

The Constitutional Dilemmas on Cases of Incompatibility and Conflict of Interest of Members of Parliament in Albania

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Abstract

This paper examines the constitutional and legal framework governing the incompatibilities of the mandate of a Member of Parliament in the Republic of Albania, with particular emphasis on the prevention of conflicts of interest and the protection of the integrity of public office. The analysis focuses on Article 70 of the Constitution, which prohibits deputies from exercising other state functions or engaging in activities that derive benefits from public property, alongside the law on the prevention of conflicts of interest, which establishes additional restrictions applicable to deputies and persons related to them.

The central research question is whether incompatibility cases provided by statutory law constitute valid legal grounds for the termination of a parliamentary mandate. To address this issue, the study examines the relevant jurisprudence of the Constitutional Court, the various limitations on the private interests of deputies and related persons, as well as the respective roles of the Assembly of Albania and the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest. The findings indicate that, despite the existence of an extensive normative framework, inconsistencies in practical application and ambiguities in the allocation of powers between the Assembly and the Constitutional Court have undermined the establishment of a coherent and unified standard for parliamentary incompatibility.

The paper concludes by emphasizing the need for clearer legal regulation of incompatibility cases, enhanced inter-institutional coordination, and strengthened control mechanisms to ensure effective implementation of the principles of parliamentary integrity and accountability in Albania.

Keywords: Incompatibility, conflict of interest, Constitution, member of the parliament, public integrity

Introduction

The Constitution of the Republic of Albania has established the foundations of the functioning of the rule of law and democratic governance, where the role of elected representatives, especially members of parliament, is essential for the functioning of institutions. In addition to the rights and guarantees that the Constitution grants to members of parliament, it also provides for clear limitations on the exercise of their function, with the aim of protecting the public interest and preserving the integrity of public officials. Article 70 of the Constitution establishes the constitutional limits of the exercise of the mandate of a member of parliament, sanctioning the prohibition of holding other state offices or of exercising activities that may generate benefits from public property. Furthermore, it provides that other cases of incompatibility will be regulated by law.

In most European countries, the conflict of interest, immunity and mandates of MPs are mainly regulated in the Constitution. The provision of special law for cases of incompatibility with the function of MP is seen in some countries, such as Romania, the Czech Republic, or Hungary. According to the general rules on the prevention of conflict of interest, MPs may be prohibited from being owners in a commercial company, being managers of a financial entity, being board members or shareholders in a for-profit organization, or managing/being members of a body established for the award of grants. Procedural rules on conflict of interest and immunity are generally found in certain provisions of the internal parliamentary regulations of these countries (Köbel 2022, 287-290). MPs do not give up other functions, jobs or activities unless they are expressly told to do so by law. This legal minimalism has often led parliaments in various countries to overlook certain conflicts of interest (de Sousa 2004, 25).

Provisions on incompatibility with the office of an MP vary from one country to another. The main approach is that there are some functions that are incompatible with the office of an MP (for example, holding a judicial position). As for holding positions in the private sector or engaging in entrepreneurial activities, the practice again varies from country to country. In some Western European countries, MPs are allowed to earn income from employment or business but must declare it. In other countries, there are

complete prohibitions on earning any income from private duties, except for educational, scientific, sports, or cultural activities (OSCE 2012, 44). In all the countries there are restrictions on other public and private employment when locally elected officials are engaged on a full-time basis and receive pay for the positions to which they have been elected (GOV/SIGMA, 2006). The Venice Commission offers detailed examples of some European countries regarding incompatibility provisions bearing economic implications (Venice Commission, 2013).

The integrity of MPs is an essential component for parliament's overall success in the fight against corruption and for raising public trust in the parliament. Incompatibility and conflict of interest provisions, declarations of assets and income, and codes of conduct all have one objective: to ensure public officials put public interests above private interests (Harutyunyan, K, 2021). In the area of public integrity, conflicts of interest and incompatibility are indicators of lack of integrity and, consequently, of corruption (Nicholls QC et al., 2011, p. 404). This has led European countries to impose continuous rules and bans on preventive policies, sometimes having a negative effect on implementation or public perception. The more rules and policies are proposed and adopted, the more rules and policies can be violated and enhance perceptions of distrust. However, this does not suggest that deregulating conflict of interest rules and policies would increase trust levels (European Parliament, 2020).

In Albania, as a subject of the law on the prevention of conflict of interest, the deputy must avoid any situation of conflict of interest that may arise in their decision-making during the legislative process or the review of various decision-making for legislative initiatives or the review of candidacies that are evaluated by the Assembly. The implementation of the obligation to declare a conflict of interest must be accompanied by further concrete steps, such as not participating in the decision-making process. In the cases of collegial bodies, such as the Assembly, with the avoidance of the member in conflict of interest from the decision-making process, the body will function as such, but without the presence of the latter (Article 13, Law 8480/1999). An official in conflict of interest may take one or more of the measures provided by the law, depending on the specific situation. He makes the solution in accordance with the situation, circumstances and needs to prevent conflicts of interest and maintain the balance and proportionality of the measures in relation to the situation. The Albanian Parliament is constantly under the monitoring of international and domestic organizations, which have noted cases where various members of parliament and officials run for positions, the decision-making of which is made by the Parliament itself or confirmed by it, while throughout the entire process there are no

clear mechanisms for regulating the status of the subject and its neutral role in the process (ISP 2019, 13).

