

**POLITICAL MIGRATION, THE ROMANIAN POLITICIANS'
"DISEASE". COMMENTS ON CONSTITUTIONAL COURT DECISION
NO. 761/2015**

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Abstract

After 1989, the Romanian society has been in a continuous constitutional, legislative, and political effervescence. Building a democratic state, a state of the rule of law, based on fundamental values, such as human dignity, freedom, fundamental rights and freedoms, political pluralism, is a long process. Democratic, fair, free and regular elections are a crucial element for the proper functioning of the political institutions. But are they sufficient to ensure a functional and representative democracy? Our answer is no. There are many other elements that are needed in order to achieve such an important goal to a functioning society. One of these elements which we would like mention is, in our opinion, important to progress and representative democracy of any state: the legitimacy and political stability of the bodies exercising power at all levels. In our study, we address a number of issues concerning a phenomenon that grinds the foundation of the representative democracy, namely political migration. In our opinion, this phenomenon, that has invaded the political life in Romania, is one of the serious "diseases" of both the political class, and the Romanian society. Obtaining power at any price seems to justify any political treason, metaphorically called "political migration". In our study, the phenomenon of the political migration will be analyzed mostly under Constitutional Court Decision no. 761 of 17 December 2014 concerning the unconstitutionality of the Law on the approval of Government Emergency Ordinance no. 55/2014 regulating measures concerning the local public administration. By Ordinance no. 55/2014, Pandora's Box has been opened once again within the local public administration as, for a period of 45 days, the local elected were provided the permission to express in writing, only once, their option of either becoming members of a certain political party or national minority organization, or becoming independent without losing their mandate. In our opinion, the above-mentioned ordinance has done nothing else but regulate a situation that actually exists among all the elected representatives of the local public administration in Romania. Regardless of the reasons that the Government or the Parliament gave, the enactment of the political migration is doing nothing else but infecting politicians with an incurable virus which will only lead to a malformed democracy.

In our opinion, the lawmakers should regulate the ways in which the elected officials, who ignored the citizens' choice of voting, can be penalized (one of the penalties would be, in our opinion, the loss of their mandate). Although we analyze the effects of an action of the elected officials – party-switching – however, we should find out which are the elements leading to an action which is abnormal in a society where the will of the people must be sovereign.

Keywords: *representative democracy, political migration, political parties, citizens, elections.*

Introduction

By being anchored in a sphere of public interest, the topic of this study covers multidisciplinary issues, because it addresses both elements of local public administration in Romania, and of representative democracy.

An approach to the theme of the political migration, whether in relation to parliament or local public administration, is very important for a country's political and administrative "health", and also for the rules and principles of representative democracy and of elective democracy.

Therefore, we believe it is necessary to analyze the effects that the enactment of Government Emergency Ordinance no. 55/2014 produced, the solutions the Constitutional Court proposed, and the impact of this phenomenon on society and political life of Romania. By the research we performed, we draw attention to the issues of political decisions defeating

the citizens' decisions, while the principles and values of democracy and the rule of law are put between brackets, so that the governing bodies can satisfy political party interests.

To perform a thorough research of the proposed objectives, we studied the specific legislation on local public administration in relation to the topic in analysis, the jurisprudence of the Constitutional Court, documents issued by international organizations, politicians' viewpoints.

Since Law no. 393/2004 ceased political migration in local local public administration in Romania, the enactment of Government Emergency Ordinance no. 55/2014 brought back to debate this negative phenomenon. The theme of our research is a topical issue; the Romanian Parliament failed to give a legislative solution to this problem which was considered by the Constitutional Court. Almost all studies in this field have focused on political migration phenomenon within the Romanian Parliament, but not within local public administration, which is why our

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study is one of the few at the moment, dealing with the subject.

2. Study background and Constitutional Court's position

The object of the unconstitutionality exception occurred from the provisions of the Law approving Government Emergency Ordinance no. 55/2014 on measures in local public administration¹.

The initiators² of the unconstitutionality objection presented a number of arguments to indicate the Court that the emergency ordinance issued by the Government is unconstitutional.

