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The Principles of Regulating Attorney Incompatibility

Zasady regulowania niepołączalności (incompatibilitas) w zawodzie adwokata

ABSTRACT

Attorney incompatibility essentially excludes attorneys from engaging in other areas of the economy. The aim of this study is to define the principles that justify this restriction and to examine the legal rules governing the grounds for attorney incompatibility. To do this end, the author first defines the concept of attorney incompatibility and then distinguishes it from other legal institutions that restrict legal practice. Subsequently, he conducts a comprehensive analysis of the regulation of this legal institution in Hungary and Europe, its domestic historical development, as well as relevant constitutional case law and the practice of EU law. On this basis, the author attempts to systematize the principles that constitute the foundation of the regulatory framework. The study also serves as a starting point for examining the practical enforcement of these principles, in particular to determine the extent to which the various grounds of incompatibility are compatible with the competitive functioning of the legal profession and its role in the administration of justice in a market economy governed by the rule of law.

Keywords: attorney incompatibility; independence of attorneys; freedom of competition; dignity of the legal profession; competitiveness of attorneys

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INTRODUCTION

Apart from positions involving the exercise of public authority and professions entrusted with the performance of public functions, there are few occupations that entail as many legal restrictions, renunciations, and obstacles as the practice of law. Among these constraints, the issue of attorney incompatibilities stands out, the practical economic effect of which is to exclude lawyers (and other legal professionals) from engaging in other sectors of the economy.

What are the reasons, arguments, and principles derived from them that may justify such restrictions in a market economy? To what extent is the detailed, often almost casuistic regulation of grounds for incompatibilities, and particularly the exceptions to incompatibilities? What impact does the current regulatory framework on incompatibilities have on the development of this legal institution in Hungary and Europe, as well as on Hungarian constitutional law and the practice of EU law?

This study seeks to address these questions in order to identify the fundamental reasons and driving principles behind the regulation of attorney incompatibilities. Only by understanding these can we examine the actual practical implementation of these principles and answer the question of how compatible the various reasons for incompatibilities are with the competitive operation of the legal profession and its role in the justice system in a market economy governed by the rule of law.

MATERIAL AND METHODS

1. The concept of attorney incompatibilities

In this study (in accordance with the current provisions of Act LXXVIII of 2017 on Legal Practice; hereinafter: LPA), attorney incompatibilities are understood as a system of legal relationships and activities that absolutely preclude the practice of law.

Incompatibilities extend not only to lawyers but also to other entities engaged in legal or related professional activities.[1] However, this study does not address the specific incompatibility rules applicable to bar association legal advisors and legal researchers, as the underlying principles of these rules differ significantly. European Community lawyers and foreign legal advisors are subject to the same incompatibility rules as attorneys; accordingly, they are addressed separately only where the relevance of the foreign element so requires.

[1] The current regulations govern the legal practice of attorneys, European Community jurists, foreign legal counsels, bar association legal counsel, employed attorneys, employed European Community jurists, articled clerks, and legal clerks registered by the bar association.

In Hungarian law, incompatibilities exclude individuals from legal practice,[2] as the general rule is that legal practice cannot be pursued if an incompatibility exists. If an incompatibility is present, the applicant shall not be admitted to the bar association nor registered in the bar association's records.[3] If a lawyer does not eliminate the incompatibility despite being urged to do so, the bar association's presidency shall terminate their membership and remove them from the bar association's records.[4] Once an incompatibility arises, the practice of law is generally prohibited and may continue only in exceptional cases, solely to protect the client from obvious and direct harm that cannot be otherwise avoided, and only to the extent necessary and sufficient for this purpose.[5]

According to Hungarian regulations, an incompatibility is an absolute disqualifying factor for legal practice. Unlike some other disqualifying factors, an incompatibility cannot be waived by the client or any other entity. It is also an absolute disqualifier in the sense that its existence is independent of the clients, their interests, or their relationships with third parties. The legislator irrebuttably assumes that the existing legal relationship or ongoing activity is in conflict with the practice of law.

Incompatibilities are fundamentally based on engaging in activities outside the scope of legal practice or maintaining legal relationships related to such activities, which are typically associated with those activities.

The categories of incompatibilities – along with exceptions, sub-exceptions, general clauses, and similar mechanisms – constitute a system not only in the current law but also in previous Hungarian regulations. Specific incompatibility scenarios and exceptions are often interpretable only in relation to one another. Moreover, incompatibilities are closely related to other legal institutions with similar purposes or content, which are also necessary for a comprehensive understanding.

