VOLUME 6
2008

SOUTH-WEST
UNIVERSITY
·NEOFIT RILSKY·
BLAGOEVGRAD, BULGARIA

SCIENTIFIC Research

ISSN 1312-7535

ELECTRONIC ISSUE

Vesela Mircheva,
PHD-student in Constitutional law,
Faculty of Law and History,
South-West University

Descriptive Scope of the Deputy Incompatibility in the Republic of Bulgaria

The legal institute of incompatibility is a consecutive manifestation of the free mandate of a deputy. Namely as a representative of his electorate and of the whole nation, a deputy is to perform his functions in its interest on the only grounds of the Constitution and laws as well as in accordance with his conscience and beliefs. That is why he has to be liberated from any commitment, including official one[1]. Thus, a deputy performs his functions in legally independent from state or not-state, in their character, bodies, liberated from any side motivational influences. This reveals one of the components of the functional independence of the legislature. Thus, the requirement for incompatibility actually secures the adherence to the fundamental to the organization and to the state activity principle for separation of authorities (art. 8 of the Constitution of the Republic of Bulgaria).

Simultaneously, the rule for incompatibility presents organizational legal guarantee of the deputy activity. Its realization favours the circumstances, requisite for effective execution of deputy functions and assignments. In this case, it is taken into consideration the opportunity presentation of a deputy for regular presence and participation in the activity of the Parliament, devoting all of his time to the realization of his representative functions. This is imposed by the fundamental for the organization and for the activity of the National Assembly principle of parliamentary professionalism. In compliance with this principle, the parliament is repeatedly functioning body which determines alone the time not being in session (art. 74 of the Constitution of the Republic of Bulgaria). This binds a deputy to work in the parliament on a constant ground for which he receives payment that amount is calculated by the National Assembly (art. 3 of Financial rules on the budget of the National Assembly /FRBNA/).

The legislator does not give legal definition to *the concept of incompatibility* in the sense of article 72, paragraph 1, and item 3 of the Constitution of the Republic of Bulgaria. The elucidation of its legal essence is to be analyzed in the context of art. 68 of the Constitution of the Republic of Bulgaria, art. 99, par. 1, item 101 and item 102, par. 1-3 of the Regulations of the organization and activity of the National Assembly (ROANA) as well as art. 52, par. 1 and 4 of the Law on electing a deputy (LED). Incompatibility, in Bulgarian constitutional legal literature[2], is defined as the *inadmissibility* a deputy to occupy another state service or perform an activity that according to the law is incongruous with the deputy status. On the other hand, some authors[3] consider this legal institute an *impossibility* to combine the mandate received on the elections and the occupation of defined by law a series of state services or services in the private enterprise. According to us, in order to determine the content of the concept in hand, it is necessary that its legal action is taken into consideration. In this case, it is to be taken cognizance of the circumstance that the violation

[1] In most of the cases, the official commitment is also combined with a definite material dependency.
[2] Stoychev, St., Constitutional law, S., 2002, p.473; Ananieva, N., Constitutional law, S., 2000, p.287.
[3] Balamezov, B., Concise terminological dictionary / state theory, law theory, constitutional and comparative constitutional law/, S., 1993, p.46; Constitutional law: Dictionary / Ex. Editor V. V. Maklakov, M., 2001, p.286; Maklakov, V. V., The Parliaments of the European Union Member States, M., 1994, p.125.

of the principle of incompatibility leads to the severe legal consequence for a deputy – termination of his power pro-term (art. 72, par. 1, item 3 of the Constitution of the Republic of Bulgaria). With reference to the stated, *we suggest the incompatibility be considered an interdiction* for simultaneously exercising deputy mandate and performing another public function (generally speaking) or activity in private enterprise. This definition finds confirmation both in the foreign constitutional legal doctrine and in the practice of the Constitutional court of the Republic of Bulgaria[4].

The Constitution of the Republic of Bulgaria settles *two kinds of incompatibility*: interdiction for a deputy to be of another state service and interdiction to perform activity that according to the law is incongruous with his deputy rank (art. 68, par. 1).