2.1. Government breached Article 115 paragraph (4) of the Constitution

Government breached Article 115 paragraph (4) of the Constitution, as the Ordinance was adopted although there was no extraordinary or emergency situation, whose regulation could not be postponed.

From the explanatory memorandum of the emergency ordinance it results that it was issued for 2 main reasons, namely that local public administration authorities encounter difficulties in establishing political majorities to ensure political stability after the reorganization of some of the political parties, political alliances, and electoral alliances, and that it is necessary to remove the blocking of the alternate members' right to be validated, following the dissolution of the political or electoral alliances whose candidates they were.

With regard to these arguments, the authors of the unconstitutionality objection showed that "as long as the deliberative bodies of the local public administration meet and discuss projects, a majority inevitably forms either in favour or against the project under discussion; the fact that the Government intends its decisions to have a certain direction cannot be a reason for enacting an emergency ordinance, otherwise Article 121 of the Constitution is violated". In the notification it was also included the following provision: "there is no connection between alternate members and local elected officials in place at the date of issuing of the emergency ordinance under review, moreover it is unconstitutional to introduce a new category of elected members, namely the alternate members, into the law regulating the election of the local public administration officials, since the electoral rights cannot be established by the means of an emergency ordinance".

In relation with this point of the objection of unconstitutionality, the Romanian Government sent the Constitutional Court the following reply: "In its analysis on constitutionality, the Constitutional Court must consider - *politically* and *legally* - the existing facts at the time of issuing Government Emergency Ordinance no. 55/2014". This refers to the fact that some local elected officials left factually and legally "the construction which, by means of the citizens' vote, allowed them to have access to public function, that is the Social Liberal Union. By adopting this emergency ordinance, the Government claims that the local elected officials were allowed to return to the normal legal framework without being "threatened" that they would lose their mandate. Thus, the negative impact on the functioning of the local public authorities, which was generated particularly by the changes in the political majority resulting from 2012 election, was removed".

In the Government's view, "the dissolution of the alliance created the need to regulate the following phenomenon: some of the local elected officials, who were part of the alliance that obtained mandates by assuming the common political program and the commitment to the electorate, found themselves in the totally unreasonable situation that, after the splitting, they would become opponents of the obligations they had electorally assumed, as they were forced to breach the mandate they had obtained". The Government believes that "*it was absolutely necessary either to enable the elected ones choose between implementing the political program they assumed by the time of the elections, or remain in the party in which they are formally enrolled (that leading to the abandonment of the political program which was originally assumed), or act as independents*".

The Government also claimed that: "in order to ensure the freedom of association, the freedom of expression and the freedom of conscience to the local elected officials who are being in the above mentioned hypothesis, it was necessary to enact such an ordinance, and the loss of the mandate, for reasons of internal regulations and discipline of a political party, has no reason under Article 53 of the Constitution".

The President of the Chamber of Deputies³ submitted the Constitutional Court a letter⁴ indicating that the criticized emergency ordinance does not contradict Article 115 paragraph (4), of the Constitution, *as it promotes solutions to improve the efficiency of the local public authorities, and emergency refers both to the need of removing the*

¹ Published in the Official Gazette of Romania, no. 646, Part I, 2 September 2014.

² The notification was made by senators and deputies of the National Liberal Party. Additional information is to be found information here: <http://www.senat.ro/legis/PDF%5C2014%5C14L617SC.pdf>

The Expert Forum Report, "Political Errors in 2014. What to do?", states that out of the 3,180 mayors, a number of 552 mayors migrated (17.4%), out of the 40,022 local councillors, a number of 4,607 local councillors migrated (13.8%), and out of the total of 1,338 county councillors, a number of 184 county councillors (11.5%) left the party on whose lists they were included as candidates. The main party beneficiary of political migration was the Social Democratic Party. For details: http://expertforum.ro/wp-content/uploads/2015/01/Raport-EFOR_Erorile-politice-din-2014.pdf

³ We need to note that the President of the Senate did not submit the Constitutional Court any position on the issue.

