documents are enforceable in themselves.

Documents to exclude a person from a political party cannot simply be deemed as sanctioning texts within the political organization, since their tangible and direct consequence is the termination of one's capacity of local councilor.

The main interest in cases such as this is, obviously, public interest, which is linked to the applicant's capacity of local councilor, and not the aspect of private law, which means that the challenged documents fall within the scope of public power, and that the lawsuit should be tried in a contentious administrative setting.

Another argument can be found in Decision no. 530/2013 of the Constitutional Court itself, which refers to the exception of unconstitutionality of the provisions of art. 16 par. 3 of Law no. 14/2003, which we have already mentioned, whose reasoning underlines the clear character at the basis of all

aspects that deal with the contentious administrative sphere. Evidently, this decision is legally binding for all courts of justice and all subsequent institutions or solutions, and thus, cannot be ignored.

We believe that, at least in the future, clearer regulation should be formulated for these aspects in order to avoid prolonging lawsuits due to the repeated deferments to other courts of justice deemed to be competent, and we also believe that the trial of these cases should be overseen by specialized courts, which possess a far better understanding of the purpose of the aspects related to the sphere of public law that this problem is linked to, and the courts in question are those that deal with contentious administrative matters.

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