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Parliamentary Mandate and Membership of the Council of Ministers: Reflections on Potential Reforms in Polish Law and Constitutional Practice²

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Abstract

The principle of incompatibility is highly significant for upholding the standards of a democratic state governed by the rule of law. It helps shape the structure of the system of public authorities and constitutes one of the fundamental guarantees of the independent exercise of the parliamentary mandate. The 1997 Polish Constitution provides an extensive catalogue of functions that may not be combined with a parliamentary mandate. At the same time, it *expressis verbis* provides for an exception for members of the Council of Ministers and secretaries of state in government administration. This article argues that while this solution is characteristic of parliamentary-cabinet systems of government, it also gives rise to certain adverse phenomena. In Poland, there is a persistent tendency to appoint parliamentarians to numerous ministerial and secretary-of-state positions, a practice that is subject to critical assessment by legal scholars and commentators as well as in public discourse. Under the current legal framework, the arguments for maintaining the constitutional exception to the principle of incompatibility are intertwined with arguments calling for its abolition.

Keywords: parliamentary mandate, incompatibilitas, Polish constitutional practice

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Mandat parlamentarny i członkostwo w Radzie Ministrów: refleksje nad możliwymi reformami w prawie polskim i praktyce konstytucyjnej³

Streszczenie

Zasada *incompatibilitas* ma istotne znaczenie dla funkcjonowania standardów demokratycznego państwa prawnego. Współkształtuje strukturę systemu organów władzy publicznej oraz stanowi jedną z podstawowych gwarancji niezależnego wykonywania mandatu parlamentarnego. Polska Konstytucja z 1997 r. przewiduje szeroki katalog funkcji, których parlamentarzyści nie mogą łączyć ze sprawowanym mandatem. Dopuszcza ona jednocześnie *expressis verbis* wyjątek dla członków Rady Ministrów i sekretarzy stanu w administracji rządowej. W artykule wskazuje się, że rozwiązanie to, charakterystyczne dla parlamentarno-gabinetowych systemów rządów, generuje pewne niekorzystne zjawiska. W Polsce utrzymuje się tendencja do powierzania parlamentarzystom licznych stanowisk ministrów i sekretarzy stanu, a praktyka ta jest krytycznie oceniana w doktrynie i dyskursie publicznym. W obecnym stanie prawnym racje przemawiające za utrzymaniem konstytucyjnego wyjątku od zasady *incompatibilitas* przeplatają się z argumentami wskazującymi na konieczność odejścia od niego.

Słowa kluczowe: mandat parlamentarny, incompatibilitas, polska praktyka ustrojowa.

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The legitimacy of combining a parliamentary mandate with membership of the Council of Ministers is a recurring topic of debate. For many years, parliamentarians have frequently been entrusted with ministerial offices or positions as secretaries of state in government administration. This issue calls for careful reflection, as it directly concerns the guarantees of the independent exercise of the free representative mandate.

The principle of incompatibility (*incompatibilitas*) plays a vital role in upholding the standards of a democratic state governed by the rule of law. It helps shape the system of public authorities. The essence of the principle lies in directives addressed to the legislature that seek to ensure the personal separation of public functions or activities that may potentially conflict because of overlapping competences. Legal scholars consider incompatibility to be an inherent element supporting the implementation of the principle of separation of powers.⁴ At the same time, the scholars point out that some legal systems may not embody a strict separation of powers and may instead favour the principle of cooperation between powers. Such a preference often implies acceptance of combining a parliamentary mandate with membership of government. This approach is especially typical of parliamentary-cabinet systems of government (discussed in more detail below).⁵

1. The 1997 Constitution of the Republic of Poland incorporates the classical concept of the free mandate. It is underpinned by two key assumptions (Article 104(1)):
 - a) universality – “deputies are representatives of the Nation,” meaning that a deputy acts on behalf of the entire sovereign (the People), rather than specific voter groups or organisations;

⁴ B. Banaszak, *Porównawcze prawo konstytucyjne współczesnych państw demokratycznych*, Warszawa 2014, p. 283. However, it is pointed out that the principle of non-combination may also apply in systems in which the separation of powers is not a fundamental systemic value. See M. Granat, D. Lis-Staranowicz, *W sprawie pojmowania zasady niepołączalności mandatu parlamentarnego w prawie konstytucyjnym*, „Przegląd Sejmowy” 2003, 3, p. 133.