⁴ Letter 2/5786, 15 December 2014

blockages in meeting the legal conditions required to validate the decisions, which are meant to ensure political stability following the reorganization of some of the political parties, political or electoral alliances, and removing the blockage of the alternates' right to be validated following the dissolution of the political or electoral alliances whose candidates they were⁵.

By analyzing the objections of the initiators, and Government and the President of the Chamber of Deputies' viewpoints, the Constitutional Court concludes, in relation to the breach of Article 115 paragraph (4) of the Constitution, that: *"the whole explanatory memorandum of the emergency ordinance under analysis focuses on the existence of some "political rupture" that occurred during mandate of local authorities, and on the need to remedy the adverse effects thereof. In other words, it is about the necessity of issuing an emergency ordinance to create the needed framework so that political majorities, within local public authorities other than those resulting from the elections, can coagulate. Such a reason, no matter how it is expressed, cannot be considered an extraordinary situation which may require the adoption of an emergency ordinance. Setting up or breaking political alliances belong to the normal democratic exercise and they cannot justify measures which, directly and brutally, change the political configuration of the local public authorities and alter the voters' will. The fact that the majorities initially established, by the means of the political alliances, are now subject to change is not an extraordinary situation within the meaning of Article 115 paragraph (4) of the Constitution. Also, the need for a political advantage so that certain decisions of local public administration authorities can be adopted, regardless of political party benefiting from this political advantage, is not an extraordinary situation within the meaning of Article 115 paragraph (4) of the Constitution"*.

Also, according to the Constitutional Court judges, *"the fact that a political alliance, which presented itself in elections with joint lists of candidates, ceases its existence does not mean that the local elected officials or the alternates, who stood on its lists, lose their political affiliation - they remain members of political parties that made up the alliance. (...) It is obvious that the real purpose of the emergency ordinance is to guide the local elected officials in a certain policy direction and to enable the creation, in this way, of a new political majority, which, of course, cannot be considered an extraordinary situation in the*

meaning of Article 115 paragraph (4) of the Constitution".

2.2. The emergency ordinance contradicts Article 115 paragraph (6) of the Constitution

According to the authors of the notification, the ordinance contradicts Article 115 paragraph (6) of the Constitution as it affects the fundamental institutions of the state, reference being made, in this respect, to Articles 121 and 122 of the Constitution. They said that "the emergency ordinance affects the legal status of the political parties and induces instability in local public administration, all these elements "affecting" the proper functioning of these fundamental institutions".

In relation to this count, the Government stated that the purpose of the ordinance was to not affect the fundamental institutions of the state, so that they can "function in accordance with the political program which the electors assumed and voted when they voted a political alliance, but to avoid disruption in local public administration authorities". In the view he expressed, the President of the Chamber of Deputies considers that none of the provisions of Article 115 paragraph (6) of the Constitution are being violated, given that the criticized emergency ordinance establishes a suspension, for a period of 45 days, of the legal effects under Article 9 paragraph (2) letter h¹) and Article 15 paragraph (2) letter g¹) of Law no. 393/2004 concerning the Statute of the local elected officials, while local and county councillors, and candidates who were declared alternates, could express only once their written option on whether they wished to become members of a certain political party or national minority organization, or to become independents, without them losing the status they acquired following the elections. Such a legislative solution does not contradict Article 16 of the Constitution, as it is an expression of the right to free association, under the Constitution, and under the Universal Declaration of Human Rights, and the Charter of Fundamental Rights of the European Union.