[2] Due to both space limitations and the ancillary nature of these issues, this study does not examine the systemic legal consequences of incompatibilities and the procedures for enforcing them. It proceeds on the assumption that incompatibilities are prohibited, and if violated, the legal practice of law cannot continue, and that there are procedures in place to enforce this. However, since comprehensive data on these procedures are not available, a thorough assessment of their effectiveness cannot be made. This, of course, does not preclude an analysis of available procedures and decisions on a case-by-case basis, nor the drawing of conclusions from them, which will also inform the present study.

[3] Under the current legislation, see Sections 58 (1) (i), 58 (2) (g), 60 (1) (f), 63 (d), 67 (1) (h), 67 (2) (g), 71 (1) (f), 75 (d), 80 (d), 83 (1) (d) LPA.

[4] Under the current legislation, see Section 149 (1) (c) LPA.

[5] Under the current legislation, see Sections 22 (1) (a) and 26 (3) LPA.

2. Distinguishing attorney incompatibilities of interest from other obstacles to legal practice

It is necessary to distinguish between cases of incompatibilities and other legal institutions that impede legal practice. This includes, in particular, differentiating conflicts of interest from other absolute impediments to legal practice – namely, other reasons that absolutely preclude the practice of law[6] – as well as from relative impediments to legal practice, such as limitations on accepting clients.[7]

Additional reasons that preclude the practice of law relate to the status of the person engaging in legal practice (or seeking to do so), such as being placed in custody of a conservator affecting their legal competency, being subject to supported decision-making, or issues related to their past conduct. These include criminal offenses they have committed, behavior warranting disciplinary exclusion or disqualification, and failure to pay debts owed to the bar association.

In contrast, client acceptance restrictions[8] impede the practice of law because, in a given situation, the lawyer would need to reconcile potentially conflicting interests, which may even be perceived as incompatible. Such restrictions are relative in the sense that the parties affected by the conflict of interest may typically grant exemptions from these limitations.

It is also necessary to distinguish between exceptions to incompatibilities and supplementary legal activities.[9] The latter are not only compatible with legal practice but, when performed by a attorney, may only be carried out within the framework of legal practice.

3. Sources for defining the principles of attorney incompatibilities

According to the explanatory memorandum of the LPA, "the incompatibility rules do not restrict lawyers in certain activities for their own sake". This statement is significant because it acknowledges that restrictions on lawyers' activities require justification, meaning the legislator does not enjoy unfettered discretion in determining such restrictions.

For this reason, it is necessary to examine, at a principled level, whether – and, if so, for what grounds – the scope of other activities that may be pursued alongside legal practice may be restricted, and to identify the principles that, in theory, underpin the grounds for incompatibilities.

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6 Under the current legislation, see Section 22 LPA.
7 Under the current legislation, see Chapter III LPA.
8 Under the current legislation, see Section 20 LPA.
9 Under the current legislation, see Section 3 LPA.

The regulation of incompatibilities for lawyers in the LPA is closely connected to previous Hungarian regulations, the practice of the Hungarian Constitutional Court, European regulations, and EU legal practice, both at the level of principles and specific regulatory solutions. Due to the scope of the subject, the Hungarian regulation is analyzed in detail in a separate study from a historical perspective.[10]

RESEARCH

1. CCBE regulation

The Code of Conduct for European Lawyers, adopted by the Council of Bars and Law Societies of Europe (CCBE) at its Plenary Session in 1988, regulates activities incompatible with the practice of law in Section 2.5. Under Section 2.5.1, the Code identifies two legitimate objectives or principles underlying the grounds for incompatibilities, while leaving the determination of specific incompatibilities to individual Member States:

a) independence of lawyers (to ensure that a lawyer can perform his duties with adequate independence), and
b) respect for the rule of law and fair administration of justice (to ensure that a lawyer acts in accordance with his obligation to participate in the administration of justice).

Sections 2.5.2 and 2.5.3 of the Code extend the incompatibility rules of the host state to lawyers who wish to provide legal services in that host Member State.

The Charter of Core Principles of the European Legal Profession (neither its explanatory memorandum), adopted by the CCBE in 2006 and intended to be mandatory in the context of cross-border legal activities, does not contain explicit statements regarding attorney incompatibilities. However, it establishes and explains the principles underlying the regulation of incompatibilities, in particular the principle of the independence of the legal profession.