⁵ The permissibility of combining functions is provided for in the German Basic Law, for example. In a parliamentary system, such as that in the United Kingdom, members of the government are normally drawn from either chamber of parliament. In some countries, on the other hand, combining government office with a parliamentary seat is prohibited (e.g. Norway, the Netherlands). Some countries provide for the suspension of a parliamentary mandate for the duration of government office. During this period, the seat is filled by the candidate who received the next highest number of votes in the parliamentary election (e.g. Slovakia, Belgium). B. Banaszak, *op. cit.*, p. 399.

- b) independence – “they are not bound by the instructions of the voters,” meaning that neither the electorate nor their organizations have the legal authority to dictate how a parliamentarian exercises their mandate.⁶ Consequently, a parliamentarian must exercise their mandate with due regard to the interests of the People, refraining from actions that would favour particular group, regional, environmental, or professional interests.⁷ Since the essence of the parliamentary mandate lies in the free and unfettered representation of the People, such representation should be exercised under conditions that guarantee its dignified and independent performance. The constitutional provisions on incompatibility support such an interpretation. The 1997 Constitution (Articles 102 and 103) prohibits combining a parliamentary mandate with public offices listed in the Constitution (so-called formal incompatibility).⁸ However, the Constitution explicitly establishes an exception for members of the Council of Ministers and secretaries of state in government administration (Article 103(1) *in fine*). It also introduces, in Article 107, a prohibition on parliamentarians undertaking or performing certain activities (so-called material incompatibility).⁹

⁶ L. Garlicki, *Article 104*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. L. Garlicki, Warszawa 2001, vol. II, p. 4.

⁷ M. Kruk, *Koncepcja mandatu przedstawicielskiego w konstytucyjnej doktrynie i praktyce*, „Przegląd Sejmowy” 1993, 4, pp. 15 *et seq.*

⁸ Article 102 excludes the possibility of simultaneously holding a seat in the Sejm and the Senate. Article 103(1) contains a list of prohibited positions and functions. This list is of a closed nature, although partly built around general concepts (P. Radziejewicz, *Article 103*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, 2nd edition, Warszawa 2023, p. 346). The first group of positions and functions comprises specific constitutional organs of the state, mentioned by name: The President of the National Bank of Poland, the President of the Supreme Chamber of Control, the Ombudsman, the Ombudsman for Children and their deputies, a member of the Monetary Policy Council, a member of the National Broadcasting Council, and in addition, pursuant to Article 132, the President. The second group concerns employment in the Chancellery of the Sejm, the Chancellery of the Senate, the Chancellery of the President of the Republic or government administration. Additionally, the prohibition covers ambassadors, i.e. the head of the Polish diplomatic mission abroad. The concept of employment should be understood broadly, as referring to all positions in those offices and all forms of permanent connection with these offices under an employment contract, a civil law contract or an administrative-law relationship (L. Garlicki, *Article 103*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, *op. cit.*, p. 4). Article 103(2), on the other hand, provides for a prohibition on the exercise of a parliamentary mandate by persons belonging to specific professional groups requiring above-standard neutrality and political impartiality: judges, prosecutors, civil servants, soldiers in active military service, police officers, and state security officers. Article 103(3) allows this catalogue to be extended by law.

⁹ Article 107 provides, within the limits specified by statute, for a prohibition on conducting economic activity using State Treasury or local-government property, or acquiring such property.

The prohibition on combining a parliamentary mandate with specific public offices has long occupied an established place in Polish constitutional tradition and practice.¹⁰ It was recognised by the Constitutions of 1921¹¹ and 1935¹² in the period of interwar constitutionalism. It was also expressed in the Constitutional Act of 17 October 1992, commonly referred to as the Small Constitution,¹³ and was included by the drafters of all the proposals submitted during the constitution-making process before the current Constitution entered into force.¹⁴ However, the scope of the relevant regulation has varied over time.