The Court noted that the mayor, city council and county council, which are regulated by Articles 121 and 122 of the Constitution, are fundamental institutions of the state within the meaning of Article 115 paragraph (6) of the Constitution, though the normative act under analysis does not make provisions concerning their constitutional status. According to the Constitutional Court, "the emergency ordinance does not make provisions in relation to the status of these institutions, but it makes provisions on the possibility

⁵ It is interesting, however, the opinion that the President of the Chamber of Deputies, Valeriu Zgonea, expressed in an interview, a few months ago: *"I personally, as President of the Chamber of Deputies and as vice-president of Social Democratic Party, think that the debate and adoption of the ordinance was a mistake, a mistake for Romania of 2014, a democratic state, and that it was mandatory and urgent by means of an ordinance, because of the tense situation we had in councils. Today, we must make a law to reject that ordinance, as requested by the Constitutional Court, but by being fair and observe the provisions of the Constitution. I think that the people who opted in that period of 45 days, should not lose their mandates."* - <http://www.mediafax.ro/politic/interviu-zgonea-psd-sustine-alegere-primarilor-intr-un-tur-ordonanta-55-a-fost-o-mare-greseala-video-13784679>.

which mayors, presidents of county councils, local councillors, county councillors, and candidates, who were declared alternates, have as to express only once their written option on whether they wished to become members of a certain political party or national minority organization, or to become independents, without them losing the status acquired following the elections, and the political configuration of these institutions will not be regarded as being part of their constitutional status".

At this issue of the notification, the Court did not find that Article 115 paragraph (6) of the Constitution was breached.

2.3. Breach of Article 147 paragraph (4) of the Constitution

The authors of the notification noted in their request to the Constitutional Court that the emergency ordinance *breaches Article 147 paragraph (4) of the Constitution in what concerns the binding character of the Constitutional Court's decisions, since it does not comply with its jurisprudence.*

In the Government's view, the Constitutional Court is not able, by itself, to show the absolute and final constitutionality of a legal text, so that the use of the *per contrario* argument has no legal power.

The Court stated that, since the time of introduction of Article 9 paragraph (2) letter h¹, and of Article 15 paragraph (2) letter g¹ of Law no. 393/2004, these were subject of constitutional review. In the case under review, the Constitutional Court stated the following issues:

- Concerning Article 9 paragraph (2) letter h¹)⁶, its objective is "to prevent the political migration of the local elected officials from one political party to another, and to ensure stability in the local public administration so that it can express the political configuration as it resulted from the voters' will.

Under its jurisprudence⁷, the Court reiterated that "the electorate votes a person to perform a public function in local public administration, considering the political program of the party whose candidate he is at the time of the elections and which he will promote during his mandate as local or county councillor. *However, since a local elected official is no longer a member of the party on whose list he was elected, it means that he no longer meets the requirements of representativeness and legitimacy needed to fulfill the political program for which the voters opted. Therefore, to keep him in the public function is no longer justified.*" As the Court noted on another occasion: "Preserving the position as a local or county councillor in the event that he no longer belongs to the party on whose list he was first elected would mean to

*convert his mandate in a mandate as an independent or possibly belonging to another political party which the councillor joined later. However, under the current electoral system that makes provisions for voting a list of candidates for municipal and county councillors, this hypothesis cannot be accepted because the running mandate, which is being continued in this way, no longer meets to the original will of the electorate, which gave its vote to a candidate by taking in consideration the party that, at that time, he represented"*⁸.

- Concerning Article 15 paragraph (2) letter g¹ of Law no. 393/2004⁹, the Court stated in its previous decisions that the reasoning of this (*article – our note*) was the fact that, following his resignation from the political party whose candidate he was, "the mayor lose consecutively also the voters' endorsement, that was initially gained by virtue of his candidacy on a candidate list supported by a certain political party during election campaign and which finally the electors voted." The lawmaker opted for such a regulation aiming to reduce the political migration and the political opportunism, phenomena whose existence has been proved by the reality of the past few years. "The change during the mayor's mandate of his political affiliation might affect the interests of the community itself, on the one hand by disturbances and instability which it could generate in the local public administrative structure through which he exercises the powers the law vested him with and which may affect the effectiveness of his actions in performing his powers and, on the other hand, by the lack of certainty regarding the fulfillment of the objectives promoted during the election campaign, by whose virtue the electors voted him."¹⁰