In the IV round of evaluation, the Group of States against Corruption of the Council of Europe (GRECO, 2018) has conducted an evaluation on the topic of “Prevention of corruption in relation to members of parliament, judges, and prosecutors”. GRECO, among other things, recommended for Albania to establish a mechanism in the Assembly for the declaration of conflicts of interest by members of parliament on a “case-by-case” basis and that the functioning of this mechanism be subject to monitoring (GRECO 2018, pg.18). In order to fulfill the recommendations, the Code of Conduct has been revised (approved by Decision no. 61, dated 5.4.2018 of the Assembly of the Republic of Albania), and the responsible service for members of parliament has now been established and is functioning, which is responsible for maintaining a special register for cases of declaration of conflicts of interest on a case-by-case basis and which should be public in the framework of transparency with the public. While Albanian legislation regulates both types of conflict of interest, the focus of this paper is only on cases of ongoing conflict of interest for female MPs, those that create incompatibility with the function.

The analysis undertaken in this paper addresses the constitutional and legal mechanisms applicable to cases of incompatibility with the office of a Member of Parliament, with particular attention to the legislation on the prevention of conflicts of interest and the law governing the status of Members of Parliament. In light of constitutional standards, the article also explores the practical limitations of the application of these provisions, focusing on the role of institutional actors such as the Assembly and the HIDAACI. The law on the prevention of conflict of interest has provided for a series of prohibitions for deputies and persons related to them (spouse, cohabitant and adult children, as well as parents of the deputy and spouse or cohabitant). Cases of legal prohibitions and those of incompatibility with the function of a deputy and persons related to them are the subject of legal analysis in this paper. In order to achieve the research goal, several methodological approaches have been combined. The study relies on a method of legal-normative analysis, which aims to identify and interpret the constitutional and legal framework that regulates the incompatibility and conflict of interests of deputies in the Republic of Albania. The analysis focuses on the norms of the Constitution, on the special legislation for the prevention of conflict of interests and on the jurisprudence of the Constitutional Court, examining how these sources interact in practice and whether they guarantee the effective implementation of the principle of integrity of the public function. The comparative method was used by conducting a brief comparison with other European countries in relation to

and with the recommendations of international bodies such as GRECO, the Venice Commission and the OECD, to see the approach of European states and to identify whether there are clear standards in this field.

The research question guiding this study is whether cases of incompatibility and conflict of interest defined by statutory law may constitute grounds for the termination of a parliamentary mandate in the Republic of Albania. To address this question, the article examines the constitutional and legal framework governing incompatibility and conflicts of interest of Members of Parliament, with particular attention to the relationship between constitutional norms and the special legislation on the prevention of conflicts of interest, as interpreted in the jurisprudence of the Constitutional Court. Furthermore, through an analysis of the institutional roles and competencies of the Assembly, the Constitutional Court and the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (HIDAACI), the study seeks to identify potential legal gaps that have contributed to the absence of a consolidated practice in addressing cases of incompatibility and conflicts of interest involving Members of Parliament.

Limitations

This study is limited to an analysis of the constitutional and legal framework of the Republic of Albania, as well as the interpretation of the Constitutional Court's jurisprudence concerning cases of incompatibility and conflicts of interest involving Members of Parliament.

While the paper includes selected comparative references to European state models and relevant international standards (GRECO, OSCE, Venice Commission), comparative analysis is not the primary objective of the research. Such references are used solely for illustrative and contextual purposes, to support the analysis and to identify good practices that may serve as points of reference. This limited comparative approach is justified by the legal-normative nature of the study, which focuses on the internal constitutional framework and on assessing the coherence between legal provisions and institutional practice in Albania.

Restrictions on the private interests of the MP due to the function

The limitation on some private interests of senior public officials, which are expressly provided for in the Constitution of the Republic of Albania, is made for a greater public interest, such as good governance, citizens' trust in public institutions, transparency in decision-making, and accountability. In identifying the types of private activities that may constitute a cause for incompatibility with the function of a senior public official, as a rule, the possibility of the emergence of a continuous conflict of interest due to private activity has been assessed; engagements in private activities that

require such time and commitment that they impede the normal performance of public duty; and the necessity of preserving the image and integrity of the high-level officials (Ballauri 2015, 31-32).

In comparison with European countries, there are two approaches to prohibitions on private interests of MPs. One method is to prohibit MPs from holding certain other offices, through provisions in the constitution or specific laws on incompatibility or conflict of interest. The alternative is to allow MPs to have other interests but to require them to disclose details in registers of interest and/or declare them before speaking in parliament on relevant issues. Declaration of private interests is increasingly seen as a minimum requirement for members of parliament (OSCE 2012, 43).

