
ARTICLES

Constitutional Aspects of Unelectability and Incompatibility of a Member of the Parliament

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The issues of unelectability and incompatibility of a member of the parliament are factors that condition the establishment of a stable, professional parliament. It is of particular interest in the course of the political and legal development of any country. Therefore constitutions draw the specific attention to the clear regulations of these matters. The objective is that a member of parliament should perform his duties in a way that expresses the will of the electorate and protects their interests. In the legislation of the foreign countries the norms restricting incompatibility are oriented towards maximal release of a member of parliament from the influence of the other state authorities and he/she has to give the priority to the performance of parliamentary duties over personal interests.

This issue is crucial in terms of modern Georgian constitutionalism because such restrictions are represented in the Georgian legislation only in the form of the declarative norms and the relevant safeguarding instruments do not assure their actual enforcement. This has a negative impact on the performance of the Parliament of Georgia as a whole.

In our opinion, the Georgian legislation does not take into account the experience of foreign countries in the regulating of these issues and is one of the reasons that cause such problems. Here, therefore we present the experience of foreign countries in this field and discuss some shortcomings in Georgian legislation. The objective of the contribution is to state certain proposals to improve the specific norms in Georgian legislation by the application of a comparative study.

What Does the Experience of Foreign Countries Offer?

Unelectability and incompatibility are strongly linked concepts and in principle it is incompatibility that is foreseen under the both cases. The main difference is that cases of unelectability apply to a candidate for election and restrict the right to participate in the elections, of course if the restricting factor is not removed by him or her within the terms set by law. Incompatibility applies to a candidate who has won an election but makes doubtful his membership in parliament unless he resigns from an incompatible position within the set terms. While the results are similar, the concept is different and we can state that this issue is not regulated under Georgia's current constitutional law at all.

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We believe that the motivation for cases of unelectability and incompatibility should be identical. The grounds to prevent a person from being a candidate ought to be the same as the motivation for prohibiting a member of parliament from holding an incompatible position. However such absolute restriction is very rare in practice. The motivations for unelectability and incompatibility fully coincide only in some countries. For example in Spain the constitution provides the same list of officials who fall under the unelectable and incompatible stakes. These include a member of the Constitutional Court, the Public Defender, a Judge, a Prosecutor and a member of an Electoral Commission.¹ However such narrow classifier establishes order only in the given circle and it is difficult to imagine what happens at the medium and lower hierarchy of positions.

We believe that taking into account the above-mentioned consideration, the restriction when a candidate upon his election as a member of parliament is obliged to leave his or her office that he/she held while his or her candidacy and which in a way conditioned his post as a member of parliament is imperfect. In terms of fairness of the results of elections it would be proper if he or she would have left his/her post by the time they became involved in elections as candidate. Logically, this is true but a legislator always has his own arguments and that is why we can find the system of the opposite proportionality between unelectability and incompatibility in some countries. For example, in Mexico a member of parliament with the agreement of the relevant chamber can occupy a paid position within the federation or state service although he is not entitled to this right in a pre-electoral period.² In Azerbaijan a candidate cannot work in the executive or the judiciary but after being elected he has the right to combine these activities with his parliamentary duties.³ We believe that allowing such benefits with respect to incompatibility affects the constitutional balance among the branches of power.

In these examples the motivation of restriction in cases of unelectability and incompatibility do not coincide. Although, as we have already mentioned similar restrictions should be set for both of them and whatever activity is forbidden to be performed by a person in the pre-electoral period, exactly the same activity has to be considered incompatible after his/her election in the Parliament, of course, under the conditions of existing the comprehensive list of incompatible positions and it should not be left at the level of abstract norms.