The fundamental objectives of the principle of incompatibility (*incompatibilitas*) are strongly emphasised by scholars and courts in Poland. They stress, in particular, the need to provide adequate guarantees for parliamentarians in the exercise of their mandate, as well as to prevent corruption and conflicts of interest.¹⁵ A free mandate thus requires certain safeguards against pressure from authorities (such as those in power or the parliamentary majority), party influence, and even pressure from constituents themselves. In this way, the parliamentarian is protected “from him- or herself.”¹⁶ The Constitutional Tribunal stated the following:

“(...) the prohibition of combining a parliamentary mandate with holding certain state positions is a consequence of the fundamental constitutional principles that define the state system based on the separation of powers. It aims to implement these principles, including legislative independence from the executive, judicial independence, and the political neutrality of certain state services. The intention (...) of the constitutional provisions is to ensure the personal separation of parliamentary membership from holding certain positions in the highest state organs. (...) The combination of holding a state function with other activities must be restricted where necessary to protect the credibility of the office held or the proper perfor-

¹⁰ D. Lis-Staranowicz, *Niepołączalność mandatu parlamentarnego w polskim prawie konstytucyjnym*, Warszawa, 2005.

¹¹ Act of 17 March 1921 – Constitution of the Republic of Poland, Journal of Laws of 1921, no. 44, item 267.

¹² Constitutional Act of 23 April 1935, Journal of Laws of 1935, no. 30, item 227.

¹³ Constitutional Act of 17 October 1992 on mutual relations between the legislative and executive authorities of the Republic of Poland and on local self-government, Journal of Laws of 1992, no. 84, item 426, as amended.

¹⁴ E. Gierach, *Article 103*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. II, eds. M. Safjan, L. Bosek, Warszawa 2016, pp. 315–316.

¹⁵ In the literature one can find an opinion that the incompatibility of a representative mandate also ensures transparency of decision-making and is an expression of rational management of human resources. M. Zubik, *Ustrojowe założenia niepołączalności mandatu parlamentarnego*, „Przegląd Sejmowy” 2008, 4, p. 107.

¹⁶ M. Granat, *O istocie mandatu przedstawicielskiego*, [in:] *Mandat przedstawicielski w teorii, prawie i praktyce poselskiej*, ed. M. Kruk, Warszawa 2013, p. 20.

mance of its duties. To the extent that the Constitution recognizes that the performance of a particular state function requires avoiding the possibility of conflicts of interest arising from the combination of particular functions or activities by the same individual, it subjects persons in public service to special restrictions.”¹⁷

It is argued that the principle of incompatibility, although it constitutes a restriction on individual rights and freedoms, plays a crucial role in ensuring the proper composition and functioning of Parliament. As such, it is necessary to strike a balance between competing interests and values. Deputies, by undertaking a specific form of public service, must accept certain constraints and institutional limits associated with the mandate.¹⁸

The principle of *incompatibilitas* is also regarded as an essential safeguard for the effective operation of the principle of the separation of powers, as expressed in Article 10(1).¹⁹ According to the Constitutional Tribunal, “the separation of powers in both the organizational (subjective) and functional (objective) sense would be ineffective if the same person, or group of persons, could simultaneously hold positions in different public authorities performing distinct constitutional functions.”²⁰ Scholars widely recognise that the principle of separation of powers is a fundamental source of various essential secondary legal principles. These include, among others, judicial independence, the political neutrality of certain public services, and the institutional separation of powers.²¹ However, simply adopting the separation of powers as a constitutional principle in a democratic state is not enough; it does not in itself dictate the particular institutional arrangements that will be established. This underscores the importance of careful consideration and intentional design in shaping effective governance. The detailed configuration of principles – including the principle of *incompatibilitas* in question – depends on the underlying assumptions and values of the given political system.

3. An important feature of the principle of incompatibility as shaped by the 1997 Constitution is the introduction of the exception noted above to the general prohibition on combining a parliamentary mandate with other public functions and positions. This exception, as already stressed, concerns

¹⁷ Resolution of the Constitutional Tribunal of 6 February 1996, W. 11/95, OTK ZU 1996, no. 1, item 5.

¹⁸ L. Garlicki, *Article 103, op. cit.*, p. 2.

¹⁹ “The system of government of the Republic of Poland is based on the division and balance of legislative, executive and judicial powers.”

²⁰ Judgment of the Constitutional Tribunal of 11 January 2000, K 7/99, OTK ZU 2000, no. 1, item 2.