We need to note that Law no. 393/2004 concerning status of local elected officials includes an oversight, namely it states that "termination of position as a mayor, before the expiry of the normal mandate, may also occur by losing, after his resignation, of his membership of political party or national minority organization on whose list he was chosen", although elections, by means of which mayors and presidents of county councils are elected, is uninominal voting. Regardless of the used voting system, candidates are nominated by political parties. According to electoral regulations, the candidacies may be submitted by the political parties, individually or united into a political or electoral alliance. At the time of the elections, regardless of how they were proposed, candidates present the voters a political program that they wish to implement in their communities. These programs consequently reflect the political party and the candidate's vision for the future in relation to the

⁶ Article 9 (2) h¹ provides: "The position as a local or county councillor ceases normally before the expiry of the normal duration of his mandate in the following cases: (...) loss of membership of political party or national minority organization on whose list he was elected".

⁷ Decision no. 1167 on 11 December 2007, published in the Official Gazette of Romania, Part I, no. 4, 3 January 2008.

⁸ Decision no. 280 on 23 May 2013, published in Official Gazette of Romania, no. 431, Part I, on 16 July 2013.

⁹ Article 15 paragraph (2) letter g¹ states that: "Position as a mayor terminates before the expiry of the normal mandate, under the following circumstances: (...) losing, after his resignation, of his membership of political party or national minority organization on whose list he was chosen".

¹⁰ Decision no. 153 on 12 March 2013, published in Official Gazette of Romania, no. 352, Part I, on 14 June 2013.

problems and practical solutions to tackle the community issues.

In the case under review, the Court argues that *the penalty of mandate losing*, regardless of how membership of a political party is lost (by resignation or exclusion), refers to "only local and county councillors, who are elected within an election list. Therefore the votes by the electors were for the political party, namely for the list it supported, and not for the individual candidates, which lead to the political configuration of the local council / county council reflected in the number of seats obtained by the political parties. Thus, the legislative solution provided by Article 9 paragraph (2) letter h¹) of Law no. 393/2004 is a requirement arising directly from the provisions of Article 8 paragraph (2) of the Constitution, a contrary legislative solution - which should not tie the termination of local or county councillor mandate with the loss of membership of a party or national minority organization on whose list he was elected – that being acceptable only in case the local and county councillors' election system changes".

The Court also stated that: "due to the lack of regulations for another election system, the Court can only find, in the present case, a violation of Article 147 paragraph (4) of the Constitution. However, the situation is different in terms of mayors and presidents of county councils, for which uninominal voting is provided, as the Court reasoning has considered the constitutionality of a way of mandate loss (resignation from the political party), without though drawing the conclusion that the lawmaker could not remove or modify provisions concerning this way of mandate loss. Thus, concerning the local or county councillor, termination of mandate, following the loss of membership of the political party on whose list he was elected, is a direct and implicit requirement of Article 8 paragraph (2) of the Constitution. Not the same conclusion can be drawn in relation to mayors and presidents of county councils, for which the lawmaker opted for the loss of mandate in case of resignation from the political party, such an option not arising (due to the uninominal voting by means of which they are elected), implicitly or directly from Article 8 paragraph (2) of the Constitution".

According to most constitutional judges, "the constitutional text does not necessarily require a legislative solution", leaving the lawmaker the possibility to tie or not the keeping of mandate of the elected ones by uninominal voting with the loss of membership of the political party by resignation. The Constitutional Court finds that the emergency ordinance breaches Article 147 paragraph (4) of the Constitution only in relation to local and county councillors.

In a separate opinion that two of the judges of the Constitutional Court expressed about the electoral lists

which the Social Liberal Union presented in 2012 local elections, it says: "Candidates, although were nominated also by specifying the political party to whom they belonged, their candidacies belonged to the Social Liberal Union's election list".

The previous jurisprudence of the Constitutional Court strengthens the arguments the two judges expressed:

- *Decision no. 273 on 24 February 2009* - "citizens, through their votes, express choices between different political programs of the parties participating in the elections and less choices about the candidates, in relation to their features, merits or promises for which they have no limits in making them during the election campaign"¹¹;

- *Decision no. 280 on 23 May 2013* - "the elector's vote expresses his option for a political party program and not for a particular candidate";

- *Decision no. 915 on 18 October 2007* - "ensuring stability within the local public administration to express the political configuration, as it resulted from the will of the electorate".