In practice of constitutional law there are different variations of unelectability. Unelectability under the norm of categorical demand has to be mentioned first when persons that occupy certain posts are prohibited from participating in elections. In Mexico a governor of a state cannot be elected as a member of the Chamber of Deputies of Parliament in the administrative-territorial unit where he performs his activities, even if he resigns from his post beforehand. In Mexico the members of the Chamber of Deputies of Federal Congress and Senators cannot be elected for a second term. In Greece paid civil servants, employees of state or municipal enterprises or institutions operating for the public benefit

¹ *Parliaments of the World, A Comparative Reference Compendium, Volume II, Second Edition, Inter-Parliamentary Union, Prepared by the International Centre for Parliamentary Documentation of the Inter-Parliamentary Union, Gower, 1986, 1147.*

² *Constitution of Mexico, Article 62, www.eur.nl/frg/jacl/armenia/constitu/constit/mexico/mexico-e.htm.*

³ *Constitution of Azerbaijan Republic, Article 89, Herald of Inter-Parliamentary Assembly, No. 3, St. Petersburg, 1996, 110.*

may not be nominated as candidates or elected in any district where they served for more than three months during the last three years before an election. The former secretaries general of ministries who held that position during the last four months of the four-year Parliament term shall be subject to the same restrictions.⁴

There are different approaches regarding the issue of resigning from an incompatible position by an elected member of parliament. In Luxembourg the person makes a choice between his current post and becoming a member of parliament after an election.⁵ In Greece persons occupying certain posts must resign before they are nominated as candidates. In Nicaragua the resignation has to be officially registered 60 days prior to elections,⁶ in Mexico - 90 days and in Colombia - 6 months before.⁷

The electoral law of certain countries allows a candidate to return to the position left by him on the grounds of unelectability after his election as a member of parliament. Such an approach makes questionable not only the meaning of the idea of prior resignation but its efficacy as a whole.

The institution of unelectability in constitutional law has several objectives. It is particularly important in terms of the reasonable regulation of an unjustifiably large number of candidates, not to mention the issue of the cost of an electoral campaign. That is why certain restrictions are established in a number of countries that place under the reasonable limits the mentioned parameters. For example, in Greece, in the case of unelectability of a public official in the parliament, his return to the same post is only possible a year after his resignation.⁸ Such a norm not only reduces the fortuitous multiplicity of candidates but saves the state funds and excludes the occurrence of artificial vacancies in certain agencies (services).

The issue of exercising the passive electoral right by a military servant is solved in a specific way. In Greece a person in the military must leave the service before being nominated as a candidate and if not elected they are forbidden to return to a military post. In Mexico a person in the military must leave his post 90 days prior to elections. In Argentina and Colombia the military cannot be elected as members of Parliament.

Concerning the issue of incompatibility of a member of parliament this means that a member of parliament does not have the right to execute certain activities restricted by law. Incompatibility on the one hand covers a certain category of positions and on the other hand - foresees a particular direction of an activity. Basically a member of parliament should not be engaged in entrepreneurial activities.

In two-chamber parliaments electoral legislation prohibits simultaneous membership of both chambers. This is the case in Austria, Kazakhstan, Japan, Ireland, Belgium, Croatia,

⁴ Galanis, *The Hellenic Parliament, A Brief Guide*, Department for Parliamentary Studies, 57.

⁵ Constitution of Luxembourg, Article 54, www.eur.nl/frg/iac/armenia/constitu/constit/luxemborg/luxbrg-e.htm.

⁶ Constitution of Nicaragua, Article 139, www.eur.nl/frg/iac/armenia/constitu/constit/nicar/nicara-e.htm.

⁷ Constitution of Colombia, Article 108, www.eur.nl/frg/iac/armenia/constitu/constit/colombia/colomb-r.htm.

⁸ Constitution of Greece, Article 56, www.eur.nl/frg/iac/armenia/constitu/constit/greece/greece-r.htm.

Czech Republic, Romania and Spain. Such a strict norm of prohibition, without prior regulation, causes certain implications and in most cases the issue is solved in the following way - a candidate who has been elected as a member of the both chambers terminates his membership in one of the chambers upon his will. We believe that the electoral law of Ireland is positive in this view. According to it the issue is regulated under the following specific norm "if any person who is already a member of either House becomes a member of the other House, he shall forthwith be deemed to have vacated his first seat".⁹

In the majority of states being a judge and a member of parliament is prohibited. The incompatibility applies to the judges of the constitutional courts in the countries where the Constitutional Courts are functioning. The constitutions of Slovakia, Hungary, Venezuela, Spain, Kyrgyzstan and Turkmenistan consider the incompatibility of prosecutors with the membership of the Parliament. The post of Public Defender is incompatible with that of a member of parliament in Hungary and Spain, and the membership of the Supreme Body of Control - in Luxemburg, Netherlands, Honduras and Hungary.