The Constitution of the Republic of Albania, in addition to constitutional guarantees, has defined the basic framework for cases of incompatibility with the function for deputies, expressly defining several legal restrictions, the violation of which would result in the loss of the deputy's mandate. Article 70 of the Constitution of the Republic of Albania provides that:

1. *Deputies represent the people and are not bound by any obligatory mandate.*
2. *Deputies may not simultaneously exercise any other public duty with the exception of that of a member of the Council of Ministers. Other cases of incompatibility are specified by law.*
3. *Deputies may not carry out any profit-making activity that stems from the property of the state or of local government, nor may they profit from this property.*
4. *For every violation of paragraph 3 of this article, on the motion of the chairman of the Assembly or one-tenth of its members, the Assembly decides on sending the issue to the Constitutional Court, which determines the incompatibility.*

Whereas, in the amended Law No. 8550, dated 18.11.1999, “On the Status of the Deputy” (Article 3, point 3) it is foreseen that other cases of incompatibility of the mandate of the deputy, except those provided for in Article 70, points 2 and 3 of the Constitution, are equivalent to those of the member of the Council of Ministers, provided for in Article 103 of the Constitution. Referring to Article 103 of the Constitution, the minister may not exercise any other state activity nor be a director or member of the bodies of for-profit companies.

In 2005, Law No. 9367, dated 7.4.2005, “On the Prevention of Conflict of Interest in the Exercise of Public Functions,” as amended, was adopted, which, among other things, provided for restrictions on private interests and the categories of officials included in these prohibitions due to

their public function and the risk of falling into a conflict of interest, also providing for specific prohibitions for members of parliament.

Cases of incompatibility with the function of a deputy, or otherwise as it is called in the law, "continuous conflict of interest" are addressed in this law in two main aspects:

1. Prohibitions on the exercise of private activities and engagement in profitable and non-profit organizations. A deputy, according to Article 28 of the law on the prevention of conflict of interest in the exercise of public functions, is prohibited from exercising activities such as:
 - manager or member of the governing bodies of profitable or non-profit organizations.
 - private activities as a natural commercial person,
 - partnership of natural persons,
 - free profession (advocacy, notary, licensed expert, consultant, agent or representative of profitable organizations)
 - Employment in another full-time position.
2. Differentiated restrictions on the ownership of shares or equity interests based on the assessment of the connection between the function and the risk/potential damage from the conflict of interest. An MP is not allowed to actively own shares or equity interests in companies or commercial entities that result in a dominant position in the market. Only passive ownership of shares or equity interests in these commercial entities is allowed.

For the category of senior officials, which includes deputies, the law has also provided for some absolute prohibitions that are due to the function but that appear in special cases, such as the prohibition of concluding contracts with a public institution. Specifically, in article 21 point 1 of law no. 9367, date 7.4.2006, "On the prevention of conflict of interest in the exercise of public functions" as amended, it is provided that senior officials, which includes deputies, are prohibited from benefiting from contracts or subcontracts with public institutions. This prohibition also applies to commercial companies, partnerships, or simple companies where this official owns, actively or passively, shares in the capital, in any quantity. At the same time, the law extends this prohibition to the circle of persons related to the official (spouse, cohabitant, adult children, and parents of the official and of the spouse and cohabitant)."

The Law on the Prevention of Conflict of Interest, based on the legislator's intention to protect the public interest, public property, and funds from the risk of conflict of interest and corruption by public officials, has also provided restrictions for persons related to them. This law, in points 3

and 4 of its article 24, expressly provides that: "the prohibitions and restrictions for the official, set out in this section, also apply to persons related to him (spouse, cohabitant, adult children, and parents of the official and of the spouse and cohabitant)." Therefore, in accordance with this legal provision, the spouse, cohabitant, adult children and parents of the official and of the spouse and cohabitant of the deputy cannot compete for public funds and benefit from contracts with a public institution due to the function of their family member as a deputy. The prohibition on concluding contracts with a public institution, for the deputy and persons related to him, extends to all types of contracts and to the entire territory of the Republic of Albania.

The Law on the Prevention of Conflict of Interest, on the other hand, considers the ownership of shares by a related person as if they were the official's own, limiting them to the same extent and manner for the related person. Specifically, the second paragraph of Article 35 of the Law provides that: "In case the shares or parts in the capital are registered in the name of the related person, they are assessed as if they were registered in the name of the official himself, and the related person's property rights to them are limited to the same extent and manner as in the case of the official himself. These restrictions do not apply to persons related to persons related to the official." This legal provision, which equates the ownership of shares by a related person to that of the official, limiting them to the same extent and manner, seems to create confusion when reading Article 70, point 3 of the Constitution, which prohibits a deputy from benefiting from public property or funds.

Accordingly, the law on the prevention of conflicts of interest prohibits the son of a Member of Parliament from competing for and receiving public funds, on the basis that the son's shares are legally treated as if they belonged to the deputy. This raises an important interpretative question: should the same reasoning apply when interpreting the prohibitions set out in Article 70(3) of the Constitution? Or do Article 24(3) and Article 35 of the law on the prevention of conflicts of interest go beyond the constitutional framework and the authorization granted by Article 70(2) of the Constitution, which allows statutory law to provide for additional cases of incompatibility of a deputy?

In practice, the introduction by statutory law of restrictions on the private interests of deputies and of the related person to them has given rise to several applications before the Constitutional Court, seeking a declaration of incompatibility with the parliamentary mandate. In addressing these cases, analyzed in detail below, the Court has primarily focused on the question of its jurisdiction and has refrained from ruling on whether the restrictions and prohibitions contained in special legislation may constitute grounds for the termination of a deputy's mandate. The Constitutional Court has consistently

maintained that the establishment of incompatibility with a parliamentary mandate fall within its jurisdiction only in the cases expressly provided for in Article 70(3) of the Constitution, whereas for all other cases the legislator has entrusted the Assembly with the authority to decide on the termination or continuation of the mandate.

