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Institutional Reform of the Croatian Local Government: From Cabinets to Directly Elected Mayors and County Governors

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Summary

In this article the new Croatian model of 'local presidential' system is defined in its most important aspects concerning the electoral model, the position, the powers, the relationship with the local council, and the accountability of directly elected heads of municipalities, mayors and county governors. However, some aspects of the new system, e.g. the powers of the directly elected local executive, are still not defined, and some changes in the electoral system have already been adopted before its actual implementation. What could be preliminarily stated is that the Croatian model is a very specific model with certain features resembling other contemporary systems of 'local presidentialism' in Europe, but also with some peculiarities similar to the American model (particularly the model of electing mayor and deputy mayor on the same ticket), which point to the conclusion that the Croatian model is a new variant of the 'local presidential' system.

Keywords: local government, Croatia, direct election of mayors

Introduction

In a number of European countries, significant reforms of the institutional framework of their local self-government units occurred in the last 15 years (Loughlin, 2001; Berg and Rao, 2005), the most important of them being the introduction of the direct election of mayors in local government. That much is admitted in the

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Resolution 139 of the Congress of Local and Regional Authorities of Europe, which says that the “direct election of mayors by the people is a procedure increasingly used in Council of Europe member states to appoint the head of the executive” (CLRAE, 2002b).¹ In another report it is stated that, “on balance, there would seem to be a decided and indeed growing preference for more direct election” of the local executive in the Council of Europe countries (CLRAE, 2004). Almost all countries in Croatia’s neighbourhood have adopted one or the other model of the ‘local presidential’ system at the local and even regional level.

With two laws enacted in October 2007 – the Law on Elections of Municipality Heads, Mayors, County Governors and the Mayor of the City of Zagreb, and the Law Amending the Law on Local and Regional Self-Government – this system has been introduced also in Croatia, specifying the abolition of cabinets, as collective executive bodies elected by the local council, and the introduction of the directly elected local executive instead. It was, as was admitted by the Croatian Government, the most fundamental change of the local government system in Croatia since its introduction in the years 1992-1993. The new system was implemented in 2009 with the regular local government elections.

In this paper we shall analyze the legal solutions introduced in the Croatian local government system with the acceptance of the direct election of the local executive. We shall also compare the new Croatian model of the ‘local presidential’ system with similar models in different European countries. Our analyses will show that the Croatian model is a very specific one with some similarities with the existing models in Europe, but its peculiarities induce us to conclude that this model is a new variant of the ‘local presidential’ system in Europe.

Before we start with our analyses, some terminological remarks are required. Although there are difficulties in describing local government systems in terms borrowed from constitutional law, this is largely due to local authorities’ being traditionally regarded as administrative, not political entities, as stated in the *Report on relations between the public, the local assembly and the executive in local democracy* prepared by Professor Philippe De Bruycker on behalf of the Chamber of Local and Regional Authorities of the Council of Europe (CLRAE, 2002a). For a

¹ This trend is present not only in the Western European countries (Germany, Austria, Italy, Spain, even Great Britain), but even more in former communist countries. Direct elections of mayors were introduced in the early 1990s in Slovakia, Bulgaria, Romania, Slovenia, Albania and Ukraine, in 1994 in Hungary, in 1995 in FYR Macedonia, and in 2002 in Poland. However, in the three Baltic States (Latvia, Lithuania, and Estonia), as well as in the Czech Republic and Croatia, the local executive is still elected by the council. For a comparative analysis of the institutional design of local government systems in the countries of former Yugoslavia see Koprić, 2009.

long time, the dominant view on the matter was that the Charter defines local self-government as a right exercised on behalf of local communities by officials elected by the population to perform a role which, in their absence, would fall to public servants appointed by the central government, and so there would appear to be no good reason to regard them as administrative rather than political entities. De Bruycker's Report treats local democracy in constitutional terms, aiming "to identify the different types of local democracy and to gain a better grasp of the significance of the reforms which many Council of Europe member countries are carrying through". The central question of the Report is the local executive organs' responsibility to the assembly; the concept involved is basically rooted in constitutional law, and it is related to the distinction between parliamentary and presidential systems. So, even if we speak of local government systems, we can use categories of constitutional law and comparative political systems.² As said by Bennett, constitutionalism, meaning a strong manifestation of the division of powers and formal electoral representation across all levels of local government, is one of the aspects of common inheritance of Europe's local governments (Bennett, 1993: 3). This corresponds with the opinions of Croatian constitutional lawyers and political scientists.