In a majority of countries the constitutions separate the incompatibility of membership of Parliament with membership of federation entities and local representative bodies. In Spain, the membership of parliament is incompatible with membership of an Autonomous Community Assembly while in Costa Rica it is with an Autonomous Institution. In Switzerland one cannot be a member in the lower Chamber and be on a Canton Council. In Kyrgyzstan the mandate of a member of the Parliament is incompatible with membership of a local Kenesh.¹⁰ In Turkmenistan one cannot be a member of the Velait, Shahr, Etrap simultaneously, while in Byelorussia you cannot be a member of the lower chamber and on a local council at the same time. There are some exceptions regarding members of upper chambers of parliament who express the interests of the entities of a Federation. For example, members of the upper chambers of the parliaments of Germany, Russia, Austria and Columbia are the members of governmental or representative bodies of the Federation subjects.¹¹ Neither the issue of unelectability nor the issue of incompatibility rises in this context, due to the fact that everything is foreseen and regulated under the constitution.

The constitutions of Guatemala, Colombia and Haiti establish the possibility to combine a diplomatic position with that of being a member of parliament. For example in Guatemala the membership of parliament may be compatible with a special temporary diplomatic task and the representation of Guatemala in international relations.¹² Of course, not only inter-parliamentary relations or organizations are foreseen at this point.

The legislation of numerous countries explicitly prohibits a member of parliament to work simultaneously in law enforcement or military bodies. A member of parliament is not allowed to work in the police in Hungary, Mexico, Spain, Poland and Slovakia. A member of parliament is prohibited to be simultaneously engaged in the military service in Hungary, Spain, Greece, Luxemburg, Honduras, Estonia, Netherlands, Poland, Slovakia, Colombia, Costa-Rica and Guatemala.

⁹ *Tkachenko*, The Parliament of Ireland, Herald of Inter-Parliamentary Assembly, St. Petersburg, 1996, No. 2, 190.

¹⁰ Constitution of Kyrgyzstan, Article 56, www.eur.nl/frg/iacl/armenia/constitu/constit/kyrgyz/kyrgyz-r.ht

¹¹ *Ienzee/Kirkhof*, The State Law of Germany, Volume 1, Moscow, Institute of State and Law, 1994, 161.

¹² Constitution of Guatemala, Article 142, www.eur.nl/frg/iacl/armenia/constitu/constit/guatemal/guatem-e.htm.

The issue of the interrelation of legislative and government bodies raises a certain interest with respect to the idea of incompatibility. This might be considered as a major feature conditioning the form of government of a state.

In parliamentary systems, in particular the Czech Republic, Germany, Italy, Austria, Hungary a member of parliament in its lower Chamber may be a member of the government at the same time.¹³ This is mandatory to the following extent in India - a person appointed as a minister does not have to be a member of parliament but if he is not elected to parliament within six months of his appointment he has to leave the post of Minister. Membership of parliament and being a minister are incompatible in presidential republics such as the USA, Brazil, Mexico, Kyrgyzstan, Honduras, Turkmenistan, and Guatemala. The issue of compatibility and incompatibility is not subject to common regulation and depends on the individual peculiarities of states of mixed government and constitutional monarchies. In some republics of mixed government - Poland, France, Romania - a member of parliament may be a member of the government as well, but these posts are incompatible in Kyrgyzstan, Armenia, Byelorussia and Russia. In parliamentary monarchies - while the constitutions of Luxembourg and Netherlands prohibit the compatibility of these posts, the legislation of Spain, Belgium and Great Britain - recognize the principle of compatibility, while in Japan - membership of parliament is obligatory for more than half of the members of the government.¹⁴