The first interdiction finds exceptionally wide application. The constitutional legislator does not specifies the type of state service, for instance its position and meaning in the system of state government or the sphere this government operates (economics, internal affairs, foreign relations and etc.). That is why it is to be accepted that the performance of any *other* state service is incongruous with the deputy status.

In order to be defined more specifically the range of the first hypothesis of incompatibility, settled in art. 68, par. 1, suggestion first of the Constitution of the Republic of Bulgaria, it is necessary the concept *"state service"* be clarified.

The Constitution of the Republic of Bulgaria and the operative legislation lack specifically legal definition of the concept in hand. Similarly, the Bulgarian legal theory does not give simple doctrinal definition[5]. In Interpret resolution No. 5 from 6th April 1993 (promulgated in Official Journal, Number 31, Publication date: 13th April 1993)[6] the Constitutional court rightly reveals the content of the concept of state service considering its systematic position and related legal institute bound up with. In the above quoted resolution, the state service is most generally defined as activity on fulfilling the functions of the state. This activity is performed on the behalf of the state and with the purpose of exercising the authority of the state bodies provided in the Constitution of the Republic of Bulgaria, yet a payment is received for it. This common understanding of the concept "state service" lies on the grounds of grammatical (linguistic) and systematical interpretation of art. 68, par. 1, suggestion first of the Constitution of the Republic of Bulgaria. According to the decree quoted, a deputy cannot be of "another" state service. Namely, this version of the text means that the legislator also accepts as being a state service, the fulfillment of the functions of the legislative power while prohibiting the performance of any another state service beyond this. Hence, the interdiction refers to all kinds of state service and state officials in the state apparatus in general[7].

The Constitutional court is consecutive as in the above quoted resolution it declares incompatibility between the deputy mandate and the deputy participation in government boards, councils, agencies and other similar state structures as well as in bodies (boards, centers, institutes and etc.) submitted to ministries and other state establishments. As a rule,

---

[4] Decision of the Constitutional court №2/26.02.1992; See: Resolutions and decisions of the Constitutional court of the Republic of Bulgaria 1991 – 1992, S., 1993; p.43; Decision of the Constitutional court №5/06.04.1993; See: Balamezov, B., Interpret resolutions of the Constitutional court 1997-1999, S., 2000; p.98-111; Krutogolov, M. A., The Parliament of France – organization, legal aspects of the proceedings, M., 1988, p.162; Ameller, Parliaments, M., 1967, p.124; Commentaries on the Constitution of the Russian Federation, M., 2002, p.682-683.

[5] Kandeva, E., Yordanov, B., Legal control of the civil service, S., 2002, p.15-16; Yordanov, B., The Governmental official – theoretical concepts, legislation, court practice, S., 2005, p.39-41.

[6] Balamezov, B., Interpret resolutions of the Constitutional court 1997-1999, S., 2000, p.101-102.

[7] In this regard, in the Bulgarian constitutionally legal literature, combining exercising of deputy function with the presidential or vice-presidential is considered incongruent, as well as occupying the positions of judge, public prosecutor, army servant, member of a municipality council, regional governor and mayor. See: Vasilev, D., Legal status of deputy, "Legal thought" Magazine, 1994, No. 2, p. 19.

committees, councils, etc., which are not parts of the respective governmental (departmental) governing and their functions are purely consultative and advisable; do not apply to the interdiction in art. 68 of the Constitution of the Republic of Bulgaria [8]. This understanding of the Constitutional court is further developed in the text of art. 102, par. 3 of ROANA, that allows deputy's participation in collective governmental and scientific bodies of universities and the Bulgarian academy of sciences, with the exception of one-man governing services. Without being specifically settled, parliamentarians can continue engaging in lecturer's activity. This conclusion is based on the regulation of art. 101, par. 2 of ROANA, according to which, a deputy can draw a fee or receive payment under a civic relation. The organization is analogous also in the Russian federation, in accordance to which, a deputy can engage in lecturer's activity, scientific or another creative work[9]. As contrasted with the settlement by compromise, accepted by the Bulgarian and Russian legislator, a stricter rule is introduced. Thereby, according to art. 56, par. 2 of the Constitution in Greece from 1975[10], lecturers in universities suspend their lecturers' activity for the time of the authority of the parliament as the way in which they are substituted is defined by law. Deputies in Portugal can engage in lecturer's activity or run scientific researches, but without being paid for that[11]. In France, an exception to the principle of incompatibility is made only in reference to professors who at the time of their election as deputies, are heads of departments in an university or of research projects[12].