²¹ K. Grajewski, *Formalna niepołączalność mandatu parlamentarnego*, „Państwo i Prawo” 2000, 10, p. 53.

members of the Council of Ministers and secretaries of state in government administration. This solution may be regarded as understandable because it corresponds to the parliamentary system of government adopted in the 1997 Constitution. In this system, it is standard practice for members of the government to be drawn from parliament.²² Indeed, an essential feature of this form of government is that the relationship between parliament and government is structured in such a way that the government's activities depend on parliamentary support. Once appointed by the head of state, the government must obtain parliamentary support expressed through a vote of confidence. Its ability to perform its functions depends on the political configuration in parliament. The government is politically accountable to parliament. This reflects the political realities of the functioning of a representative body. Ministers, who are also deputies or senators, therefore play an important role in securing support for bills and other government actions.

The solution adopted in the Polish Constitution stems from parliamentary tradition and is closely related to the experience of post-1989 systemic transformation. It was argued at the time that the principle of an absolute ban on combining parliamentary and government functions could block the formation of new political parties and prevent them from participating in the government as coalition partners. Any attempt to remove members of the government from the political game would then be bound to fail from the outset.²³ Given the political conditions of the time, it was also feared that the introduction of a ban on combining membership of the Council of Ministers with a parliamentary mandate would, to some extent, strengthen the dependence of government members on the President.²⁴

It is emphasised that such "interconnection" is particularly justified in systems in which the principle of separation of powers is interpreted as one of balance and cooperation, rather than strict division. This interpretation of the principle was

²² *Parlamentarny system rządów. Teoria i praktyka*, eds. T. Mołdawa, J. Szymanek, M. Mistygacz, Warszawa 2012; M. Grzybowski, *System rządów (Sejm-Prezydent-Rada Ministrów)*, [in:] *System rządów Rzeczypospolitej Polskiej. Założenia konstytucyjne a praktyka ustrojowa*, ed. M. Grzybowski, Warszawa 2006, p. 12.

²³ H. Suchocka, *Zasada podziału i równoważenia*, [in:] *Zasady podstawowe polskiej konstytucji*, ed. W. Sokolewicz, Warszawa 1998, p. 161. J. Cierniewski also pointed out that separating parliamentary functions from government functions becomes very difficult for parties, as they must constantly make compromises not only on tactics, but also on strategic matters relevant to conduct in government and in parliament; parties try to direct prominent representatives to the government, while their position within the party usually depends on their ability to act in parliament. J. Cierniewski, *Podział władz w Małej Konstytucji*, [in:] *Mała Konstytucja w procesie przemian ustrojowych w Polsce*, ed. M. Kruk, Warszawa 1993, p. 31.

²⁴ M. Granat, *Opinia w sprawie niepołączalności mandatu posła albo senatora z zatrudnianiem w administracji rządowej*, „Przegląd Sejmowy” 1997, 6, p. 97.

dominant within the Constitutional Commission and formed the basis for the solutions ultimately adopted in the Constitution.²⁵ It is also worth noting that in an electoral system based, as in the case of the Polish Sejm, on proportional representation, the exercise of a parliamentary mandate occurs within a political and social environment in which a deputy is heavily dependent on the political grouping that supports them. Any interpretation of the free mandate must take into account the significant role assigned to political parties by the Constitution, which recognises their essential place in the functioning of a democratic state.²⁶

Nonetheless, the exception to the principle of *incompatibilitas* must be interpreted and applied narrowly. The legislature may not derive from Article 103(3) of the Constitution a general competence to introduce further exceptions to the rule; this provision only authorises the legislature to expand, by statute, the list of public offices incompatible with the parliamentary mandate. Consequently, the only positions excluded from the prohibition are those expressly named – members of the Council of Ministers and secretaries of state in government administration.²⁷ The Constitutional Tribunal has underscored that the constitutional prohibition constitutes a restrictive constitutional provision. Assigning the title of “secretary of state” to a particular governmental position solely for the purpose of employing a sitting parliamentarian – thereby avoiding the incompatibility rule – amounts to a circumvention of constitutional provisions.²⁸

In addition to arguments supporting the legitimacy of the constitutional exception to the principle of *incompatibilitas*, the scholars also highlight the adverse consequences of its application. One of the primary concerns is its impact on the functioning of the principle of separation of powers and on the need to balance two competing values: cooperation between the executive and legislative branches, and the autonomy of the legislature. The problem arises most clearly in the context of organisational autonomy – specifically, in the potential for governmental influence

²⁵ H. Suchocka, *op. cit.*, p. 161.