According to Article 70 of the Constitution and the prevailing interpretation in Albanian constitutional doctrine, constitutional incompatibility constitutes a prohibition of a principled nature, which operates directly and serves to guarantee the independence and integrity of the parliamentary mandate. Legal incompatibility, as developed through statutory instruments such as the Law “On the Status of the Deputy” and the Law “On the Prevention of Conflicts of Interest,” gives concrete expression to these constitutional principles by introducing additional restrictions expressly authorized by the Constitution itself. However, in practice, the application of statutory incompatibility reveals an institutional gap: neither has the Assembly developed a consolidated practice concerning the termination of mandates based on incompatibility defined by law, nor has the Constitutional Court accepted jurisdiction over such cases. This situation seems to have created a vacuum in the implementation of Article 71 of the Constitution.

The legal analysis thus highlights the absence of an effective liaison mechanism capable of addressing cases of incompatibility defined under the law on the prevention of conflicts of interest as potential grounds for the termination of a parliamentary mandate. This deficiency has resulted in legal uncertainty and institutional fragmentation in practice.

The legal consequences of acts or contracts concluded under conditions of a conflict of interest

The Constitution of the Republic of Albania, in Article 70/3, has absolutely prohibited the deputy from carrying out a profitable activity that originates from the property of the state or local government. Therefore, even though the deputy is allowed to own shares in a private company (if it does not have a dominant position in the market), this company cannot benefit from public funds or property or enter into contractual relations with the state to benefit from public funds or property. This constitutional prohibition, which constitutes incompatibility with the function of the deputy and a cause for the loss of his mandate, has also found special regulation in the law on the prevention of conflict of interest, specifically in Article 21 paragraph 1 thereof. On the other hand, the Law on the Prevention of Conflict of Interest stipulates that administrative acts and contracts issued both in conditions of actual interest and in cases of apparent conflict of interest are invalid (Article 40 of the Law). In particular, the Law stipulates that any civil contract

concluded in violation of points 1, 2, 3, and 6 of Article 21 and point 3 of Article 24 of this Law, or in any other case when it is concluded in the presence of an actual or apparent conflict of interest, does not create any legal consequences.

Albanian legislation provides that, in cases where a conflict of interest constitutes a cause for the absolute invalidity of an act or contract, a request for its determination may be made at any time. Also, the administrative body, on its own initiative, may determine an administrative act to be invalid at any time and take measures to regulate the consequences that it may have created since the moment of its issuance. In the absence of action by the administrative body responsible, the determination of the absolute invalidity of the act is made, at any time, by the court at the request of an interested party. In the case of relative invalidity, the abrogation or revocation of the act, at the request of the interested party or at the initiative of the competent body itself, is made within the deadlines provided for by the Code of Administrative Procedures itself. The effects of the abrogation or revocation of the act begin and are regulated according to the provisions of the Code of Administrative Procedures itself (Article 113 et seq.).

With the amendments and additions made to Law No. 9367, dated 7.4.2005, in 2012, special legal instruments have been provided that operate to regulate the legal consequences of acts taken under conditions of conflict of interest in cases where the responsible institutions do not provide a solution. The amendments approved in 2014, approved by Law No. 44/2014 dated 24.4.2014, charge the High Inspectorate for Declaration and Control of Assets and Conflict of Interest (HIDAKKI) with responsibilities and duties to follow up to the end of an administrative investigation initiated on certain decision-making suspected of being taken under conditions of conflict of interest.

Article 40/1/2 of the Law on the Prevention of Conflict of Interests stipulates the obligation of public institutions, when an act of theirs becomes invalid due to a conflict of interest, to undertake disciplinary proceedings against officials who have acted in bad faith; to shift the burden of compensation for the damage caused to this official, requesting the court, as appropriate, to impose compensation on the institution for the moral damage caused by the illegal actions of this official; and to file a criminal complaint when it is judged that a criminal offense has been committed. In cases where the institution itself does not undertake this initiative, the law determines the competent body that must act, the HIDACCI, in cooperation with the State Attorney's Office.

But what would be the appropriate way and mechanism to prevent specific cases of conflict of interest and illegal benefit of public funds or state property by public officials (or commercial companies in which officials or persons related to them own shares)? In Albania we have an

independent institution charged with controlling private interests and conflicts of interest of public officials, HIDACCI, but despite the legal possibility to initiate an administrative investigation, it is impossible for all decision-making of the public administration to be controlled by a single institution. If this had been the purpose of the law, then the law would have authorized mechanisms for HIDACCI to filter in advance any public decision-making. But this was not the intention, because first, the obligation to prevent and manage cases of conflict of interest is the official's own. Further, it is the obligation of the public institution where the official exercises his functions to take measures to avoid cases of conflict of interest when the latter has not acted on time or has acted in bad faith. Meanwhile, regarding the constitutional and legal prohibition that deputies cannot carry out any profitable activity that originates from the property of the state or local government nor acquire the property of these, directly or through their family members, we emphasize that it is the obligation of the contracting authority that will conclude the public contract, which must ensure that the private party is not in the conditions of the legal prohibition. The mechanism in force for the implementation of this obligation is found in the documentation that the economic operator must complete and in the search for published data, with open access of the National Business Center in Albania. The legislation has taken care to anticipate cases of using subcontracting to avoid legal prohibitions. In particular, the law (article 21/1) prohibits subcontracting for those administrative contracts that due to the function, cannot be concluded by high-ranking officials, including deputies.