In the above cited Interpret resolution No. 5 from 1993, the Constitutional court rightly restricts to the interdiction regime of art. 68, par. 1, suggestion first of the Constitution of the Republic of Bulgaria and the deputy's participation in supervision, control, governing and other bodies of state and municipal establishments, companies, trade companies with state and municipal estate, given to them by deeds (instructions, orders, resolutions) of bodies of the executive power and related to them contracts of management[13]. We fully support the motives presented in the resolution. Namely, even though the activity of those companies (irrespective of their legally organizational form) is run in compliance with the private law, their management structure is appointed, controlled and released by the executive power. Furthermore, their directing and managing functions express and realize public interest. These companies run state and municipal estate which in the sense of art. 17, par. 2 of the Constitution of the Republic of Bulgaria, is public property. In the broad sense, their management is of public function that takes legal form. On these grounds, the Constitutional court assumes in the resolution in hand that a deputy cannot take state service also in the Bulgarian national bank, State saving bank and State insurance institute[14].

The understanding of incompatibility of deputy status with service in the governing of public establishments (state and municipal) is enacted in the decree of art. 102, par. 2 of ROANA. The text settles common interdiction on deputy participation in governing or

[8] For example commissions of scientists and other specialists for explaining of a definite question. See: Interpret resolutions of the Constitutional court No.5/06.04.1993. See: Balamezov, B., Interpret resolutions of the Constitutional court 1997-1999, S., 2000, p.105.

[9] Grankin, I. V., Russian Parliament, M., 2001, p.113.

[10] Constitutions /collection/: USA, Republic of Italy, FRG, Republic of France, Republic of Greece, Kingdom of Spain, Federal Republic of Brazil, S., 1990, p.180.

[11] Deputy in the Parliament in foreign countries, executive editor D. A. Kovachev, M., 1995, p.64.

[12] Ameller, Parliaments, M., 1967, p.126; Krutogolov, M. A., The Parliament of France – organization, legal aspects of the proceedings, M., 1988, p.165; Prelo, M., Constitutional law of France, M., 1957, p.447.

[13] In Greece, for example, this aspect of the incompatibility rule concerns not only the government positions but all positions in similar companies. See: Ameller, M., Parliaments, M., 1967, p.128.

[14] Interpret resolution of the Constitutional court No.5/06.04.1993. See: Balamezov, B., Interpret resolution of the Constitutional court 1997-1999, S., 2000, p.108.

supervising bodies of trade companies and co-operatives[15]. It is to be mentioned that the legislator does not specifically define whether it concerns legal entities with state or municipal property or those with private capital. Therefore, it is to be assumed that the interdiction concerns both hypotheses. The legal organization in the Russian federation is analogous. A deputy in the State duma does not have the right to engage in entrepreneurship or other paid activity as well as being member of governing body of economic company or another trade organization[16].