2. European research findings

In 2015, the Research and Documentation Directorate of the Court of Justice of the European Union conducted a study[11] examining occupations, roles, and

[10] *The Development of the Domestic Regulation of Lawyers' Incompatibilities*. Manuscript, forthcoming.

[11] Research and Documentation Directorate of the Court of Justice of the European Union, *Research Note: Scope of the Requirement of Independence of Lawyer*, June 2015, https://curia.europa.eu/site/upload/docs/application/pdf/2024-04/ndr_scope_of_the_requirement_of_independence_of_lawyers_en.pdf (access: 25.5.2026).

activities incompatible with legal practice across 12 European countries.[12] This study investigated (absolute) incompatibilities as defined in the present study,[13] as well as rules aimed at avoiding situations where a professional mandate entrusted to a lawyer conflicts with their own interests, thereby compromising the lawyer's independence[14] (which in Hungary are issues addressed under relative client acceptance restrictions).

The report on the study clearly derives the justification for restricting the practice of law in both cases from the requirement of lawyer independence.[15] It points out that some of the examined countries define the activities that lawyers cannot engage in through a casuistic, exhaustive list, while in other countries, a general clause stipulates that the legal profession cannot be reconciled with activities that might undermine the independence of the lawyer or the dignity of the legal profession.[16] This indicates that, in the affected countries, alongside the principle of lawyer independence, the dignity of the legal profession and the principle of public trust in the legal profession also serve as bases for incompatibilities.

The report on the study categorises activities related to incompatibilities with the legal profession into several groups and typifies the solutions applied concerning incompatibilities (where multiple solutions may appear in a given country):

1. Employment activities, which (a) are completely excluded in some of the examined countries, (b) are only permitted in specific job positions in other examined countries, (c) can be carried out with restrictions in yet other examined countries, (d) are generally not restricted in most of the examined countries.[17]
2. Business and other activities based on civil law, which (a) are fully or conditionally excluded in some of the examined countries, (b) are generally not restricted in most of the examined countries.[18]
3. Public service and political positions, which in some of the examined countries (a) are essentially fully excluded, (b) are excluded, but with legally based exceptions, (c) are excluded if they are not compatible with lawyer independence, (d) are permissible with public authority permission.[19]

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[12] Austria, Germany, Denmark, Spain, France, Italy, Ireland, Latvia, the Netherlands, Poland, Portugal, and the United Kingdom.

[13] Research and Documentation Directorate of the Court of Justice of the European Union, *op. cit.*, p. 5.

[14] *Ibidem*, p. 6.

[15] *Ibidem*, p. 5.

[16] *Ibidem*.

[17] *Ibidem*, pp. 8–9.

[18] *Ibidem*, p. 10.

[19] *Ibidem*, pp. 10–11.

4. Education and teaching, which is generally an exception to incompatibilities in most of the examined countries. The main difference lies in whether teaching is permitted alongside practicing law at the university level or below.[20]
5. Commercial and executive positions, which in some of the examined countries (a) are under a complete ban, (b) are prohibited only for certain companies or specific commercial activities.[21]

The study concludes that, from the perspective of our topic, the regulations in the examined countries align with the principle of independence defined in the Charter of Core Principles of the European Legal Profession.[22]

The research also points out from the perspective of this study that, on the one hand, the basis for incompatibilities can be not only the protection of lawyer independence but also the dignity of the legal profession, meaning public trust in the legal profession. On the other hand, it indicates that, based on the principle of lawyer independence, different European countries have arrived at not only fundamentally different regulatory solutions (such as taxation, general clauses, complete bans with exceptions, etc.), but also, with perhaps the exception of the exercise of public authority, at significantly varying degrees of restriction on legal practice. This also implies that neither the principle of lawyer independence nor the principle of public trust in the legal profession alone can provide a clear derivation of the reasons for incompatibilities. Instead, it is necessary to examine how specific reasons for incompatibilities contribute to the realization of the relevant principle and whether they are in conflict with other principles, particularly the requirement for free competition. As will be shown in the following section, this essentially aligns with the practice established by the Hungarian Constitutional Court.

Unfortunately, the research report does not provide a substantive examination of these issues, nor does it offer a thorough justification as to why the examined regulations are consistent with the principle of independence.