Describing the original organization of the Croatian system of local government, Smiljko Sokol and Josip Kregar stated in 1993 that "against the background of the old assembly-presidential system, the Law on Self-Government and Administration accepts... basically the parliamentary system of interior organization of units of local self-government and administration" (Sokol and Kregar, 1993: 49). The former minister of justice and law professor Stjepan Ivanišević stated in 2001 that with the direct election of the local executive, "the postulates according to which the presidential system functions" would be accepted (IHS, 2001: 3-4). Commenting the Law on Local and Regional Self-Government, constitutional lawyer Branko Smerdel argued that, in the matter of organization of local government units, the Croatian lawgiver accepted a "local variant of the parliamentary system" with a collegial executive, while with the direct election of mayors, elements of the "presidential system, in which the mayor is not politically responsible to the representative body of the local unit", would be introduced in the system of local government (Smerdel and Sokol, 2006: 404-405).

Dealing with the local electoral law in Croatia, Mirjana Kasapović also emphasized that communal political science analyses local politics more and more with the help of categories usually applied in the analyses of national politics. As local communities are based on democratic principles of their organization, on the

² For different typologies of local government systems see Heinelt and Hlepas (2006), Bäck (2005), Humbleton (1998) and Wollmann (2008).

participation of citizens, political competition, and duality of government and opposition, it is possible to speak about the 'parliamentarisation' of local politics. This 'parliamentarisation' is explained by the fact that local representative bodies are democratically legitimised by the elections, because they are functioning as holders of public authority and because they elect and control the local executive (Kasapović, 2004a: 66). With the direct elections of the local executive in Croatia, it is her opinion that local parliamentarism will be replaced by local presidentialism (Kasapović, 2004b).

Let me start with De Bruycker's definition of the parliamentary and presidential systems, with emphasis on the local government system:

In the parliamentary system, the executive is responsible to the assembly and dismissible by it on conditions and with arrangements which vary. In the presidential system, on the other hand, the executive is unmistakably and organically independent of the assembly and answerable to it in far fewer cases, and the procedure involved comes under criminal law rather than the political sphere. A further difference, in theory, between parliamentary and presidential systems is that in the latter the assembly is dismissible by the executive, but not in parliamentary ones. The factors which the experts used in the national reports to differentiate between the two forms of local democracy tend, however, to relate to the method of appointing the executive. The method is regarded as, on the whole, of a parliamentary nature if the executive is elected by the assembly, and of an, on the whole, presidential nature if the executive, like the assembly, is directly elected by the people. (CLRAE, 2002a, para. 30)

For the purpose of this paper I shall define as 'local presidential' the system which fulfils the following two conditions:

1. the head of the local executive is elected directly by the voters, not by the local council
2. the head of the local executive cannot be dismissed by the local council, and he or she cannot dissolve the local representative body.

The Characteristics of Croatian Local Government

Before entering our subject, I shall give a short introduction to the Croatian local government system (for a comprehensive review see Koprić, 2003). The major laws that provide for Croatian local self-government were enacted in 1992, and on the basis of this legislation the first local elections for local representative bodies were held in February 1993. The territorial organization of local self-government in Croatia is structured on two levels. The first level comprises municipalities and cities. Municipalities (*općina* in Croatian) are mostly small (averaging about 3.000

inhabitants), established in rural areas, and comprising several settlements that represent a natural, economic and social whole and that are connected by their inhabitants' common interests. Cities (*grad*) are local government units established in urban areas. There are certain conditions established in law which must be fulfilled so that a municipality could be granted the status of city. First of all, the city status is granted to all county seats, regardless of their size. The second condition is the number of inhabitants: all settlements with more than ten thousand inhabitants are recognized as cities. However, the law allows the possibility of recognition as a city for a municipality with less than 10.000 inhabitants, if there are some special reasons (historical, economic, geographical, etc.). Due to this possibility, Croatia now has more than 120 cities (although no more than 38 settlements with more than 10.000 inhabitants), and more than 420 municipalities.