In contrast with Bulgaria and Russia, in a number of countries, it is specifically settled that it concerns companies or societies, financed in one form or another by the state. That is, for example in France where a deputy mandate is incongruent with taking governing services in private enterprises, that enjoy state guarantees and grants or in public establishments; financial companies of savings and giving credit; companies or enterprises, the activity of which mainly consists of running activities, supplies or services at the expense or under the control of the state, state body or establishment or state enterprises (art.146-153 of the Legislative part of the Elective code). It has to be mentioned that what is meant in the three hypotheses is the actual management of private companies related in one way or another to the state. Thereby, outside the range of incompatibility come persons who possess shares from the capital of the related company[17]. In Poland, on the one hand, the managing positions incongruent with the deputy status are specifically defined. That is – chairman of the Polish national bank, chairman of the Supreme chamber of accounts and member of the Council of monetary politics that perform public functions (art. 103, par. 1 of the Constitution of Poland). On the other hand, the text in, art. 107, par. 1, specifies common interdiction for a deputy to engage in economic activity by means of which he benefits from the property of the State treasury or the territorial self-government as well as acquiring such a property[18]. The legal organization in Greece is extremely detailed. Incompatibility applies to those holding leading positions (that are thoroughly listed) as well as to the executive functions of employees in legal entities of the public law in general, in state and municipal institutions or in establishments for community services (art. 56, par. 1 and 3 of the Constitution of Greece). The approach when defining the incompatibility in the private enterprise is analogical. In this case, it concerns the trade company or firm that takes advantage of social privilege, state grants, receives concessions from state services or runs state errands (art. 57, par. 1 of the Constitution of Greece). It is specifically interdicted to deputies to engage in commission activity, researches or construction of projects of the state, the local self-government bodies or other legal entities of the public law or construction of state or municipal establishments as well as renting real estates which belong to the mentioned persons or accepting concessions in any form regarding this real estate. These activities are invalid also when they are performed by trade companies or firms in which a deputy fulfills the duties of director, manager, law-officer or joins as a partner (art. 57, par. 4 of the Constitution of Greece)[19]. From the comparative-legal analysis made, it can be inferred that the approach of the Bulgarian

[15] This is also the permanent practice of the Constitutional court of the Republic of Bulgaria since its establishment in 1991. Thus, for example, by resolution No.2 from 26.02.1992, the Constitutional court declares incongruence on occupation of the position of a director general of the state company "Miziya", town of Pleven by the deputy Hristofor Dochev and his deputy status and because of this, his authority was ceased before term. See: Resolutions and decisions of the Constitutional court of the Republic of Bulgaria 1991-1992, S., 1993, p. 42-44.

[16] Grankin, I. V., Russian Parliament, M., 2001, p.113.

[17] Krutogolov, M. A., The Parliament of France – organization, legal aspects of the proceedings, M., 1988, p.169; Constitutional law: Dictionary / ex. editor V. V. Maklakov, M., 2001, p.287.

[18] Constitution of the Republic of Poland, "Legal world" Magazine, 1999, No. 2, p.268-269.

[19] Constitutions /collection/: USA, Republic of Italy, FRG, Republic of France, Republic of Greece, Kingdom of Spain, Federal Republic of Brazil, S., 1990, p.179-181.

legislator in the legal organization of the incompatibility is more expedient. It is to be taken into consideration the circumstance that it concerns the constitutional-legal organization of definite public relations. And the main characteristic of the constitutional-legal regulations is their maximum degree of abstractness and generalization. The concretization of the legal organization is to be settled in law.

Proceeding from the broad sense of the state service concept, in Interpret resolution No. 4 from 30.03.1993[20] the Constitutional court rightly declares incompatibility between deputy status and performing the functions of chairman of the General meeting of the United Nations organization (GM of UN). In the motives for the resolutions, it is emphasized that the head and the members of the Bulgarian delegation in UN represent the Republic of Bulgaria as being of state service in leading the foreign policy of the country. The election of the due deputy for chairman of GM of UN does not functions as power-depriving with regard to his official position of a member of the delegation and representative of the country in the international organization. In other words, he continues fulfilling the state service in sphere of the foreign relations which leads to incompatibility with the position of a deputy in the sense of art. 68, par. 1 of the Constitution of the Republic of Bulgaria. Settling the interdiction of incompatibility of the deputy mandate with the occupation of any state service, the legislator expediently accepts and the related guarantees for non-violating the professional career of the members of parliament. Here it is to be taken into consideration the circumstance that the deputy mandate is of periodic character (four years), after which it is possible that the deputy is not re-elected in the new parliamentary legislature. Herewith, in compliance with, art. 99 of ROANA, parliamentarians keep the occupied by them service in state and municipal bodies and organizations by going on leave without pay until the end of their power. This applies also to the executors on contracts for management of trade companies with more than fifty percent state or municipal share, but not longer than the end of the term of the contract. In cases when the re-occupation of the position held requires public act, it is bound to be issued. Moreover, the time when deputies exercise their functions, is declared length of service in their specialty, respectively length of official service for the occupation they had before being elected (art. 100 of ROANA).