3. EU regulations and case law

The issue of incompatibility rules was examined from a competition law perspective by the Court of Justice of the European Union (CJEU) in the *Wouters* case.[23] Among other things, the Court considered whether a national bar association (or an equivalent organization) could prohibit lawyers and law firms from participating in such close associations with auditors that result in an integrated operation.

[20] *Ibidem*, pp. 11–12.
[21] *Ibidem*, pp. 13–14.
[22] *Ibidem*, p. 27.
[23] Judgment of the CJEU of 19 February 2002, case C-309/99, *J.C.J. Wouters, J.W. Savelbergh, and Price Waterhouse Belastingadviseurs BV v. Algemene Raad van de Nederlandse Orde van Advocaten*, ECLI:EU:C:2002:98.

The CJEU found that, from a competition law perspective, the bar association is considered to be a business association, and its regulations are considered decisions made by such business associations.[24] The Court also determined that the regulation has a restrictive effect on competition within the internal market and can affect trade between Member States. This is because the expertise of lawyers and auditors can be complementary, potentially allowing for a broader range of services to be offered and innovations to be introduced. Consequently, clients might benefit from a "one-stop shop" for most of the services needed to organize, manage, and operate their businesses, and economies of scale could help reduce service costs.[25] In this regard, the CJEU's position differs somewhat from the Hungarian Constitutional Court's earlier stance, which stated that the freedom of economic competition is to be understood in comparison between lawyers and any other economic operators, and only within the context of relationships between lawyers themselves.[26]

In contrast, the CJEU accepted that integrated cooperation between the necessarily decentralized legal profession and the significantly "entangled" auditing profession could indeed restrict competition within the legal market. However, the Court found that it would not be necessary to impose a complete ban on such cooperation. More precisely, less restrictive measures could be available and would be proportionate, meaning that a total prohibition might not be justified or proportional in itself.[27]

The CJEU also found that legal practice entails an obligation to protect the client's interests independently and exclusively, to avoid any potential incompatibilities, and to maintain confidentiality.[28] In contrast, the auditing profession is not subject to such requirements; indeed, it is responsible for the accounting of financial results arising from transactions also involving legal practice and for certifying these results to the public.[29]

The CJEU concluded that the restriction is necessary for the proper practice of legal services and, as such, does not violate Article 81 (1) of the Treaty establishing the European Community.[30] The restriction ensures the necessary guarantees of integrity and experience for the ultimate consumers of legal services (i.e., clients) and the proper administration of justice, and it is intrinsically linked to achieving these objectives.[31]

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[24] *Ibidem*, para. 71.
[25] *Ibidem*, paras 87–89.
[26] Decision of the Constitutional Court No. 374/B/1998.
[27] Judgment of the CJEU of 19 February 2002, case C-309/99, paras 93–94.
[28] *Ibidem*, para. 100.
[29] *Ibidem*, paras 103–105.
[30] Today, Article 101 (1) of the Treaty on the Functioning of the European Union.
[31] Judgment of the CJEU of 19 February 2002, case C-309/99, paras 97, 110.

When analyzing a chamber decision as an agreement between businesses, A. Pünkösty summarized that "it is necessary to consider the objectives related to rules on organization, qualifications, professional ethics, supervision, and responsibility in order to ensure professional integrity and experience for the ultimate users of professional services and for a specific public interest goal. Subsequently, it must be evaluated whether the competition-restricting consequences are essential for achieving these objectives, i.e., whether they are necessary to ensure that the profession is practiced properly within the introduced system in the member state. Additionally, the competition-restricting effects must not exceed the extent necessary to ensure the proper practice of the profession (proportionality criterion)".[32]

From the *Wouters* case, it can be generally inferred that:

1. Rules of incompatibilities (and other restrictions) may be suitable for limiting competition.
2. Incompatibility rules – especially when they limit activities with a high degree of integration – may also be used to prevent distortion in the legal services market. However, it must be examined whether the same goal can be achieved with less restrictive measures.
3. The introduction of competition-distorting incompatibility rules can be justified if necessary for the proper practice of legal activities, particularly to protect clients and ensure careful justice, including the protection of attorney-client confidentiality.
4. Accordingly, any competition restriction must be necessary and proportionate to the intended goal.
5. The prohibition of competition restrictions also extends to chamber regulations that might define incompatibility rules, meaning these regulations must also comply with the above requirements, as such regulations are considered decisions on business associations from a competition law perspective.