According to the law, local self-government units (municipalities and cities) perform tasks of local significance, particularly the tasks of urban design of settlements and dwelling, zoning and urban planning, communal activities, child care, social welfare, primary health care, primary education, culture, physical culture and sports, consumers' protection, protection and improvement of the natural environment, fire and civil defence, and traffic in its area. The special category of 'great cities' (with more than 35.000 inhabitants and the seats of counties), established by law in 2005, has a greater scope of activities (it includes maintaining public roads and issuing building permits and other documents related to building and urban planning).

The counties (*županija*) are second-level units. The law defines a county as unit of regional self-government, the area of which represents a natural, historical, traffic, economic, social and self-governing whole, organised in order to perform tasks of regional interest. From the beginning of Croatian regional self-government there have been 20 counties. The counties perform, within their self-governing scope of activities, tasks of regional significance, particularly the tasks related to primary and secondary education, health care system, zoning and urban planning, economic development, maintaining public roads, planning and developing the network of educational, health, social and cultural institutions, etc.

The City of Zagreb, as the Croatian capital, has a special status – it has at the same time the position of city and county.

In the 1992 Law on the Local Self-Government and Administration Croatia adopted a dualistic local government with the local council, as a representative body of citizens, and the local executive cabinet (*poglavarstvo*) elected by the council, and this 'local parliamentary' system has been in force in Croatia for the past 16 years. Local councils are elected proportionally, using the D'Hondt system. In municipalities, councils have between 7 and 15 members, in cities between 15 and 35,

and in counties and the City of Zagreb they could have up to 51 members. Local executive cabinets are headed by heads of municipalities, mayors and county governors, depending on the form of the local government unit. These local executive cabinets could have from 5 members in the units up to 10.000 inhabitants, to 13 members in counties and 15 members in the City of Zagreb. Local councils have the most important powers of local legislation, but the local executive cabinet is autonomous in managing and disposing of the immovable and movable property owned by the local or regional self-government unit, as well as its revenues and expenses, besides other executive tasks.

Reasons of Abandoning the Croatian ‘Local Parliamentary’ System

Having in mind the bitter experiences in some local and regional units after the latest local elections in 2005, the Croatian Government has proposed the transformation of current ‘local parliamentary’ system into the ‘local presidential’ system. This new system was implemented in 2009, with the regular local elections.

What was the cause of this decision? It was, principally, a result of public dissatisfaction with the ‘local parliamentary’ system, in which voters have only an indirect influence as to the decision who shall run their municipality, city or county. Post-electoral coalitions and very frequent changing of sides of many councillors after the elections, giving the previous minority the status of majority in the council, have caused public outrage. In numerous occasions there were rumours about corruption, i.e. many councillors were accused of receiving money for changing sides in the council, voting for dismissal of their local executive authority and giving their support to previous opposition. In this way, numerous reversals had happened and new heads of the local executive installed by the local council. In some cases, early elections followed because of inability to form the local executive authority. The result was that the voters’ original decision on who was the winner and who lost was annulled.

Supporters of direct election of the local executive argued that such takeovers would be impossible if the electorate had the opportunity to directly elect the local executive. The changing of sides of some councillors in the local council could then not nullify the decision of voters. Under constant public pressure, the Croatian Government finally promised that the new local elections in 2009 would ensue according to the new rules and that heads of the local executive would be directly elected. The expected advantages of the new electoral system, according to the Government’s explication, would be numerous:

- greater legitimacy of election of heads of the local executive, because of their direct election by the electorate
- greater identification of citizens with the local government

- better system of administration and greater stability of local government, and
- greater degree of continuity in the functioning of the local executive.

In his first review of the new law on direct election of the local executive in Croatia, Antun Palarić, secretary of the Central State Office for Administration, commented that by direct election, “‘buying’ of the mandates shall be prevented in the processes of forming post-electoral coalitions, and that means direct influence on the lessening of corruption on the local level, and thereby also the perception of corruption in the Republic of Croatia” (2007: 3).