In addition to the legal consequences of the act, the Albanian law on the prevention of conflict of interest has also provided for administrative measures with fines, which for such a violation range from 100,000 to 200,000 ALL (Article 44 of Law 9367/2005). The law expressly sanctions that any violation of the obligations set out in this law by officials constitutes a disciplinary violation, regardless of criminal or administrative liability. Disciplinary measures are applied in accordance with the laws regulating labor relations and/or the status of officials. For officials who are equal to or are members of constitutional bodies, the measures and procedures set out in the Constitution and the relevant legal provisions are applied.

The competent authority for assessing incompatibility with the mandate of the MPs

In Article 131/1/e) of the Constitution of the Republic of Albania, it is expressly provided that the Constitutional Court decides on issues related to the eligibility and incompatibilities in the exercise of the functions of the President of the Republic, of the deputies, of the officials of the bodies provided for in the Constitution, as well as the verification of their election.

The Internal Regulation of the Assembly, in Article 119/1 (added as a provision in 2019) points 1 and 2 provide that the deputy takes all measures to avoid any situation of incompatibility or conflict of interest, which may arise at the moment of the beginning of the parliamentary mandate and throughout the time it continues. The deputy takes concrete actions no later than the moment of the announcement of the final election result, at which time the deputy is provided with certainty and clarity about his financial income. For any violation of the restrictions of this article, as stated in point 2 of this article, the case shall be referred without delay to the Constitutional Court.

The jurisprudence of the Constitutional Court has clarified the role of the Assembly in the process of initiating the Constitutional Court. The constitutional norm has defined the Assembly as a special subject that initiates this constitutional trial, as well as the subjects that initiate parliamentary procedures for this purpose (the Speaker of the Assembly or one-tenth of its members). The decision-making of the Assembly, within the meaning of Article 70, point 4, is only in function of legitimizing this subject for initiating the constitutional trial to ascertain the incompatibility of the deputy's mandate. Whereas, ascertaining the incompatibility with the deputy's mandate is within the competence of this Court (decision no. 93, dated 17.05.2016).

The Court has also consolidated in its jurisprudence the fact that one-fifth of the deputies, as one of the subjects provided for in Article 134 of the Constitution, are not entitled to directly address the Court to request a finding of incompatibility in the exercise of the deputy's mandate. In such cases, in accordance with point 4 of Article 70 of the Constitution, the Court may be set in motion only by a decision of the Assembly (see decision no. 29, dated 30.06.2011, decision no. 1 dated 23.01.2023).

However, despite the provisions of Articles 70/2, 71/2/c and 131/1/e of the Constitution, which do not make any exceptions or distinctions in the types of incompatibilities that may lead to the termination of a deputy's mandate, the Constitutional Court has held that it has no jurisdiction to review other cases of incompatibility with a deputy's mandate, except for those specified in Article 70/3 of the Constitution (see decision no. 72, dated 07.12.2016, of the Constitutional Court).

The Constitutional Court, in its decisions on requests for the determination of the incompatibility of the deputy's mandate, has limited its jurisdiction only to the examination and assessment of the incompatibility with the mandate for violation of paragraph 3 of Article 70 of the Constitution. The Court has assessed that it has jurisdiction for cases of assessment of the incompatibility with the deputy's mandate for violation of paragraph 3 of Article 70, when the deputy himself, with his actions, violates

the constitutional prohibition provided for in this provision, i.e., only if he himself carries out profitable activities that originate from the property of the state or local government or acquires property of these. Only in relation to this prohibition has the Constitution-maker provided for the setting in motion of the Constitutional Court, according to Article 70/4, which in such cases is the body that has the competence to examine the merits of the case (decision no. 72, dated 07.12.2016 of the Constitutional Court). Meanwhile, this limited position seems to bring uncertainty about the competent body and the procedure that will be followed to assess the incompatibility with the deputy's duty in cases where he may have been a director or member of the governing bodies of for-profit or non-profit organizations; exercising private activities as a natural person, partnership of natural persons, liberal profession (lawyer, notary, licensed expert, consultant, agent, or representative of for-profit organizations) results in being employed in another full-time position or violates the absolute prohibitions defined as incompatibility with the function in the law on the prevention of conflict of interest.