The constitution of the Czech Republic foresees a peculiar model of incompatibility. Here the membership of parliament and government is compatible but upon the certain conditions. A member of the government who is also a deputy and a member of the government - at the same senator can not hold the following parliamentary positions: the Chairman of the Chamber of Deputies and the Chamber of Senate or the Deputy Chairman, the Head of the Committee of Parliament or the Head of Investigation Commission or any other Commission or be the members of these commissions.¹⁵ In some countries the issue of compatibility is connected with concrete terms. In the Netherlands a minister elected as a member of the States General has the right to be its member and be a minister but not for more than three months.¹⁶

Terminating the mandate of a parliamentarian in case of incompatibility always has caused and causes ambiguity. An elected person only has a few days to make the final decision in the case of revealing incompatibility. For example, In case of existence of the grounds of incompatibility a member of parliament has to make the choice in eight days in Greece while in France it is fifteen days from the moment of recognition of his authorisation,¹⁷ otherwise his mandate of deputy shall be terminated.¹⁸

¹³ *Parliaments of the World, A Comparative Reference Compendium, Volume I, Second Edition, Inter-Parliamentary Union, Prepared by the International Centre for Parliamentary Documentation of the Inter-Parliamentary Union, Gower, 1986, 1203.*

¹⁴ *Constitution of Japan, www.eur.nl/rg/iacl/armenia/constitu/constit/japan/japan-e.htm.*

¹⁵ *Rules of Procedure of the Chamber of Deputies of the Czech Republic, Article 22, www.psp.cz/cgi-bin/eng/docs/laws/1995/90.html.*

¹⁶ *Netherlands Rules of Procedure of the Lower House, www.parlement.nl/int/index/docs/indexv.htm.*

¹⁷ *Galanis, The Hellenic Parliament, A Brief Guide, Department for Parliamentary Studies, 93.*

¹⁸ *Rules of Procedure of the National Assembly of France, www.franceway.com/w3/Facts&Figures/politics/rules&proceduresassnat.html.*

When incompatibility is not connected with elections but concerns the termination of a mandate of a member of parliament due to the holding of an incompatible post it requires special observation. For example the termination of a mandate of a MP in the Czech Republic does not require the adoption of a specific act since according to the Constitution "A Deputy's or a Senator's mandate expires the day he or she enters upon the office of the President of the Republic, or the day he or she assumes a judgeship or another post incompatible with the post of Deputy or Senator. The member of the Parliament assigned to a post of a minister, in the event of incompatibility of this post, loses his membership in the Parliament and attains it only in the next election under the general rule".¹⁹

There is another method for resolving the problem of incompatibility in constitutional law. A member of parliament who becomes a minister may temporarily give up his seat in parliament but return to it when he leaves the government. This is what happens in Estonia, Haiti, Slovakia, Portugal, Bulgaria and Costa Rica where a mandate of a member of parliament does not expire while the performance of the function of a member of the government by him but as it is stated - the authority of a member of parliament is not just exercised during the relevant period of time. As a result, the principle of the continuity of the mandate is not violated - it is valid but just suspended and neither the principle of individuality of the mandate is violated. In Costa Rica, according to the established rule, the duties of the member of parliament, whose authority is suspended, are performed by his replacement, a so called assistant - the person elected together with him. The legislation also foresees the termination of the authority of the latter, in the event of the dismissal of the deputy from his ministerial post.²⁰

The incompatibility of the post of a member of parliament with the entrepreneurial activities aims to protect the public from the potential abuse of his position in the interest of his own business. Entrepreneurial activity foresees numerous industrial trends, different positions within an enterprise and the limits of income. In Greece, a deputy cannot be an employee of a commercial firm or enterprise, enjoining concessions from public service. He also has no right to enter into agreements on the supply of goods or to execute any activity in favour of state or municipal enterprise. Any act of a commercial enterprise or firm, the function of director or administrator of which are executed by the deputy who participates in the leadership on a collegial basis shall be considered invalid.²¹

These issues are even more precisely solved in France. Here it is explicitly stated that the mandate of a member of parliament is incompatible with such positions as the head of an enterprise, the chairman of an administrative council, general director and deputy director, the head of a financial authority, or the head of those enterprises or firms which aim to receive a profit.²²

This issue is remarkably regulated in the United States, where a deputy has no possibility to unjustifiably exercise his mandate. According to the permanent rules of the Senate, a Sena-

¹⁹ Constitution of Czech Republic, Article 22, www.eur.nl/frg/iacl/armenia/constitu/constit/czech/czech-e.htm.