²⁶ M. Zubik, *op. cit.*, p. 105.

²⁷ J. Lang, *Opinia w sprawie niepołączalności mandatu posła albo senatora z zatrudnianiem w administracji rządowej*, „Przegląd Sejmowy” 1997, 6, p. 72.

²⁸ Judgment of the Constitutional Tribunal of 20 April 2004, K 45/02, OTK-A 2004/4, item 30. The Constitutional Tribunal ruled that granting the heads of the Internal Security Agency (ABW) and the Foreign Intelligence Agency (AW) the “rank” of secretary of state was erroneous because Polish law structures administration on the basis of specific positions, rather than ranks or grades. The powers of a given official derive directly from the statutory description of their function, and adding the title of secretary of state neither imposed any new duties on the heads of the services nor gave them additional legal instruments. Their actual powers continued to derive from the provisions governing the intelligence agencies, so granting them a new rank was merely a terminological exercise. The Tribunal therefore found that the regulation served to circumvent the constitutional prohibition on combining functions and thus constituted an impermissible circumvention of the Constitution.

over the internal functioning of the parliamentary houses.²⁹ In particular, the presence of members of the government within parliament is viewed as enabling direct political pressure on MPs, which may undermine the principle of the free mandate and effectively transforms parliament into a “political backroom of the government.”³⁰ It is also noted that deputies may find themselves acting as judges in their own cases – for example, during votes of no confidence in ministers who simultaneously hold parliamentary seats. Similar criticism is voiced when a person speaks in the same debate both as a parliamentarian and as a government minister.³¹ This duality may weaken the Sejm’s oversight function, a trend that appears to have become especially pronounced during the constitutional crisis in Poland in 2015–2023.³² The combination of functions within the legislative and executive branches has also been identified as one factor contributing to the ongoing crisis of the Polish judiciary.³³

4. As mentioned, the political tendency to appoint parliamentarians to positions within the government remains a persistent feature of Polish political practice. A striking example of this is the 2023 amendment to the Act on the Council of Ministers, in which an ostensibly minor change created a legal pathway for increasing the number of parliamentarians in the executive. Specifically, while the pre-amendment provision stated that a minister performs their duties with the assistance of “a secretary of state,” the revised provision, by using the plural form “secretaries of state,” effectively removed any upper limit on the number of such appointments (Article 37(1)).³⁴ This legislative modification has significant implications for the

²⁹ A. Jaworski, *Problematyka łączenia mandatu parlamentarnego ze stanowiskami członka Rady Ministrów*, *Zeszyt Prawniczy UAM* nr 13/2023, p. 72. The author cites the problematic parliamentary practice of setting the agenda in a way that favours the government side, as well as so-called block votes on amendments, consisting in the acceptance of a block of amendments proposed by the governing coalition and the rejection of a block of amendments proposed by the opposition, thereby reducing an important stage of the legislative process to only two votes.

³⁰ *Ibidem*, p. 73.

³¹ K. Skotnicki, *Konstytucyjne i polityczne determinanty statusu posłów i senatora*, [in:] *Parlament. Model konstytucyjny a praktyka ustrojowa*, ed. Z. Jarosz, Warszawa 2006, p. 69.

³² M. Zubik, *Konstytucja a rzeczywista rola ustrojowa Sejmu III RP*, „Państwo i Prawo” 2022, 10, p. 207.

³³ B. Sitek, *Rozdział władzy ustawodawczej od wykonawczej gwarancją niezależności sądownictwa w Polsce*, „Journal of Modern Science” 2017, 3, pp. 88–89.