In a case from 2011 (decision no. 29, dated 30.06.2011) with the object of ascertaining the incompatibility with the mandate of the deputy, the Court was requested to give a final interpretation of Articles 69, 70, 71 and 72 of the Constitution of the Republic of Albania. The applicants (no less than 1/5 of the deputies of the Assembly) have submitted that there are uncertainties regarding: the moment of commencement of the mandate; the legal effects of the oath on the validity and exercise of the mandate; the failure to respect the principle of proportionality between the economic and property limitation arising from being a deputy and the deprivation of the enjoyment of the legal, economic and political status of the deputy due to the failure to take the oath; the moment of the emergence of the incompatibility and conflict of interest with the duty of the deputy; the body that will ascertain the conflict of interest relationship within the meaning of Article 70, point 3 of the Constitution; the risk of a conflict of competences arising between the Assembly and the HIDAA when the latter has previously initiated the investigation. However, the Constitutional Court in that decision did not express itself on two points that in practice have not yet received a clear solution. First, which body will be the one that will ascertain the existence of a conflict of interest in cases of incompatibility with the duties of a deputy, as provided for in the law on the prevention of conflict of interest? And second, is there a risk of a conflict of competence between the HIDAAACCI, as a body charged by law with the verification and administrative investigation of cases of conflict of interest of high-ranking officials, and the Assembly? Providing an interpretation and position by the Court on these two issues would have helped clarify the role of institutions

and their competences in reviewing cases of incompatibility as provided for in the law on the prevention of conflict of interest. The need for unification of work standards by institutions responsible for conflict of interest, including HIDAACI and the Parliament, has also been identified in monitoring reports of non-profit organizations, according to which the practice has not been consolidated, and in some cases even with different standards (ISP 2020, 5).

If we refer to the practices of European countries, there are different approaches regarding the competent body in reviewing cases of incompatibility of members of parliament due to conflict of interest. We also highlight here the regulation that the European Parliament has made in the case of reviewing the conflict of interest of its members (European Parliament, 2020, 101) and that it is itself competent to terminate the mandate of a member of the European Parliament due to conflict of interest, putting into operation a permanent institutional mechanism within the Parliament (European Parliament, 2014). In most European countries, such as Germany (Constitution of the Federal Republic of Germany, Article 41), France (Electoral Code of the Republic of France, Article LO151-2), Poland, the competence to terminate the mandate of a deputy due to a conflict of interest belongs to a constitutional judicial body, while parliamentary bodies have only a preliminary investigative or recommendatory role.

Meanwhile, the Venice Commission, in its opinion on the implementation by the Assembly of the decisions of the Constitutional Court, has highlighted the fact that there are no clear standards on the procedure for deciding on incompatibility in various democratic countries. Issues regarding incompatibility can be raised by Parliament (or deputies) and then referred to a constitutional or ordinary court. However, it remains important that the procedures and powers of the institutions responsible for assessing cases of incompatibility with the duties of a member of parliament are clear and enforceable (Venice Commission, 2024, 33-44).

Jurisprudence of the Constitutional Court on cases of incompatibility with the mandate of a deputy

The Constitution of the Republic of Albania has listed the cases when the mandate of a deputy may end. Specifically, in Article 71/2/ c, it is defined as one of the reasons for the end of the mandate, the confirmation of one of the conditions of ineligibility or incompatibility provided for in Articles 69, 70, paragraphs 2 and 3, of the Constitution. Article 70 paragraph 2, of the Constitution provides that: Deputies may not simultaneously exercise any other state duty, except that of a member of the Council of Ministers. Other cases of incompatibility are determined by law.

The restrictions set out in the law begin to apply on the day the deputy is declared elected by the Central Election Commission or, in case of appeal, by the competent court. The deputy is obliged to take all measures to avoid any situation of incompatibility or conflict of interest that may arise at the moment of the beginning of the parliamentary mandate and throughout its duration. The deputy undertakes concrete actions no later than the moment of the announcement of the final election result, at which time the deputy is provided with certainty and clarity about his financial income. This is a position consolidated by the Constitutional Court in its jurisprudence, which has clarified and provided an answer to the question of when the obligation of the elected person to implement the constitutional and legal obligations regarding private interests begins: when he is declared a deputy by the Central Election Commission or when he takes the oath as a deputy (decision of the Constitutional Court no. 44, dated 7 October 2011).

The Constitutional Court has assessed that the legal consequences of a deputy mandate enter into force at the moment when the candidate is declared a deputy by the Central Election Commission. From that moment on, he is required to fulfill all constitutional and legal requirements resulting from the prohibition from exercising other activities and the obligation to make his financial interests public, as provided for in Article 70 of the Constitution and in other laws (Constitutional Court decision no. 44, dated 7 October 2011). This position of the Court has already been reflected in the amendments to the Internal Regulations, approved by decision no. 85/2019, which has sanctioned in point 1 of Article 119/1 of this regulation that the restrictions set out in this article begin on the day the deputy is declared elected by the Central Election Commission or, in case of appeal, by the competent court.

The decision-making of the Constitutional Court and its jurisprudence has limited its jurisdiction only to the provisions of Article 70/3 of the Constitution. The Court has maintained that it is competent to consider only cases where the deputy himself has benefited from state or local government property and not when the beneficiary could be a person related to him. In the assessment of the Constitutional Court, for all cases other than those provided for in Article 70/3 of the Constitution, it is the Assembly itself, the institution, that decides on the removal or not of the deputy's mandate (Decision no. 93, dated 17.05.2016, and no. 72, dated 07.12.2016, of the Constitutional Court). However, in the practice of the Albanian Parliament for several years, since the adoption of the law on the prevention of conflict of interest (2005), it has been found that there have been no cases of removal of the mandate of a deputy from the Parliament for cases of incompatibilities defined by law.