Early enough prior to the next local elections, the Croatian Parliament started enacting the ‘package’ of laws related to the introduction of direct election of the local executive. The first one was the Law on the Elections of heads of municipality, mayors, county governors and the Mayor of the City of Zagreb³, which was debated in the Parliament for more than two years, and the second one was the Law amending the Law on Local and Regional Self-Government, proposed by the Government

³ Such a long title is usual in Croatian legislation. We have also the Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units (adopted in 2001), regulating the election of councillors in municipalities, cities, and counties. In one of the recent debates on the Draft law, I proposed that these two laws, dealing respectively with the election of local executive and local councils, be combined into one law with the title – Local Elections Act, but in vain. One problem with the long title of the Law on the Elections of heads of municipality, mayors, county governors and the Mayor of the City of Zagreb is that we have different terms for the heads of local executive in different territorial units. So, the head of the local executive in municipality (*općina*) is head of municipality (*općinski načelnik*), in city (*grad*) it is mayor (*gradonačelnik*), and in county (*županija*) it is county prefect (*župan*). Further in this paper I shall refer to that law simply as the Law on the Elections. Also, I would like to state that the usual name for the head of the regional executive – county prefect – which has been used from the beginning in English translations of Croatian legislation is in my opinion not correct. Namely, as we know a prefect is a central state official in the region which supervises and controls local government actions and ensures that its tasks are performed according to legal rules (see Page, 1991: 28). Originally, according to the first Law on Local Government and Administration from 1992, the county prefect (*župan*) had a dual role – he was at the same time the head of regional executive cabinet, elected by the county assembly and the highest state representative in the area, and therefore his election by the regional assembly had to be also confirmed by the President of the Republic. This unusual construction was abandoned as unsuitable in the new Law on Local and Regional Self-Government from 2001. Today *župan* is exclusively the head of regional executive, and the state supervision of local government activities is entrusted to another official – the head of county state office, appointed by the central state administrative office. Therefore, in my opinion it would be more suitable to translate *župan* as county governor. Similarly, Koprić (2003: 196) uses the term county governor for *župan*, but uses the term mayor for *općinski načelnik*, and town/city mayor for *gradonačelnik*, and it seems to me that his terminology is most suitable.

in June 2006, and enacted in October 2007. These two laws were in parliamentary procedure longer than any other law in the history of the Croatian Parliament, which is not surprising when one has in mind, as we said before, that by adoption of these two laws, the most significant reform of the Croatian local government system has been legally carried out.

On the basis of these two laws I shall give a preliminary assessment of the most significant features of the proposed Croatian model of the 'local presidential' system, having in mind also the comparative experiences of other countries which have introduced direct election of mayors before Croatia. There are various models of the 'local presidential' system in contemporary European local government systems, reflecting different models not only of electing the local executive, but also different solutions as to defining the position and powers of heads of the local executive and their relation to the local representative body. I would say that models of the 'local presidential' system in some German and Austrian lands, in Italy, and Slovenia, are of special relevance, so I shall compare their solutions with the ones envisaged in Croatia's legislation.

The New Electoral Model for the Croatian Local Executive

The most important provisions in the Law on elections are certainly Articles 35-38 specifying the electoral model for heads of the local executive. Some different variants were available for the lawgiver: quasi-direct election in the sense that candidates for heads of the local executive would be leaders of slates of candidates for the representative body (as in France or Spain); association of the election of representatives in the local councils with the election of mayors (as in Italy); or adoption of separate election of head of the local executive and local council (as in German *Länder*).

The Croatian Government has proposed, I would say, the best possible solution – the German model, according to which it is necessary to receive the majority of votes cast in the first round of election. If no candidate receives such majority, there is the second round in which only the two candidates with the most votes in the first round participate. In the second round, the candidate with more votes is chosen.

This electoral model, as is usually stressed, gives a far greater degree of legitimacy to the directly elected mayor, because she is at least the second best choice of the majority of voters in the local government unit.

However, as to the proposed length of mandate of the head of the local executive in Croatia, contrary to the earlier commitment, it is not German model⁴ that is

⁴ In German *Länder* the election of mayor and local council is, as a rule, temporally separated. The length of mandate of the local council is five years in all *Länder*, the length of the mayoral

accepted, but the model accepted in France, Spain, Italy, and numerous other European countries, namely four years. The election of the local executive and the council is thus synchronized.

‘Synchronization’ of the election of mayor and local council starts principally from the proposition that it will be much more probable that the same political option would have the head of the local executive and the majority in the local council at the same time. Different timing of election of mayor and council could end in *cohabitation*, if we can use the term from the French semi-presidential system.