Despite the common interdiction on occupying state service, the decree of, art. 68, par. 2 of the Constitution of the Republic of Bulgaria, settles a specific interdiction on combining the status of deputy and his position of minister (this is also occupation of state service). This is due to the great importance of relations between the legislative power and the executive one in the circumstances of rationalized parliamentarism. Actually this incompatibility is a corollary of the principle of the authority division. As a member of the parliament, a deputy is a part of the National Assembly – a subject of the legislative power (art. 62, par. 1 of the Constitution of the Republic of Bulgaria). Occupying the post of a minister, he becomes a member of the Council of ministers, which is holder of the executive power. Namely, with regard to the distinction of the functions between the bodies, holders of the legislative and executive power, the personal union in the person of a deputy – minister is unacceptable. In some countries, for instance Great Britain and the countries under the influence of the English parliamentarism, the so called cumulative mandate is adopted. It traditionally combines two functions – ministers are at the same time deputies. As an argument it is given their constant and active participation not only in the legislative process, but in the parliamentary control[21]. Thus, the close co-operation between the legislative and the executive power is emphasized. In Poland, also, there is no specific interdiction on combining the deputy mandate and the

[20] Balamezov, B., Interpret resolutions of the Constitutional court 1997-1999, S., 2000, p.93-97.

[21] Ananieva, N., Constitutional law, S., 2000, p.287; Drumeva, E., Constitutional law, S., 1995, p.160; Avtonomov, A.S., Constitutional (State) law of foreign countries, M., 2005, p.398.

membership in the government[22]. We think that when combining the deputy and minister mandate, the parliamentarism would lose significance. We find reasons for this conclusion in the essence of the parliamentary system. Namely, the relations between the legislative and executive power are determining to a greater extend for its essence. In these relations, a priority is given to the holder of legislative power – the Parliament. This constitutional resolution is logical consequence from its characteristic of being the only national body, which comprises of political representatives of different social groups, who received their mandates directly from the source of power, the people. In this way, the government is put in dependent from the representative body. Its dependence is implied in two forms – the realization of parliamentary control upon government policy and the acceptance of the political sanction through passing censure on the government. Therefore, a fusion between the controlling and the controlled body, i.e. between the bodies of the legislative and executive power through combining by one person the deputy and minister functions, is unacceptable.

The second type of incompatibility interdicts performing activity that is incongruous, according to the law, with the position of a deputy (art.68, par. 2, suggestion second of the Constitution of the Republic of Bulgaria).

The constitutional legislator uses negative criteria in order to specify the *range of the interdiction in hand.* This conclusion is drawn by the logical interpreting of the regulation cited. Namely – because the first interdiction refers to the occupation of state service in its most broad sense, that is why the second interdiction is to cover the sphere beyond the realization of the public functions of the state[23]. The matter concerned is an extremely broad and varied sphere of social life's activity – the private one. Therefore, the specific type of activity, incongruous with deputy status, is to be defined by law.

In compliance with, art. 3, par.3 of Transitional and concluding provisions of the Constitution of the Republic of Bulgaria, the National Assembly is due to specifically pass the mentioned in it laws in the term of three years. Up to the time present, however, no law is passed that settles the incongruous with the deputy status activities, which at the same time does not compose state service. That is why while the first interdiction under art. 1 of the Constitution of the Republic of Bulgaria operates immediately in compliance with art. 5, par. 2 of the supreme law, the direct application of the second interdiction, alluded in the above cited regulation, is bound by the adoption of the additional legal organization[24]. With regard to this, it is to be mentioned that, contrary to the specific text of art. 68, par. 1, suggestion second of the Constitution of the Republic of Bulgaria, the activities incongruous with deputy status are settled in ROANA. Herewith, it is according to art. 102, par. 2 and 4 of ROANA, a deputy does not have the right to join in governing and supervision bodies of trade companies and co-operations, as well as to give his consent or to take advantage of his official position for advertising activity. Indisputably, in the Bulgarian constitutionally legal doctrine[25] the opinion prevails that in its essence the Regulations of the organization and activity of the National Assembly are a normative act. Exactly in this capacity, it possesses similar characteristics with the laws, which are also normative acts of the parliament. However, at the same time, they reveal and a number of differences (for instance regarding the subject in the relations, originated from the activity of the related standards and regarding the procedure of their debating and passing). Despite the normative character of the regulations in hand, rightly