³⁴ The amendment of the Act on the Council of Ministers of 8 August 1996 (Journal of Laws No. 106, item 492), adopted in 2023, also deserves attention because it was introduced **incidentally**, through the Act of 26 May 2023 on the mCitizen Application (Journal of Laws 2023, item 1234), whose subject matter did not concern the regulation of government positions. The governing camp at the time sought to regularise the practice of multiplying the positions of secretaries of state in ministries, contrary to the Act on the Council of Ministers; at that time, there were as many as 49 secretaries of state in 17 ministries. For criticism of the amendment, see M. Jarentowski, *Opinia do ustawy o zmianie ustawy o służbie*

perception of the role of parliamentarians within the executive, as well as for their functioning within the legislature. It has a direct impact on the implementation of the constitutional principle of separation of powers and affects the delicate balance between ensuring an effective executive branch and safeguarding the independence and institutional integrity of the parliamentary chambers, particularly the Sejm, from which most ministers are drawn. The debate over the legitimacy and desirability of maintaining this constitutional exception remains ongoing.

In light of the foregoing analysis, several key issues should be considered in shaping potential constitutional reforms. First and foremost, Article 103 of the Constitution – which sets out the principle of *incompatibilitas* (in its formal sense) and enumerates specific exceptions – is directly applicable. It does not require implementing legislation to be effective, although statutory regulations may develop the procedures for enforcing it. The Constitution itself establishes a broad framework for the incompatibility of public offices with a parliamentary mandate. This is evidenced by the extensive and statutorily extendable list it provides. It is significant that the constitutional framework expressly permits the introduction of additional incompatibility rules by statute. This possibility reflects the broader constitutional principle that matters concerning human and civil rights and obligations must be regulated by law. It should be emphasised, however, that the existing constitutional exception for members of the Council of Ministers and secretaries of state cannot be modified by statute alone.

It is important to highlight certain limitations on the powers of individuals who simultaneously hold a parliamentary mandate and serve as a member of the Council of Ministers or as a secretary of state in government administration, as reflected in the houses' rules of procedure. According to the Standing Orders of the Sejm of the Republic of Poland,³⁵ a deputy who holds one of these government functions may not serve as a member of any Sejm committee (Article 7(3)), except for the Extraordinary Committee tasked with considering constitutional amend-

cywilnej oraz niektórych innych ustaw (druk nr 963), Biuro Legislacyjne Kancelarii Senatu, 25.04.2023. Available from: <https://www.senat.gov.pl/download/gfx/senat/pl/senatekspertyzy/6760/plik/963o.pdf> (accessed: 23.06.2026). Available from: <https://www.prawo.pl/samorzad/mnozenie-stanowisk-sekretarzy-stanu-zmiany-w-przepisach,521222.html> (accessed: 23.06.2026). The practice of entrusting parliamentarians with numerous functions in the government – positions of ministers and secretaries of state – also persists in the current parliamentary term, i.e. after the elections in autumn 2023 and a significant change in the ruling team. Available from: <https://www.prawo.pl/samorzad/powolywanie-poslow-do-rzadu,525814.html> (accessed: 23.06.2026)

³⁵ Resolution of the Sejm of the Republic of Poland of 30 July 1992 – Rules of Procedure of the Sejm of the Republic of Poland, consolidated text: *Monitor Polski* 2022, item 990, as amended.

ment bills (Article 86b(1)). Membership of a Sejm committee terminates upon appointment to the Council of Ministers or appointment as secretary of state. In contrast, the Standing Orders of the Senate³⁶ provide that a senator holding such a government position may not serve on committees whose subject matter overlaps with the government department in which they serve (Article 20(4)); however, no specific provision defines the date on which committee membership terminates. While these regulations restrict the exercise of parliamentary functions within the chambers, they fall within the internal autonomy of the legislative bodies and should not be interpreted as prohibiting the simultaneous holding of office in the Council of Ministers or the position of secretary of state alongside a parliamentary mandate.

The standing orders of both houses give effect to constitutional provisions.³⁷ They are adopted directly on the basis of the Constitution, namely Article 112 for the Sejm and Article 124 for the Senate, which define the scope of matters regulated by these rules. This includes the internal organisation and conduct of the business of the houses, the procedures for appointing and operating their bodies, as well as the way in which constitutional and statutory duties of state authorities towards the Sejm and Senate are carried out. The exclusive powers of the houses to regulate certain matters, along with the discretion granted in how these matters are regulated, constitute the principle of parliamentary autonomy in respect of standing orders. Beyond the specified issues, other internal aspects may also be regulated in the standing orders, particularly those relating to the organisation and procedural operation of the houses, which the Constitution addresses only in broad terms and which can be further developed and elaborated.³⁸ However, autonomy is not synonymous with arbitrary decision-making in applying procedural rules. Instead, it reflects the separation of powers and the distinctness of the different branches of government.