The Constitutional Court thus expresses regarding the loss of mandate by local and county councillors who left the political party which proposed them and allows the lawmaker to decide in respect of mayors and presidents of county councils. However, the Constitutional Court did not take into consideration that both mayors and presidents of county councils were nominated by a political party or an electoral alliance or a political alliance and presented the voters a particular political program that reflected their vision on the community.

On the other hand though, we must not forget that the local elected officials, who left the political formations which proposed them as candidates, did that based on a legal document issued by a Romanian state authority, namely the Romanian Government, who invoked the blockages in the lawmaker and local executive bodies, which prevented local elected officials to implement the political programs they presented the citizens in 2012 elections.

Perhaps those local elected officials preferred to "abandon" the parties which supported them in order not to "abandon" the goals which they proposed the citizens of their communities.

Political and administrative life from Romania is highly tumultuous, and the political parties have always tried to come to power through setting up electoral and political alliances that defied political logics or ideology, but which met the parties' interests. In support of our statements, we give a few examples: Liberal Democratic Party + Social Democratic Party (December 2008 - October 2009) and Social Democratic Party + National Liberal Party + Romanian Popular National Union + Conservative Party (February 2011 - February 2014).

¹¹ Decision no. 273 on 24 February 2009, published in Official Gazette of Romania, no. 243, Part I, on 13 April 2009.

In our opinion, regardless of the solutions to be found by the lawmaker, major issues for Romanian politics and administration remain: *political instability, inconsistency in implementation of projects for local communities, lack of a solid political culture, lack of dignity and honour, a governing system supporting political parties or groups' interests, a legislation that both allows the manifestation of harmful phenomena such as political migration and, at the same time, is unable to address the society evolution and the changing demands of democracy and the rule of law.*

And in this tumult, the following question remains: *what happens to Romanian citizens' votes, to their aspirations which they expressed at the time of the voting, which were hijacked by changing the political "switch" at a given time?*

The solution to all these problems should coagulate efforts of many forces in society: *The political parties* are those ones who, through their elected representatives, create different structures of power, *the parliament* is the one that makes regulations to govern the state, and last but not least *the citizens*, because they are the recipients of the government decisions, and those ones who, by their votes, determine the configuration of the public authorities.

Unfortunately, the ordinance opened again, although for only 45 days, Pandora's Box. If, by issuing the ordinance, they wanted to solve the real problems of the Romanian administration, this thing did not happen though.

But both those who came to power and the opposition have addressed this issue from the viewpoint of the moment interests. The speeches and solutions are still demagogic for both political camps. The core problem remains, because it is determined by the quality of the political class.

Putting parentheses to the provisions of Article 9 paragraph (2) letter h¹ and of Article 15 paragraph (2) letter g¹ of Law no. 393/2004, for 45 days, even for a noble purpose - the proper administration of state affairs - did nothing else but hijacked the will the electors expressed in 2012.

3. Conclusions

By the research we performed, we analyzed the Constitutional Court decision with regard to a negative phenomenon that affected the smooth conduct of the public affairs, namely the possibility given to local elected officials to move to a different political party than the one whose candidates they were at 2012 local elections.

When year of this study, the issue under review has not found legal regulation. Political transits issue has always been a topic of particular interest to the public.

When writing this study, the problem under review was still not solved by means of a legal solution. Political migration has always been an interesting subject mainly to public opinion. Although the political class disagrees with this phenomenon, when it comes to taking constitutional¹² or legislative¹³ actions in this sense, everything remains suspended in time. Citizens are tired of seeing how the will they expressed in national elections is changed by the elected officials' will. The citizens' sovereign will, which was expressed at the time of voting, is negotiated during mandates and, unfortunately, negotiation does not aim at the citizens' welfare, but at the elected officials' welfare.