[22] Deputy in the Parliament in foreign countries, executive editor D. A. Kovachev, M., 1995, p.43.

[23] See: Interpret resolution of the Constitutional court No.5 from 06.04.1993. See: Balamezov, B., Interpret resolutions of the Constitutional court 1997-1999, S., 2000, p.102-104.

[24] The direct influence of the constitutional interdiction on occupation of another state service do not discounts the possibility of defining by law state services which deputies cannot occupy.

[25] Spasov, B., Constitutional law of the Republic of Bulgaria, part two, S., 2002, p.49-50; Stoychev, St., Constitutional law, S., 2002, p.456; Ananieva N., Constitutional law, S., 2000, p.236; Drumeva, E., Constitutional law, S., 1995, p.265.

does the constitutional legislator accept the legal institute of incompatibility to be additionally settled in a law.

Comparatively legal analysis[26] reveals an analogous legislative resolution. In this way, for instance, in Great Britain a House of Commons disqualification Act (from 1957 with followed changes) is passed which lists services, incongruent with deputy status. In Portugal, apart from the constitutionally legal institute, the incongruence is settled in a special law of the deputy status, as well as in the elective law. Analogously, the incompatibility is settled on a legislative level also in Poland, the Czech Republic, Italy, France, and the Netherlands. Exception here is the legal organization of the described legal institute in Federal Republic of Germany that is included in the Regulations of the Bundesrat. In the Constitution of the FRG, however, there is no specific requirement for this to happen by law. The additional legal organization of incompatibility in Bulgaria is to find its place in a law, settling thoroughly the status of a deputy. There is no normative obstacle for it to be included in also in several legislative acts. Thus for example, the services that are incongruous with the deputy status in the European parliament (art. 2) are specifically listed in the Law of election of members of the European parliament from the Republic of Bulgaria (LEMEPRB)[27]. Provisions are made for an opportunity the list to be completed by another law. That is why with regard to the public significance of the legal institute of incompatibility, *de lege ferenda* we propose a special law of the incompatibility of the deputy status with doing another duties to be passed. Regarding the detailed regulations of incompatibility, the legislator is to take into consideration two circumstances. On one hand, its interdictory rule is to confirm the independence of deputies from the influence of financial and economic factors as well as to prevent misuse of the membership in the parliament with the purpose of benefiting during doing their professional duties. On the other hand, the rules, regulating the incompatibility, should not be excessively harsh in order the assistance (their application and election for deputies) of highly qualified specialists in the work of parliament to be stimulated.

It has to be mentioned that by means of the text of art. 102, par. 4 of ROANA, the legislator extends the scope of the principle of incompatibility. The interdiction on a deputy giving his consent or using his official position for advertising activity also refers to the principle. Analogous regulations exist in other countries as well. For example, in France, it is forbidden for deputies to publish their names with indication for their belonging to the parliament in documents of financial, industrial and trade companies that are intended for publication, posting and advertising. It is also forbidden for them to make use of their names or to allow its using by another person for performing the activity of those companies as well as practicing liberal or whatever other profession. In principle, it is forbidden to make use of your deputy title for purposes not related to exercising their deputy mandate[28]. In the USA, senators cannot make use of their professional position in order to derive financial benefits for themselves or their families, as well as for a definite circle of persons or companies, which they or their families are part from or are controlled by them or members of their families. Besides, senators are not allowed to make use of their names in firms, companies, associations or corporations[29].