The standing orders are normative acts that rank below the Constitution in the hierarchy of sources of law. Like any legal act, they must be consistent with higher-ranking law.³⁹ The relationship between the standing orders and statutes, however, is more complex.⁴⁰ Without delving into detailed analysis, it is important

³⁶ Resolution of the Senate of the Republic of Poland of 23 November 1990 – Rules and Regulations of the Senate of the Republic of Poland, consolidated text: *Monitor Polski* 2024, item 10.

³⁷ The Rules of Procedure of the Sejm contain provisions supplementing, developing and interpreting the Constitution. The degree to which the provisions of the Rules of Procedure are linked to the Basic Law therefore varies. E. Gierach, *Article 112*, [in:] *Konstytucja RP...*, p. 405.

³⁸ P. Radzewicz, *Article 112*, [in:] *Konstytucja Rzeczypospolitej Polskiej...*, p. 368.

³⁹ Decision of the Constitutional Tribunal of 26 January 1993, U 10/92, OTK 1993, No. 1, item 2.

⁴⁰ L. Garlicki, *Konstytucja – regulamin Sejmu – ustawa*, „Przegląd Sejmowy” 2000, 2, p. 28.

to emphasise that by reserving the regulation of certain matters exclusively to standing orders, the Constitution effectively limits the scope of statutory regulation in those areas, permitting statutory intervention only in exceptional cases. At the same time, standing orders may not regulate matters reserved for statute but may elaborate on constitutional and statutory provisions. This applies in particular to areas involving individual rights and duties. Consequently, the standing orders should neither impose new rights and obligations on individuals and other entities nor specify or further develop rights and obligations already imposed by law. Similarly, they may not grant public-authority powers to the Sejm, the Senate, or their bodies, nor impose new duties on other public authorities beyond what the law provides. However, standing orders may specify constitutional and statutory provisions defining the duties of state authorities towards the Sejm, the Senate, and their bodies.⁴¹ It follows from this that while the standing orders may influence how deputies and senators – who are also members of the Council of Ministers or secretaries of state – perform their parliamentary functions, they cannot introduce a prohibition that would negate the constitutionally guaranteed possibility of combining these functions.⁴²

A constitutional amendment would be required to respond to scholars' calls for abolishing the permissibility of combining a parliamentary mandate with government office⁴³. Such an amendment would need to go beyond merely adding members of the Council of Ministers and secretaries of state to the catalogue of functions incompatible with a parliamentary mandate. It should also address the

⁴¹ Judgment of the Constitutional Tribunal of 14 April 1999, K 8/99, OTK 1999, No 3, item 41.

⁴² The call for changes to remove the permissibility of combining an MP's mandate with the office of member of the Council of Ministers and Secretary of State, also appears in public discourse. See: Petycja w sprawie zmiany art. 7 uchwały Sejmu Rzeczypospolitej Polskiej z dnia 30 lipca 1992 r. Regulamin Sejmu Rzeczypospolitej Polskiej (M.P. z 2022 r. poz. 990 ze zm.). Available from: [https://orka.sejm.gov.pl/petycje.nsf/nazwa/155-X-307-24/\\$file/155-X-307-24.pdf](https://orka.sejm.gov.pl/petycje.nsf/nazwa/155-X-307-24/$file/155-X-307-24.pdf)

⁴³ A. Jaworski reviews the literature, *op. cit.*, pp. 72–75. He presents a number of arguments in favour of amending Article 103(1) of the Constitution and departing from the exception contained therein. He points, *inter alia*, to the following: increasing the freedom of parliamentarians to act within the chambers; reducing the possibility of pressure on parliamentarians, thereby supporting the development of pluralism within governing groupings; strengthening the Sejm's oversight function in relation to the Council of Ministers; improving the performance of functions within the Council of Ministers and the manner in which appointments to government positions are made, since the need to choose one function would require greater deliberation; and improving the quality of the legislative process by reducing pressure from members of the government to accelerate parliamentary work, for example through "block votes" or by completing the parliamentary stage of the legislative process within only a few days, or even hours. The effect would be to improve the quality of legislation. It is worth adding that a prohibition on simultaneously holding a parliamentary mandate and other public functions was included in three draft amendments to the Constitution presented by the Ombudsman in 2009. *Biuletyn Informacji Publicznej RPO*, the Ombudsman presented drafts of the new Constitution of the Republic of Poland. Available from: <https://bip.brpo.gov.pl/pl/content/rzecznik-praw-obywatelskich-przedstawil-%C5%82-projekty-nowej-konstytucji-rzeczypospolitej-polskiej> (accessed: 23.06.2026).