The question is whether, with Hungary's accession to the European Union, EU competition rules establish prohibitions or obligations for Hungarian legislators (particularly concerning cross-border services provided by European and Hungarian lawyers). In contrast, practice and literature generally assert that under EU competition rules, distortions or restrictions of competition arising from national regulations are not, in themselves and generally, prohibited. EU competition law only specifies particular prohibitions.[33] The principle of *effet utile* (the effectiveness of EU law) cannot be interpreted in such a way that national law would be

[32] A. Pünkösty, *A szakmai kamarák tevékenységének megítélése a közösségi és a magyar versenyjogban*, 2006, https://docplayer.hu/44476153-Punkosty-andras-a-szakmai-kamarak-tevekenysegenek-megitelese-a-kozossegi-es-a-magyar-versenyjogban.html (access: 25.5.2026).

[33] C.I. Nagy, *A tagállami árszabályozás keretei az Európai Unió jogában, különös tekintettel a liberalizált piacokra*, "Verseny és szabályozás" 2013, vol. 1, pp. 121–144.

challenged merely due to its potential or actual restriction of competition. This is because any state measure regulating an element of market processes will have some impact on competition. In other words, national legislation that generally influences competition is not, by itself, contrary to EU law. National law only conflicts with EU law if it involves measures that specifically contravene the antitrust rules and render these rules ineffective.[34]

Regarding the incompatibility reasons, these clearly do not arise. However, it must also be noted that the absence of a conflict with EU law does not imply that incompatibility rules do not impact competition in the legal market or that they do not create competitive disadvantages specifically for Hungarian lawyers and their clients. Additionally, unlike national laws, the above conditions are fully applicable to bar regulations.

4. The practice of the Hungarian Constitutional Court

The practice of the Hungarian Constitutional Court (hereinafter: the Constitutional Court) is consistent with the cited reasoning of the LPA, which states that "the rules on incompatibilities do not limit lawyers in certain activities arbitrarily". The Court established early on that restrictions on activities that can be conducted alongside legal practice affect the fundamental right to work (occupation, business).

The constitutionality of these restrictions, however, must be assessed based on different standards depending on whether the state restricts (a) the practice of a profession or (b) the free choice of profession. Within this framework, the assessment also varies depending on whether the restriction pertains to (ba) subjective or (bb) objective limitations on entry into the profession. The constitutionality of an absolute exclusion from a profession, which is entirely independent of the person's characteristics, must be examined with the utmost rigor, focusing primarily on its necessity and inevitability. This means assessing whether the restriction – in this case, the incompatibility – truly represents the least restrictive means to achieve the intended goal. In contrast, when defining subjective limitations, the constitutional standard is more lenient, and the restriction is considered constitutional if it is justified from a professional and practical standpoint.[35]

Incompatibility rules for lawyers do not prohibit a natural person from engaging in any activity; rather, they limit the practice of law by requiring a person to choose which activity they wish to pursue. Accordingly, the constitutional requirement for incompatibility rules, as subjective limitations, is that they must be justified from a professional and practical standpoint.

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[34] T. Tóth, *Uniós és magyar versenyjog*, Budapest 2020.

[35] Decision of the Constitutional Court No. 22/1994 (IV.16). See also decisions of the Constitutional Court No. 52/1996 (XI.14) and 428/B/1998.

It is important to note that the Constitutional Court has frequently addressed whether restrictions that distort free competition are constitutional. In a case concerning lawyers' fees, the Court established that the independence of lawyers is manifested in their ability to operate fundamentally as independent businesses, organizing their activities freely. In doing so, they make decisions in accordance with the requirements of free competition and adjust their fees in response to market conditions. However, this competition is only applicable within the specific constraints imposed by the nature of the legal profession and its unique responsibilities.[36]

In another decision, the Constitutional Court – citing the reasons related to incompatibilities – stated that due to the very nature of the legal profession, the law imposes requirements that cannot be applied to economic entrepreneurs. One such requirement is that a lawyer must be free and independent in their practice, must not undertake any obligations that could endanger their professional independence, and must always exhibit conduct worthy of the legal profession while practicing. According to the Court, this implies that for the legal profession – due to its unique characteristics – the freedom of economic competition is not understood in a comparative sense between lawyers and other economic entrepreneurs, but rather in the context of the relationships between lawyers themselves, and is primarily realized through the enforcement and protection of constitutional rights.[37]

The Constitutional Court's cautious approach aligns with its consistent practice based on Article 9 of the previous Constitution (hereinafter: the Constitution).[38] According to this practice, the freedom of economic competition was not a fundamental right, but rather a condition for the functioning of a market economy, which the state was responsible for ensuring. However, free competition did not have a distinct constitutional standard.[39] A.Gy. Kovács compared the Constitutional Court's practice on market economy and freedom of competition, based on both the Constitution and the subsequently enacted Fundamental Law of Hungary.