In systems in which a mayoral candidate is at the same time the head of the slates of candidates for the local representative body, the length of her mandate is, logically, equal to the length of the council’s mandate. In most local government systems it is usually four years. If one wishes citizens to vote separately for mayor and council, then there are no obstacles to have the mandate of the mayor longer than the mandate of the local council, e.g. five years.⁵

No one in Croatia favours a longer mandate, say six to nine years. However, a longer mandate of the local executive, with possible early elections, would mean that we could have local elections at irregular periods (as it is a rule in Germany). It is fair to say that ‘synchronization’ of the election of the local executive and the local council (of course, only in case of directly elected mayors) is almost a rule. However, I would like to stress one thing. The separation of direct election for heads of the local executive and election of the local councils would significantly lessen the ‘nationalization’ of local elections, which is emphasized today, because constant electoral contests throughout the country would not focus the attention of the national public and political parties on these local elections.

There is one question left unanswered in contemporary debates on the direct election of heads of the local executive in Croatia. If there is a principled commitment to a separate election of executive and representative bodies, the question is should the candidates for the local executive office be at the same time leaders of slates of candidates for the representative body?⁶ According to the existing electoral

mandate in almost all of them is longer. Only in Niedersachsen and Nordrhein-Westfalen is the mandate of local council and mayor of the same length. In other eleven countries the length of the mayoral mandate is from six to nine years. See H. Wollmann, 2004 and 2005.

⁵ Croatian mayors have supported the proposition to give the head of local executive the length of mandate of five years, emphasizing the advantages of continuity in office and lessening the effects that the ‘pre-electoral’ and ‘transitional’ period have on the ordinary functioning of local units.

⁶ This is the so-called ‘Tirol’s model’, shaped for the first time in 1994 by the *Tiroler Gemeindevahlordnung*. It prescribes the separate, but concurrent election of mayor and local council. However, its peculiarity is that it demands that the candidate for the mayoral office must also be

laws, this possibility is not forbidden. Therefore, a candidate winning the direct election for the local executive office could at the same time have a winning slate of candidates. This would largely diminish the possibility of ‘cohabitation’ of different political options winning the local executive office and the majority in the local representative body. However, on the other hand, the possibility of control of the executive by the representative body would also be diminished. The question is what is more important to the lawgiver – securing for the local executive a stable majority support in the local council, or having a divided local government in which the local council could serve as a check on executive powers?

In the present legal standing, it is possible that the same person is a candidate for mayor or county governor, and a leader of the party list for the local council, and this means that the local electoral system in Croatia is a strange mixture of German, Italian and Austrian models, which is definitely not a good solution.

Head of the Local Executive and Her Deputy

The adopted solution as to the selection of the deputy mayor and the deputy county governor in the Law on elections of local and regional executive is quite original – it is unknown in numerous European models of direct election of the local executive.

The members of the executive body in the Italian local government units (*assessori*) are selected by the mayor, not the council. In larger units their position is incompatible with the membership in the local council, although the mayor can be a councilor. In Germany mayor has one or more deputies (*Beigeordnete*). But the specificity of the German model is that in most *Länder* it is stipulated in the municipal statutes that the council elects deputy mayors,⁷ who, as a rule, direct sectoral departments of local administration in their own responsibility, but are, in the last resort, subordinated to the elected mayor. Along with the mayor they form a kind of “(chief) executive cabinet”, but it is recognized that he has the last word (Wollmann, 2004: 159). The deputies are elected according to the strength of parties in the council. Therefore, in Germany we have a different logic as to the election of mayor and her deputies than in Italy. To our knowledge, the German model is widely applied in numerous European systems of local government with the directly elected mayor.⁸

a leader of slates of candidates for the local council. The goal behind this provision is to have a mayor with majority, or at least strong support, in the council, so as to avoid a possible *cohabitation*.

⁷ See e.g. Article 67 on the election of deputy mayors in *Gemeindeordnung für das Land Nordrhein-Westfalen* (1994).

⁸ A different variant of the German model has recently been adopted in Slovenia according to which the mayor appoints and dismisses his deputy from the members of the council.

The Croatian solution of the selection of deputy head of the local executive is different from all other European models. Namely, it has been proposed and accepted that the deputy will be elected together with the head of the local executive. In a way, this procedure is very close to the American presidential electoral contest, where the candidates for presidency and vice-presidency are on the same ticket. The same model is also applied in some American cities in which the mayor and deputy or vice mayor run together as a ticket (Zimmerman, 1999), and from 2001 it is accepted in the elections of mayor of the City of Melbourne, Australia. According to some unofficial statements of Croatian officials, this model was recommended to them in the process of drafting the Law on elections by USAID experts visiting Croatia. I do not find this model attractive. There are many reasons for that.