²⁰ Constitution of Costa Rica, Article 111, www.eur.nl/frg/iacl/armenia/constitu/constit/constrica/constar-r.htm.

²¹ Constitution of Greece, www.eur.nl/frg/iacl/armenia/constitu/constit/greece/greece-e.htm.

²² Rules of Procedure of the National Assembly of France, www.franceway.com/w3/Facts&Figures/politics/rules&proceduresassnat.html.

tor shall not receive any remuneration and shall not allow the allocation of any funds on his financial account if such funds will “indecently” affect his activity as a Senator; he shall not be involved in any enterprise or carry out other professional activity, he shall not abuse his position in terms of supporting and contributing to the elaboration and adoption of a law which shall aim at his and his family’s financial welfare; he shall not work in any state corporation or in a corporation subordinated to state control and in the council of a financial institution or entrepreneurs’ corporation, or be its member; he shall not allow any firm, association or corporation to act on behalf of his name; he shall not carry out any paid activity during the working hours set in the Senate; the “other incomes” of members of the Senate shall not be more than 15 % of the basic salary. These restrictions do not include: author’s honoraria; revenues received by selling art pieces, monetary revenues received from the selling of shares, if the price of the shares is in line with the market prices; the revenues from family enterprises and dividends. The amount of the author’s fee should not be more than the common prices valid at the time of conduction of the contract. The member of the Senate shall not receive remuneration of more than the amount of 1000 USD for any presentations, speech or article. He is forbidden to receive presents from any person, excluding some exceptional cases.²³

This issue was given great attention in CIS countries. In particular, Russia, Kyrgyzstan, Kazakhstan, Armenia and Tajikistan regulate it under specific norms. Russia and Armenia view entrepreneurial activity as “other paid activity” and restrict its execution. The constitution of Kazakhstan forbids a member of parliament to carry out entrepreneurial activity at all, as well as the membership of the central body of a commercial organization or supervisory council.²⁴ The Constitution of Kyrgyzstan prohibits the execution of entrepreneurial activity only to members of the upper chamber.²⁵

What Did Georgian Legislation Give Us?

Poor regulation of the issues of unelectability and incompatibility played the role of a reversing factor in terms of the development of the legal system in Georgia. Shortcomings in the Georgian electoral law resulted in a parliament, which not mentioning other things, did not even make an effort to develop this part of legislation. In fact, the starting point of the problem of our impracticable legislation that has suffered through so many changes lies in the electoral law. Here we will draw attention to some vitally important issues.

The list of the cases of unelectability given in Article 94 of the Electoral Code of Georgia covers only some positions, the holder of which cannot participate in parliamentary elections. As it actually turns out, incompatibility is presented in wider frame and covers more cases than unelectability does. For example a candidate can be an official, holding a

²³ *Kovachev*, *The member of the Parliament in Foreign Countries*, Moscow, 1995, 86.

²⁴ Constitution of Kazakhstan, *Herald of Inter-Parliamentary Assembly*, St. Petersburg, No. 3, 1998, 212.

²⁵ Constitution of Kyrgyzstan, Article 56, www.eur.nl/frg/iacl/armenia/constitu/constit/kyrgyz/kyrgyz-r.htm.

number of posts through which he is able to influence the results of the elections. He might occupy the positions of the deputy chief of staff of parliament or be a chief of the committee staff. But in the case of being elected he is obliged to leave the post. The presentation of the cases for unelectability in the form of the specific list might cause negative results because it is not excluded that certain positions that have broad rights in the process of the conduction of an election are not included in the list, unless this list is not precise. For example membership of an electoral commission is not mentioned in Article 94 of the Electoral Code. It means that the Code allows a candidate to be a member of an Electoral Commission while for a member of parliament such position is considered to be incompatible. We believe that such errors can be resolved by the identification of cases of unelectability and incompatibility. The above-mentioned mechanism, in some measure, would improve the electoral process, reduce the number of candidates and only those candidates will participate in elections that have the very chance to win and for them it is "worthy" to risk to lose the position that they will not be able to return during some period of time.