Kovács summarized the practice based on the Constitution as follows:

- although not independent, it provided normative content to the concept of a market economy;
- it did not endorse a specific model of the market economy;
- it viewed the market economy not as a fundamental right or even a constitutional right, but as a state objective;
- it considered violations of the market economy as unconstitutional only in extreme cases, specifically when the regulation aimed at its complete abolition;

[36] Decision of the Constitutional Court No. 907/B/2004.

[37] Decision of the Constitutional Court No. 374/B/1998.

[38] Act XX of 1949 on the Constitution of the Republic of Hungary.

[39] Decision of the Constitutional Court No. 22/1994 (IV.16). See also decision of the Constitutional Court No. 52/1996 (XI.14).

– intervention in economic competition needed to either serve the interests of competition or at least require constitutional justification.[40]

The Fundamental Law of Hungary introduced the concepts of value-creating work, the freedom of enterprise, and fair economic competition,[41] instead of the market economy and economic competition.[42] A significant difference is that, unlike the Constitution, the Fundamental Law does not present the state's role in this area as a "negative obligation of tolerance", but rather as an obligation to ensure fair competition.[43] In line with this, the Constitutional Court's practice, in the limited scope where it has left open the possibility of finding unconstitutionality based on Article M (2) of the Fundamental Law of Hungary, would occur not due to state intervention in competition, but precisely due to its absence.[44]

From the perspective of our topic, it follows that in the context of the legal services market, it is unlikely that the Constitutional Court would invalidate regulations that restrict competition. On the contrary – if we extend Kovács's argument[45] – it is possible that the Fundamental Law of Hungary might be examined in terms of whether the potential rollback of incompatibility rules, introduced to protect legal competition, could be considered unconstitutional. This would be particularly relevant in light of the continuous expansion of exceptions to incompatibility rules.

5. Domestic regulations

The domestic regulation of lawyers' conflicts of interest – from the point of view of the basic principles of the regulation of lawyers' activities – shows a clearly demonstrable development curve. In the beginning, the goal was specifically to separate judicial positions, i.e. to ensure the independence of lawyers in the narrow sense.[46] From the middle of the 17th century, ensuring the independence of lawyers from the public authorities appeared as a clear goal, i.e. the independence of lawyers in a broader sense.[47] From the 19th century – with the help of a general clause – this was supplemented with a number of other principles, such as the primacy of the

[40] A.Gy. Kovács, *Piacgazdaság, gazdaságszabályozás és az Alaptörvény*, "Közjogi Szemle" 2017, no. 4, pp. 27–28.

[41] Article M (1) and (2) of the Fundamental Law of Hungary.

[42] Sections 9 (1) and (2) of the Constitution of the Republic of Hungary.

[43] A.Gy. Kovács, *op. cit.*, p. 29.

[44] *Ibidem*, p. 30.

[45] "Moreover, Article M of the Fundamental Law allows for the formulation of principles regarding state interventions. If the Constitutional Court exercises this provision, it will bind the hands of the government in office and impose constitutional limits on reverting from interventions that have already taken place" (*ibidem*, p. 33).

[46] Notary – Act III of 1405; judge – Act XIV of 1471; royal or palatial person – Tripartitum opus iuris consuetudinarii inclyti regni Hungariae, 1517.

[47] Parliamentary envoy – Act XLIV of 1649; meeting of the orders – Act LXI of 1655.

client's interests (client protection), the prevention of the lawyer's dependency situation, trust in the lawyer, public trust in the legal profession, and the authority of the legal profession.[48] Then, with minor and major detours, the regulation moved in the direction of a complete ban on other gainful occupations, i.e., treating lawyering as a profession excluding all others, which was completed after the Second World War.[49] After the change of regime, in addition to leaving the regulation on the basis of these principles intact, the range of exceptions to conflict of interest, regulated more and more on a case-by-case basis, was continuously expanded.[50]

Despite the above, the freedom of economic competition and fair competition, or its precursors, have frequently emerged or are emerging in the context of domestic regulation of legal activities. The Act XXXIV of 1574 partially exempted lawyers from the oath introduced by the Act XXVII of 1567, primarily because the oath was not effectively enforced ("its usefulness was limited"), partly because lawyers who had taken the oath were becoming too expensive ("demanding excessive fees for their services"), and it was also because some lawyers intentionally obstructed access to legal services for certain litigants ("at times secretly conspiring against some litigants to prevent them from hiring a lawyer"). In other words, the suspension of the oath can be interpreted as an attempt to liberalize a segment of the legal services market, addressing issues arising from restrictions on free competition and unfair legal practices by reintroducing liberalization in that same market.