consequences for the parliamentary mandate of appointment to the Council of Ministers or to the position of secretary of state (e.g., its termination or suspension).⁴⁴ Amending the Constitution is a complex and demanding process that requires broad political consensus.⁴⁵ Moreover, this issue is primarily discussed within legal doctrine and public discourse. The practice of recent years, however, suggests that for politicians – especially representatives of the ruling majority, regardless of political camp – any regulation different from the current one appears difficult to imagine. This is exemplified by the aforementioned amendment to the Act on the Council of Ministers in 2023.⁴⁶

Conclusions

The principle of incompatibility is one of the guarantees of the independent exercise of a parliamentary mandate. The exception allowing parliamentarians to serve as members of the Council of Ministers and as secretaries of state stems from the nature of the parliamentary-cabinet system adopted in the Polish Constitution of 1997. In practice, there is a political tendency to entrust parliamentarians with ministerial functions, which may lead to irregularities, particularly as became evident during the constitutional crisis that has been ongoing since 2015. This problem is recognised by constitutional-law scholars and commentators, and criticism of the regulations and practices is raised in public debate.

In light of these experiences, it seems appropriate to call for a change to the legal status quo aimed at repealing the exception to the principle of incompatibility established in Article 103(1) *in fine* of the Constitution. However, combining

⁴⁴ A. Jaworski points out that the expiry of a mandate could quickly become an effective tool of political struggle and of enforcing obedience among government members, owing to the risk of being removed from the government with no prospect of returning to the parliamentary bench. *Ibid.*, p. 76. A much more justifiable solution appears to be the suspension of the mandate and the introduction of a substitute mechanism, whereby a parliamentarian is replaced by a person standing for election from the same list and ranked next in terms of the number of votes received. The appropriateness of such a solution was already advocated during the work on the Constitution. *Jaka konstytucja? Analiza projektów Konstytucji RP zgłoszonych Komisji Konstytucyjnej Zgromadzenia Narodowego w 1993 roku*, ed. M. Kruk, Warszawa 1994, pp. 30 and 143.

⁴⁵ The Constitution is amended by an Act passed in identical wording by the Sejm and the Senate. Adoption of this Act by the Sejm requires a majority of at least two-thirds of the votes in the presence of at least half of the statutory number of deputies, and an absolute majority in the Senate in the presence of at least half of the statutory number of senators (Article 235(2) and (4) of the Constitution).

⁴⁶ Certain remedies to curb the current practice of combining these roles could include limiting remuneration or the parliamentary allowance. However, this would require an amendment to the Act of 9 May 1996 on the Exercise of the Mandate of a Deputy and Senator (consolidated text: *Journal of Laws* 2024, item 907), and, for the reasons discussed above, appears difficult to imagine in the current political reality.

a parliamentary mandate with government membership has a long-standing place in Polish political tradition. Therefore, the most acceptable solution from the perspective of Polish political practice appears to be the model adopted in some countries, which provides for the suspension of the mandate for the duration of government office and temporary replacement by the person who received the next highest number of votes in the election. In this way, parliamentarians would not lose their mandates but would have the opportunity to return to parliament after completing their period of government office.

However, it should be borne in mind that the provision governing this matter, as expressed in Article 103(1) *in fine* of the Constitution, is directly applicable. The Constitution does not provide for the possibility of departing from the exception contained therein by statute. The only permissible way to introduce changes is to amend the Constitution, which is inherently difficult and time-consuming. Despite the lack of willingness to change the law, it is worth proposing a change in political practice and a departure from the tendency to entrust parliamentarians with numerous positions as secretaries of state. It would therefore be optimal to return to the wording of Article 37(1) of the Act on the Council of Ministers prior to the 2023 amendment, which provided for the appointment of only one secretary of state in each ministry.

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