Today the mechanism that puts all candidates into equal starting conditions is not defined under the Georgian legislation. Numerous persons holding public and political posts have the opportunity to remain on their posts before being nominated for elections and use these positions to affect the electoral process for their own political objectives. The establishment of relevant restricting norms in legislation, according to which a candidate must leave his post before a certain time prior to elections would help the electorate in making objective decisions.

According to Article 8 of the Law of Georgia on the Status of a Member of the Parliament - a member of parliament can possess shares, portions and other property. But the law does not entitle a member of parliament to the right of directly performing the multiple activities of managing financial instruments and material values for the aim of having profit. In another words it does not give the right to directly manage shares owned by him. Hence, according to point 3 of Article 66 of the law on the Civil Service, a member of parliament is obliged, during the term of his authority as a member of parliament to transfer the portion of the charter capital of the entity of entrepreneurial activity, owned by him, to the management of another person under the rules and conditions foreseen by law. Such a rule does not violate the right to property as recognized by the Constitution. Consequently, if a member of parliament has not transferred the portion of the charter capital upon the trust agreement, it means that he carries out an incompatible activity. It seems everything has to be in order for the so-called former entrepreneurs to carry out their activity in the Parliament of Georgia, considering the fact that there is a lack of public information on this. But the point is whether this corresponds with reality or not. It is possible that they, upon the requirement of law, have transferred their own portion under the trust agreement and have no right to interfere in the activities of an enterprise but the controlling mechanism - whether they do manage this indirectly or not - is lacking. However, it is difficult to blame a member of parliament in such an action, if it is not proven by official documentation. We consider it necessary to establish a consecutive mechanism subject to control, to eliminate the defi-

ciencies that occur during the transfer of shares in the case of entrepreneurial incompatibility on the basis of the application of the norms of Civil Code. For the purpose of avoiding such an uncontrollable situation in practice, the legislation of numerous countries gives us the way out in transferring property under a trust agreement to a trust company.

Concerning the issue of incompatibility, it is important to mention that Georgian legislation totally lacks an indication within what timeframe a member of parliament has to resolve an incompatibility after the recognition of his authority. It is a fact that some members of parliament have illegally maintained their mandate and incompatible position for several years due to the imperfection of the legislation. Among the reasons for the poor regulation of the issue, has to be mentioned the fact, that there is not set down any timeframe within which parliament has to take a decision concerning the termination of a mandate of a member of parliament in case of incompatibility. We believe that the regulation of concrete timeframes for the mentioned mechanisms will ease the resolving of the issue of incompatibility in the electoral legislation of Georgia.

If we will generalize the mentioned circumstance on the level of initial grounds causing it, it certainly has to be mentioned that the issue of the responsibility of Parliament has to be defined more clearly. It is noteworthy to mention the fact that resolving the issue of incompatibility applies to the category of parliament's authorities and not obligations. The lack of set timeframes for the regulation of the issue of incompatibility creates a lot of difficulties in practice. We consider that in this case there is no necessity to establish any timeframe as everything can be arranged by the adoption of a single act. In the first part of this act there would be given the approval on appointment and in another part - the notice to dismiss the person from membership of parliament due to the appointment on another post. Such a mechanism would not only simplify the process but also exclude cases when parliament might not agree to dismiss a member of parliament appointed to another post.

The control of the issues of incompatibility is within the competence of the Parliamentary Committee for Procedural Issues and Rules. According to article 191 of the Regulation of Parliament "if a member of parliament occupies a position that is incompatible with the status of a member of parliament or carries out an incompatible activity, the Committee shall: consider the documentary materials, take his explanation and draw a relevant decision". We believe that the mentioned norm does not provide for the actual execution of supervision over the issue of incompatibility, due to the fact that it enables the committee to examine the issue only when the results are already accomplished. The rule for revealing the mentioned violations is not defined. It has to be clear from whom and what kind of documentation the Committee is authorized to consider. Presently the Committee of Procedural Issues and Rules is studying this matter on the basis of data contained in the property and financial declarations of members of parliament. This however might not reflect the true nature of things. As long as parliament is not entitled to broad investigative authority, it will always experience difficulties in collecting the relevant evidence. In our opinion, the most competent and objective authority would be the judiciary, due to the fact that it is entitled to broad authority to collect any relevant evidence.