In 1694, the Statutum per Advocatos Causarum, seu Procuratores Regni Observandum (hereinafter: the Statute)[51] reintroduced the mandatory lawyer's oath, without which no advocate could appear as a representative before the country's courts. This oath certificate – serving as a precursor to the lawyer's identification – had to be presented to the court each time. Therefore, according to the Statute, the scope of those eligible to perform legal representation was theoretically narrowed, as only those who took the oath could practice law. However, in practice, virtually anyone could engage in legal advocacy as long as they took the oath, with no other prerequisites required.[52]

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[48] Sections 3 and 4 of the Advokaten-Ordnung of 1852; Section 10 of the Act XXXIV of 1874 on the Lawyer's Code of Conduct; Section 66 of the Act IV of 1937 on the Lawyer's Code of Conduct.

[49] Section 5 of the Legislative Decree No. 12 of 1958 on the practice of the legal profession and organizations of lawyers; Section 3 of the Legislative Decree No. 4 of 1983 on the legal profession.

[50] Section 63 of the Act XXIII of 1991 on the Legal Profession; Section 6 of the Act XI of 1998 on the Attorneys; Sections 23–26 LPA.

[51] Since the original Hungarian text of the Statute could not be located, the analysis presented herein relies on the studies of Krisztina Korsósné Delacasse and János Zlinszky. See K. Korsósné Delacasse, *Az ügyvédi autonómiák létrejötte és működésük megkezdése Magyarországon a polgári korszakban*, Pécs 2009 (PhD thesis), pp. 10–11; J. Zlinszky, *Az ügyvédség kialakulása Magyarországon és története Fejér megyében*, [in:] *A XII táblától a 12 ponton át a magánjog új törvényéig Fejér Megyei Ny.*, Székesfehérvár 1976, pp. 42–44.

[52] K. Korsósné Delacasse, *op. cit.*, p. 11.

Free competition (with varying content) continued to be a recurring justification in the regulation of legal practice: particularly as an argument for free choice of lawyers and clients, for fee agreements, and against the limitation on the number of lawyers. This was emphasized to the extent that the justification of an Act of 1874 on Legal Practice established as a fundamental principle that "anyone who possesses the necessary qualifications should be able to practice as a lawyer freely, and complete free competition should be ensured in this regard".

The justification of the LPA explicitly contrasts incompatibility rules with free competition and the derived right to freely choose one's lawyer. According to the justification, the LPA "establishes the right to freely choose one's lawyer as a fundamental principle. Under this right, clients have the freedom to choose their lawyer in the context of a legal mandate agreement, and likewise, the lawyer can freely decide whether to accept the mandate and under what conditions. This principle serves the interests of clients on the one hand and creates the freedom of economic competition among lawyers on the other. Incompatibilities rules can be considered a limitation to the right of free choice of lawyer". Of course, this does not mean that the principle of free competition overrides other principles governing legal practice, but it does suggest that provisions limiting competition, including incompatibility rules, must serve another fundamental objective that can be reconciled with this principle. This standard is not significantly different from the aforementioned constitutional standards, meaning that incompatibility rules must be justified from a professional and practical standpoint.

According to the explanatory memorandum of the LPA, restrictions on activities that can be pursued alongside legal practice were imposed when and only if such restrictions were essential to maintain the independence necessary for their legal practice. In line with this, the justification states that the aim of the incompatibility rules for lawyers is to "ensure the lawyer's independent and impartial conduct while performing legal duties, which is a matter of public interest because the lawyer plays an important professional role in the administration of justice and the protection of constitutional and legal rights".[53]

According to the *Great Handbook for Lawyers*, "the purpose of the prohibitions related to incompatibilities is to ensure that individuals holding certain official positions or practicing specific professions engage in impartial and unbiased activities, maintain the dignity of their position or profession, avoid potential incompatibilities, and prevent the misuse of personal interests".[54]

The commentary on the LPA further elaborates by noting that "the fundamental principles for defining situations in incompatibilities with the legal profession – such as avoiding conflicts of interest, ensuring the impartiality of legal activities,

[53] Explanatory memorandum for Sections 23–24 LPA.