Directly related to the legal organization of incompatibility is also the regulations in art. 101 of ROANA. According to its text, a deputy cannot receive another payment under

[26] Deputy in the Parliament in foreign countries, executive editor D. A. Kovachev, M., 1995, p.25, p.43-44, p.63-64, p.84-86, p.101.

[27] Promulgated in the Official journal, Number 20, Publication date: 6th March 2007, amendment in the Official journal, Number 19, Publication date: 22nd February 2008.

[28] Deputy in the Parliament in foreign countries, executive editor D. A. Kovachev, M., 1995, p.86-87; Krutogolov, M. A., The Parliament of France – organization, legal aspects of the proceedings, M., 1988, p.171-172; Prelo, M., Constitutional law of France, M, 1957, p.449-450.

[29] Deputy in the Parliament in foreign countries, executive editor D. A. Kovachev, M., 1995, p.75.

labour relation[30] but he can draw a fee or payment under civic relations. On the grounds of this, deputies - lawyers can practice their profession during their mandate in the parliament. In the Bulgarian constitutionally legal literature[31] the expedience of this legislative resolution is rightly opposed. It is claimed as an argument that the National Assembly takes part in the election of the Supreme Court council, which represents the personnel body of the legal power. In this manner, because of the lawyers – deputies' participation, the principle of equality of the parties in the lawsuit is violated. This circumstance can also influence the objectiveness of judges. Here it is to be added the fact that the lawyers' profession is extremely dynamic and demanding continuous qualification. That is why in the conditions of continuously working parliament, combining both professions – lawyer and parliamentarian – would corrupt to a greater extend the performance of deputies' duties. In different countries, this problem is settled in two ways ranging from full interdiction on practicing lawyers profession to interdiction on practicing definite activities by lawyers – parliamentarians (Belgium, Brazil, Italy)[32]. Thus for example, in France, they cannot conduct suits on crimes against the state or conclude in debates against the state, state establishment or enterprise. They don't have the right to conduct suits in their capacity of representatives of establishments, the governing positions in which are incongruous with the membership in the parliament. In the rest of the cases, lawyers who are members of the parliament can exercise the lawyers' profession only without emphasizing their deputy title[33].

The institute of incompatibility is bound to the most severe *legal consequence* for a deputy. According to, art. 72, par. 1, item 3 of the Constitution of the Republic of Bulgaria; this is suspension of its authority before the term[34]. An exception from the common principle is the hypothesis of incompatibility between the deputy and mister mandate according to which the authority of the elected as minister deputy is suspended *ex lege* (art.68, par.2 of the Constitution of the Republic of Bulgaria).

In the Interpret resolution No. 8 from 06.05.1993[35], the Constitutional court gives the basic differences between those two legal institutes. Firstly, *the termination* of deputy authority results in final lost of the deputy status. While in case of *suspension* it is lost only for the time he is a minister. After suspending the practice of the minister's functions, the deputy status is completely restored if the mandate of the National Assembly[36] has not expired. Secondly, it comes to vacation of the mandate in the hypothesis of authority

[30] The amendment of the decree in ROANA from 1995 (abrogated in the Official journal, Number 44/1997) had included also and an interdiction on a deputy's receiving pension (art.100, par.1). Expediently in the next regulations this interdiction was abolished because it did not satisfy the designations of the incompatibility. And that is – receiving a pension does not make a deputy whatever economically dependent on one or another financial circle.

[31] Ananieva N., Constitutional law, S., 2000, p.287-288.

[32] Ameller, Parliaments, M., 1967, p.128.

[33] Deputy in the Parliament in foreign countries, executive editor D. A. Kovachev, M., 1995, p.86; Krutogolov, M. A., The Parliament of France – organization, legal aspects of the proceedings, M., 1988, p.171; Prelo, M., Constitutional law of France, M, 1957, p.449.