According to paragraph 3 of Article 70 of the Constitution, deputies may not carry out any profitable activity that originates from state or local government property, nor acquire any property of these. Whereas according to paragraph 4, “for any violation of paragraph 3 of this article, upon motion of the President of the Assembly or one-tenth of its members, the Assembly shall decide to refer the matter to the Constitutional Court, which shall determine the incompatibility.” This constitutional provision defines the subjects that initiate parliamentary procedures (the President of the Assembly or one-tenth of its members), as well as the Assembly as a special subject that sets in motion the constitutional trial. The decision-making of the Assembly, within the meaning of Article 70/4 of the Constitution, is in function of legitimizing this subject for initiating a constitutional trial to ascertain the incompatibility of the mandate of the deputy (Decisions no. 29, dated 30.06.2011; no. 7, dated 24.02.2016 of the Constitutional Court). In decision no. 32/2016, the Constitutional Court has assessed that the Assembly in these cases cannot enter into the merits of the case, i.e., the assessment of whether the concrete actions allegedly carried out by the deputy are incompatible with his mandate, because otherwise it would interfere with the powers that the constitution-maker has recognized only to the Constitutional Court. Thus, although the verification and assessment of the legal-formal criteria of requests of this nature is a matter that belongs to the Assembly, the assessment of the merits of the case, i.e., whether the deputy has acted contrary to the prohibition provided for in paragraph 3 of Article 70 of the Constitution, which consequently leads to the finding of incompatibility in the exercise of the mandate, is a matter that belongs exclusively to the Constitutional Court. The Court has concluded that for any violation of Article 70/3 of the Constitution, when a finding of incompatibility with the mandate of the deputy is required, the Assembly is obliged to refer the case to this Court, which is the only body that has the competence to examine the merits of the case (see decision no. 7, dated 24.02.2016, of the Constitutional Court).

The Constitutional Court has reviewed several cases of requests for the determination of incompatibility with the duty of a deputy because persons related to them had benefited from public funds from contracts with a public institution, contrary to the provisions of Article 21/1 of the Law on the Prevention of Conflict of Interest. The Court has held that its jurisdiction includes only cases of assessing incompatibility with the mandate for violations of paragraph 3 of Article 70 when the deputy himself, with his actions, violates the constitutional prohibition provided for in this provision. That is, if he carries out profitable activities that originate from the property of the state or local government or acquires property from these. For all other

cases, the legislator has provided for the Assembly itself as the institution that decides on the removal or not of the mandate of the deputy.

Specifically, in decision no. 93, dated 17.05.2016, which had as its object the examination of the incompatibility with the mandate of the deputy V.L., because her son had benefited from public contracts in violation of the law on the prevention of conflict of interest, the College held the position that: The Constitutional Court has jurisdiction over cases of assessing the incompatibility with the mandate for violations of paragraph 3 of Article 70 when the deputy himself, with his actions, violates the constitutional prohibition provided for in this provision, i.e. if he carries out profitable activities that originate from the property of the state or local government, or acquires property of these. Only in relation to this prohibition did the constitution-maker provide for the setting in motion of the Constitutional Court, according to paragraph 4 of Article 70, which in such cases is the body that has the competence to examine the merits of the case. As for other cases of incompatibility under paragraph 2 of Article 70 of the Constitution or the laws to which it refers, the Constitutional Court has no jurisdiction to review them.

The Constitutional Court also held the same position in the case regarding the incompatibility with the mandate of MP R.S., because the company in which citizen S. S. (son of MP R.S.) is a partner, whose shares were previously owned by this MP, has benefited from income originating from public funds as a result of entering into a lease contract with a company with 100% state capital, such as OSSHE. The Court, by a majority vote of its members, decided to dismiss the request, emphasizing that the determination of the incompatibility of the MP's mandate is within the jurisdiction of the Constitutional Court only in cases provided for by Article 70/3 of the Constitution, while for all other cases the legislator has provided for the Assembly itself as the institution that decides on the removal or not of the MP's mandate (see decision no. 72, dated 07.12.2016). In this case, the court's decision-making regarding this issue was not unanimous, and the minority members had a different approach. In the analysis and legal assessment of the minority, it was concluded that issues related to incompatibility in the exercise of the function of a deputy, regardless of the type of incompatibility, should be within the competence of the Constitutional Court. These two different positions of the Constitutional Court's panel of judges regarding this important issue of its jurisdiction show that there is indeed an ambiguity in the norms regulating the procedure and the competent body that should examine cases of incompatibility of a deputy.

The issue of the jurisdiction of the Constitutional Court over the examination of other cases of incompatibility with the duty of a deputy (other than those specified in Article 70/2 of the Constitution) must be

analyzed in relation to other provisions of the Constitution. Thus, in Article 131, point 1 letter e) of the Constitution, it is provided that the Constitutional Court decides on "e)" issues related to the eligibility and incompatibilities in the exercise of the functions of the President of the Republic, of deputies, of officials of the bodies provided for in the Constitution, as well as with the verification of their election", without making any exception or distinction in the types of incompatibilities. This constitutional provision has determined the competence of the Constitutional Court to decide on issues related to incompatibility in the exercise of the function of a deputy and has not made a distinction if this provision or another has not expressly excluded it. Even Article 71/2/c of the Constitution, which deals with cases of termination or invalidity of the mandate of a deputy, refers to the cases of incompatibility provided for in Articles 70/2 and 70/3, without making any distinction between them. On the other hand, the parliamentary procedure on the verification of the validity (Article 3/2) of the mandates of deputies provides that if the Temporary Commission for the Verification of Mandates notes illegality in the elections, it proposes to the Assembly to send the case to the Constitutional Court. Meanwhile, in Article 13, point 4 of this regulation, it is provided that: "The Council shall review all issues of the validity of the mandate of the deputy according to Article 70 of the Constitution."