[54] D. Kiss, Z. Csehi, *Az ügyvédek nagy kézikönyve*, Budapest 2010, p. 42.

and excluding the accumulation of underlying financial responsibilities – have not changed with the LPA".[55]

The commentary also explains – referring the Constitutional Court Decision no. 22/1994 – that the rationale behind rules of incompatibilities for lawyers may include the notion that "classical legal practice assumes a professional activity that requires conscientious personal availability to clients, and is to be practiced as a primary occupation".[56]

This practical approach – that legal practice is generally to be pursued as a full--time occupation requiring primary commitment – is also linked, within its own logical framework, to a fundamental principle in legal scholarship, specifically the primacy of client interests. R. Minkó further explains that a guarantee of the rule of law and legal certainty, partially ensured by the legal profession, is that "the lawyer must be accessible to their clients and should not overextend themselves with other activities". However, she acknowledges that the logic of preventing hypothetical conflicts with obligations arising from other activities can be somewhat paternalistic.[57]

CONCLUSIONS: PRINCIPLES UNDERLYING INCOMPATIBILITY REASONS

In summary, the principles underlying the current incompatibility reasons related to legal practice, as drawn from domestic legal development, European Union institutions' documents, and the justifications and commentaries of the applicable regulations, are as follows:

1. The principle of legal independence, which includes: primarily, the separation of judicial positions; secondly, ensuring lawyers' independence from public authority; and thirdly, ensuring freedom from all other dependency situations.
2. The principle of public trust in the legal profession, which involves protecting the dignity of the legal profession beyond just the independence of lawyers.
3. The principle of the primacy of client interests, particularly emphasizing the nature of the legal profession as a full-time occupation that demands complete commitment.
4. In contrast to the above, the freedom of competition.

[55] R. Minkó, [in:] *Nagykommentár az ügyvédi törvényhez*, eds. J. Bánáti, B. Baranyi, Budapest 2021, p. 133.

[56] *Ibidem*, p. 134. It should be noted, however, that the referenced Constitutional Court decision does not include such a reference.

[57] See R. Minkó, K. György, *Ügyvédi összeférhetetlenség elméletben és gyakorlatban*, 2023, https://www.kozigkedd.hu/kozigkedd11 (access: 1.6.2026).

A further question to examine remains how these potential fundamental principles of incompatibility rules for legal practice are applied in practice. To address this, it is necessary to conduct a comprehensive analysis of the regulations, their application in practice, and the day-to-day operations of legal practice, specifically examining each incompatibility reason and its exceptions.

This approach will provide a true picture of how the institution of incompatibility regulation serves the enforcement of well-developed principles, and to what extent it operates unnecessarily, thereby hindering the competitiveness of both lawyers and the national economy.

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ABSTRAKT

Niepołączalność w zawodzie adwokata w istocie wyklucza adwokatów z podejmowania działalności w innych obszarach gospodarki. Celem opracowania jest określenie zasad uzasadniających to ograniczenie oraz regulujących przesłanki niepołączalności adwokackiej. W tym celu autor definiuje najpierw samo pojęcie niepołączalności, a następnie odróżnia ją od innych instytucji prawnych ograniczających wykonywanie zawodu prawniczego. Kolejno przeprowadza kompleksową analizę regulacji tej instytucji na Węgrzech i w Europie, a także jej krajowej historii oraz orzecznictwa konstytucyjnego i praktyki prawa unijnego. Na tej podstawie podejmuje próbę usystematyzowania zasad stanowiących fundament omawianej regulacji. Opracowanie stanowi zarazem punkt wyjścia do zbadania praktycznego stosowania tych zasad, w szczególności zaś do udzielenia odpowiedzi na pytanie, w jakim stopniu poszczególne przesłanki niepołączalności są zgodne z konkurencyjnym funkcjonowaniem zawodu adwokata oraz jego rolą w wymiarze sprawiedliwości w gospodarce rynkowej opartej na zasadzie państwa prawa.

Słowa kluczowe: niepołączalność w zawodzie adwokata; niezależność adwokatów; wolność konkurencji; godność zawodu adwokackiego; konkurencyjność adwokatów