[34] In different countries the suspension of deputy's mandate by the hypothesis of incompatibility takes different shapes. Thus, in Great Britain, for example, the legal consequence in case of incompatibility manifests in obligation of applying for retirement, in Portugal - in depriving of deputy authority. See: Deputy in the Parliament in foreign countries, executive editor D. A. Kovachev, M., 1995, p.25, p.64. When an illegal combination of deputy mandate and interdicted profession is established in France, the Constitutional court declares the resignation of the deputy. See: Krutogolov, M. A., The French Parliament – organization and legal proceedings, M., 1988, p.174. The deputy in Greece is by rights deprived of the deputy position (art. 57, par. 2 of the Greek Constitution). In Brazil, the deputy or senator loses his mandate (art.55, par. I of the Constitution of the Federal Republic of Brazil).

[35] Balamezov, B., Interpret resolutions of the Constitutional court 1997-1999, S., 2000, p.111-122.

[36] The legislative resolution in Portugal is analogous - according to this resolution the deputy authority is suspended. See: Deputy in the Parliament in foreign countries, executive editor D. A. Kovachev, M., 1995, p.63.

termination before term under art. 71, par. 1 of the Constitution of the Republic of Bulgaria. In compliance with, art. 115, par. 1 and 2 of Law on election of National Assembly deputies (LENAD), in case of authority termination before term of a deputy, the Central electoral commission declares deputy the next candidate in the respective ticket. When there are more candidates as well as when the authority of a deputy is terminated before the term, the position stays unoccupied until the end of the National Assembly's mandate[37]. The legal organization is analogous when regarding replenishment of the vacant position of a member of the European parliament from the Republic of Bulgaria with authority terminated before the term (art.122, par. 1 and 2 of Law on election of members of the European parliament from the Republic of Bulgaria /LEMEPRB/)[38]. While in case of termination of the authorities, the elected a minister deputy is replenished by a defined by law order, that is – with the next candidate in the ticket (art. 68, par.2, sentence second of the Constitution of the Republic of Bulgaria in relation to art.115, par.2 of LENAD and art.109, par.1 of ROANA). The deputy replenished with, acquires full status of deputy from the moment of his announcement for such and after the fulfillment of all requirements for assumption in exercising his authorities (as he is sworn in accordance with art. 76, par. 2 of the Constitution of the Republic of Bulgaria). His mandate, however, is of temporary character. Every moment, the deputy replenished with is in danger of coming into force of the termination clause the elected minister to lose this capacity. In this way, an end to his mandate is put, in order the mandate of the now ex-minister to be restored (art.109, par.1, sentence first of ROANA). In this way, the preservation of his place in the parliament is guaranteed when he is released from the position of a minister[39]. In cases when in one ticket more than one replenishment are made, when restoring the authority of a deputy, the authority of the last in the ticket who acquired them by replenishment, is suspended (art.109, par.2, sentence second of ROANA).

[37] In the interpret resolution in hand, the Constitutional court takes the position that usual means of occupying vacated mandate before term is by running new partial election of a deputy. See: Balamezov, B., Interpret resolutions of the Constitutional court 1997-1999, S., 2000, p.117-118. The constitutional resolution of art.56, par.2 of the Constitution of the Federative republic of Brazil is analogous. According to its text, in the presence of a vacated position and there is no candidate, an election is held for its occupation if there are more than fifteen months until the mandate expiry. The Constitution of Greece contains a similar decree. According to art.53, par.2, the vacated deputy position is taken by means of partial election, on the condition of it has not been vacated during the last year of the parliament mandate expiry and the vacated positions are more than one fifth of the total number of the deputies. Also, according to art. I, par.2 of the US Constitution, the vacated positions at a given state agency, are occupied by means of additional elections.

[38] It is to be mentioned that LEMEPRB settles one exception of the above regulation by establishing the institute for preferential election. Thus, in the hypothesis of a suspended mandate before term of an European parliament member from the Republic of Bulgaria, gives preference to the vacated position to be taken by the candidate who has received preferential votes, but hasn't been declared for elected (art.122. par.3 of LEMEPRB).

[39] In this regard, an exception is the legal organization of Luxemburg, according to which in case of being a part of the government, the deputy mandate is suspended immediately and can be restored only by the force of new election. See: Comparative analysis of the organization and proceedings regulations of the parliaments of the European Union Member States and other countries outside the European Union /legislative inquiry/, Parliamentary students' internship program, NA, S., 2001, p.92.