The phenomenon of political migration dishonors the politicians and demobilizes the electorate, who wonders: What is the point of voting if my vote does not count? I wonder whom to choose, if

¹² In 2013, in a proposal to revise the Constitution, the Parliamentary Committee proposed a formula to stop political migration in case of parliament members, as follows: "Article 70 is amended and it will have the following content: "The mandate of Senators and Deputies: (1) Senators and Deputies shall begin their mandate on the date of the Assembly of the Chamber to which they belong, provided that their election is validated and their oath is taken. The oath shall be established by organic law. (2) The Deputy or Senator function shall cease: a) on the date of the assemblies of the newly elected Chambers; b) in case of resignation; c) in the case of disenfranchisement; d) in case of incompatibility of political function; e) on the date of resignation from the political party or political group from which he was elected or *on the date of its enrolling at another political party or a political formation*; g) in case of death."

In the Constitutional Court Decision no. 80/2014 (Official Gazette no. 246/04.07.2014), the Court declared, however, that the amendment of the provisions of Article 70 paragraph (2) letter e) "suppresses a guarantee of fundamental rights and freedoms - representative mandate stated through Article 69 of the Constitution, by violating the review limits set by art 152 paragraph (2) of the Constitution. The Court arguments were as follows: "(...) *under this constitutional Article, responsibility for a particular policy option, evidenced by resignation from the political party from which he was elected, or by enrolling at another political party can only be a political one, at most moral, but under no circumstances legal. Therefore, the sanction of losing a parliamentary mandate affects significantly the interests of the voters they represent and ignores one of the parliamentary democracy foundations – the representative mandate. The provisions of the proposed law are designed to restrict the freedom of parliament member to join a parliamentary group or another, or to become independent in relation to all parliamentary groups. However, this freedom of choice should act according to one's own political affinities, and according to the possibilities that different parliamentary groups offer, in order to make use of the electorate's interests, as representative mandate is a guarantee of promoting and respecting citizens' fundamental freedoms and rights of in parliamentary democracy.*"

In support of its decision, the Court also presented the provisions of the Report on the imperative mandate and similar practices by the Venice Commission, at its 79th plenary session, on 12 to 13 June 2009. According to the report, "*One of the problems in modern democracies, from the point of view of parliamentary stability and fidelity to voters' choices is the practice of elected representatives abandoning parties in whose lists they were elected. [...] Once elected, deputies should be accountable primarily to the voters who elected them, not to their political party. This flows from the fact that they hold a mandate from the people, not from their party. The fact that a deputy has resigned from or has been expelled from the party should therefore not entail their expulsion from parliament.*"

(For details, please visit: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282009%29027-f>)

¹³ Law no. 393/2004.

the one I choose says that today he is from a right-wing party, but tomorrow he would claim that he is from a left-wing party, or vice versa?

In our view, not even the Constitutional Court succeeded in giving a solution to stop this phenomenon. In our opinion, the Court judges have even suggested a differentiated approach, an unequal treatment, to the issue of political migration when political migration focused on local and county councillors, and when it focused on mayors or presidents of county councils.

This study is in the line the authors followed in conducting their previous research of disapproving this harmful phenomenon for the political class in Romania and extremely harmful to any democracy.

We expect this study to be one more warning, which we bring to the attention of the policy makers to

enact regulations that take into account firstly the causes, and secondly the effects of this phenomenon.

Also, through this study, we would like to remind the Romanian citizens that they are part of the equation of power, by the votes they give, at various times, to political parties and their candidates at elections, therefore, deeper and more radical response to these phenomena which destroy the idea of representation, is required.

In the face of such malformations of democracy, the voice of demos in Romania is too weak, and memory too short.

As a conclusion of the research study, a reflection of Winston Churchill's words: "*Some people change party for the sake of their principles, other change their principles for the sake of a party.*"

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- Law No. 67/2004 concerning the election of local public administration authorities, republished in the Official Journal of Romania, Part I, No. 333 of 17 May 2007, with subsequent amendments and completions.
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III. Romanian Constitutional Jurisprudence

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