The local elections, conducted recently, also demonstrated that not everything is in order in terms of unelectability and incompatibility in the electoral law of Georgia. However, other peculiarities were also revealed in this process. Even though it is strange but the Parliament of Georgia took a decision to suspend its plenary session due to the local elections and declared so-called pre-election holiday. This was due to the active involvement of a large number of members of parliament in the local elections in various towns and regions and the Parliament put aside its major authority "in a very organised way" for this period of time.

The possibility of this is conditioned by poor regulation of the mechanism of and incompatibility by the legislation. It is sad that to draw the conclusions we need own mistakes and the later possibility is not fully exercised by us either. We consider that the given case once again reveals the necessity to resolve the issue of unelectability and incompatibility as a whole.

The prohibition of the incompatibility of membership in two representative bodies in Constitutional law, especially if the timing and periodicity of the elections do not coincide, is connected to two possible options of unelectability. The one option foresees the participation of a member of the inferior representative body in the superior that is during a parliamentary election. We believe that in this case the existence of so-called favourable conditions is possible in terms of unelectability but not with regard to incompatibility. We think that the conditions of unelectability have to be strictly regulated in relation to the second option – when a member of parliament decides to participate as a candidate in local elections. In this case ineligibility and incompatibility have to be limited in one and in the same way.

Conclusions

The statement, that the legislator should, by all means define the timeframe for the removal of the incompatibility by a member of parliament himself as well as the timeframe regarding the taking the decision on the issue of incompatibility by the Parliament, nowadays should not raise any doubt. It would be better if the issue of incompatibility was resolved before the approval of the authority of a member of parliament. In the cases of consent, appointment and approval a member of parliament to an incompatible position, parliament has to decide the issue regarding the mandate of the member of parliament by a single act. As for the intention of the member of parliament to participate in local elections, we think that the legislation has to establish not only incompatibility but the limits of unelectability as well if a member of parliament shall not terminate his authority as member of parliament before the announcement of the pre-electoral campaign. The solution of the certain problems related to the deficiencies of the Georgian legislation observed in the present publication have to be thought over and we have to look for the rational idea and even for a very bit of it in the experience of the foreign countries.

As a whole, the mechanism of unelectability and incompatibility reveals numerous problematic issues while the practices of other countries offer a lot of ways and means for their solution. We will draw attention to specific proposals that are interesting not just in the

light of the regulation of the issue in general but have to be considered from the viewpoint of improving Georgian legislation.

We think that due attention has to be paid to the proportionality between the cases of unelectability and incompatibility, their coincidence just like in the case of Spain. Notice worthy are the norms established in Mexico, Nicaragua and Colombia that oblige a candidate to resign from his post a certain time prior to the elections. We think that on the example of Greece, in the event of not being elected the possibility of returning of the candidate on his previous post should be limited. For the duly settlement by the Parliament the problems connected with incompatibility it is necessary to set a certain timeframe as it is practised in Greece and France. While in the case when incompatibility occurs in the process of executing the authority, the Czech norm is to be taken into account – when the authority of the Member of the Parliament is terminated automatically. What concerns incompatibility with regard to the entrepreneurial activity, we think that the experience of USA where the amount of revenues is limited as well as the mechanism regulating the issue of incompatibility with the management of enterprises and membership of a Supervisory Council according to France's experience is worthy of interest. Incompatibility with the membership of local representative body and parliament actually has to be protected by the system of norms of unelectability as is the case in Kyrgyzstan, Byelorussia and Turkmenistan.

The experience of other countries certainly deserves attention. Many issues have to be taken into consideration but not in a manner that we are used to in terms of the "development" of the existing legislation by "crossing" of certain organically incompatible ideas. In this case the focus should be on the experience of countries first of all with a similar legal system as well as a similar administrative-territorial arrangement and the constitutional model of government.