Parliamentary practice in Albania has shown that we have not had cases of finding incompatibility or removal of the mandate of a deputy by the Assembly for cases of prohibitions and incompatibilities provided for in the law. This finding also applies to those cases when there have been violations of the law on the prevention of conflict of interest by deputies, but which the Constitutional Court has not addressed, since it has assessed that they are outside their jurisdiction, as long as they were not related to the implementation of Article 70/3 of the Constitution. On the other hand, the issues that the Constitutional Court has removed from their jurisdiction of review, because they were not related to the implementation of Article 70/3 of the Constitution, result in them not being brought back to the attention of the Assembly to be addressed as possible cases of incompatibility with the function of a deputy.

From the analysis of the decisions of the Constitutional Court, it results that the latter has maintained a consistent but limited approach to its competence, only in cases of constitutional incompatibility defined in Article 70/3 of the Constitution. The Court has not extended its jurisdiction to cases of conflict of interest or incompatibility provided for by ordinary laws, considering those issues to be resolved by other competent bodies, including the Assembly and the HIDACCI.

Constitutional jurisprudence has confirmed the importance of constitutional incompatibility as a principled guarantee but has not been able

to ensure the effective implementation of legal incompatibility. This remains one of the central dilemmas that require legislative intervention and a more comprehensive interpretation of Article 71 of the Constitution, to guarantee a unified and clear standard for cases of incompatibility and conflict of interest of deputies.

Conclusions

The constitutional and legal regulation of incompatibility concerning the office of a Member of Parliament in Albania reflects an effort to establish a coherent system of oversight and accountability aimed at safeguarding the integrity of the parliamentary mandate. By imposing restrictions on the private interests of deputies and their related persons, Albanian legislation aims to avoid the influence of special interests on public decision-making, as well as to maintain the standard of independence and ethics in parliamentary representation.

The analysis developed in this study shows that the Albanian constitutional and legal system for the incompatibility and conflict of interest of deputies has a consolidated legal framework in terms of strengthening the integrity of the public function but remains fragmented without a consolidated institutional practice. The existing legal framework, built on Article 70 of the Constitution and the law on the prevention of conflict of interest, has created the foundations for the control of incompatibility situations, but there is a lack of coherence in practical implementation and coordination between responsible institutions.

The Albanian normative framework provides a dual system of incompatibility of parliamentary mandate, foreseen in the Constitution and in the law. The jurisprudence of the Constitutional Court has clarified that its competence is limited only to cases of incompatibility defined in Article 70 of the Constitution. For cases of conflict of interest or incompatibility provided for by ordinary law, the Court has refused jurisdiction, considering this a matter that belongs to other state bodies.

In particular, the interpretation of the powers between the Assembly of Albania and the Constitutional Court in dealing with cases of incompatibility has highlighted a legal vacuum. The Constitutional Court, in its jurisprudence, has limited its jurisdiction only to cases related to the violation of the prohibitions provided for in Article 70/3 of the Constitution – that is, only when the deputy himself benefits from public funds or property. For all other cases provided for by law, it has avoided the examination by leaving the decision-making to the Assembly, which on the other hand has not built a consolidated practice of intervention for the assessment of the incompatibility with the mandate of the deputy in these cases. This situation has left unanswered the essential question on the legal

effect of the violation of the prohibitions provided for by law: whether such incompatibility can lead to the termination of the mandate, or does this require the intervention of a constitutional body. This regulatory and practical vacuum has created a gap between the declared principles and their effective implementation.

The lack of constitutional and parliamentary judicial practice in cases of removal of mandate due to incompatibility with the function of the deputy, according to the definitions of the law on conflict of interest, shows that the legal norm remains "dormant" in many cases, without real effect in public life. This creates the perception of a lack of political and legal accountability of deputies, undermining public trust in the institution of the Assembly.

In conclusion, as long as incompatibility remains a fundamental mechanism for preserving the integrity and preventing conflicts of interest of deputies, it is important to harmonize constitutional provisions with implementing laws and to clearly define the competencies and role of the responsible institutions in each case, so that restrictions on the private interests of deputies do not remain merely declarative, but become effective instruments for protecting the public interest. In this context, improving the legal framework requires a clear allocation of competencies among the Assembly, the Constitutional Court, and the HIDAACI regarding cases of conflict of interest and incompatibility with the office of a Member of Parliament. Such reforms could also be reflected in the Assembly's internal rules. From a normative perspective, however, the expansion or clarification of the Constitutional Court's jurisdiction to encompass incompatibility cases arising from statutory law, where these may entail the termination of the parliamentary mandate, appears to be the most effective legal alternative.

Cases of incompatibility with the office of a Member of Parliament that may give rise to the termination of the parliamentary mandate should be clearly and expressly defined by law, leaving no room for divergent interpretations in their implementation. Strengthening control mechanisms, including the proactive role of the HIDAACI and improving parliamentary procedures for the assessment of cases of conflict of interest, remains essential for the functioning of a credible accountability system.

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