First of all, the directly elected head of the local executive will have, according to the latest changes in the Law on Local and Regional Self-Government, only one deputy in the local government units with less than 10.000 inhabitants.⁹ If, for any possible reason, the deputy should resign or be dismissed, the Law does not allow the possibility to replace him. Because the deputy has been elected directly, it would be, of course, nonsense to elect a new deputy according to the same procedure. So, there is only one procedure left – the possibility to elect a new deputy by the local council,¹⁰ and this procedure should be prescribed. Only in the local government units with more than 10.000 inhabitants the head of the local executive could have two deputies (and possibly three if a given national minority has the right to a deputy).

There is one more thing. The law (Article 40a) does not foresee that the deputy takes over the rights and obligation of the head of the local executive in case of his or her early termination of mandate (as is the case in the American local government units in which a mayor and his deputy are elected together, and also in the situation when the office of the president of the USA is vacant), except in case such termination occurs in the year of the regular election. I admit that it is not the most fortunate idea to compare the American presidential model and the adopted Croatian model of electing the local executive, but the fact is that we cannot compare the Croatian

⁹ In the Law amending the Law on local and regional self-government it has been prescribed in Article 9 (amending Article 41) that the head of local executive has only one deputy, but with the exemption in the local government units in which there is a legal obligation that a given national minority must have its representative in the local executive, and if neither the head nor his deputy belongs to a given national minority, there would be additional elections at which only the members of a national minority could vote for its deputy head of local executive. So, in the local government units with a larger share of national minority population there will be two deputies. However, this applies only to a small percentage of local government units.

¹⁰ This is, by the way, the procedure of electing the vice-president in the United States, in case of resignation or other cause of vacancy of the post of the vice-president.

model with any other local system. Therefore, having in mind the only possible comparative solution and the determination of the lawgiver to have a direct election of the local executive head and her deputy, I would like to recommend the following solutions:

1. That in the case of early termination of the mandate of the local executive head, his deputy will take over all of his duties till the end of the regular mandate.
2. In case the deputy becomes the head of the local executive and in the case of early termination of the mandate of the deputy elected directly, the local council will elect a new deputy from its own membership.¹¹

I must admit that I still prefer the German model of selecting the deputy head of the local executive. This model brings a certain collegial moment in the executive's decision-making and in a certain measure diminishes his absolute executive power. According to Hellmut Wollmann, the deputy mayors symbolize the principle of 'consociational democracy' (*Konkordanzdemokratie* in German), because they are selected by the council according to the proportional strength of parties represented in the council. This solution partially mitigates the effects of the 'majority democracy' and the principle of the monocratic executive (Wollman, 2004).

Candidacy for the Local Executive

According to Article 4 of the Law on Elections, a person being nominated for the head of the local executive has to be a Croatian citizen, over 18 years of age, with permanent residence in the area of the unit for which the elections are conducted for at least six months before the official proclamation of the elections, and its candidacy must be supported by a certain number of voters' signatures depending of the number of electors in the local government unit (from 50 in very small municipalities to 5.000 in the City of Zagreb).

Six months residence is a new condition for candidacy in Croatian electoral legislation. It is the solution we have been arguing for since the first version of the Draft law was proposed in 2005, because the temporal residence requirement was not envisaged.¹² Why has this solution been accepted after all? I believe that the Government thought seriously about the possibility that many candidates would change their residence shortly before local elections to comply formally with the candidacy requirements. Numerous politicians could in this way announce their

¹¹ This was also recommended by USAID expert Jesse Pilgrim in his remarks on the draft law on election made in September 2005 (USAID Croatia, 2005).

¹² In my book I have proposed a much higher temporal (five years) residence requirement as a condition for candidacy (Podolnjak, 2005: 142).

candidacy for the post of mayors, although they had never before lived in a specific town, and having already a parliamentary mandate, they could also succeed in winning the local executive post. This reminds us on the specific French model of *Cumul des Mandates*. Because something like that happened recently in the early elections for the city council in Velika Gorica, so I think it has influenced the Croatian Government to propose temporal residence in the law. Besides, the proposed provision has the goal to proscribe the candidacy of persons not familiar to the local community, which do not have, so to speak, local roots in the community. So I still think that it would be preferable to insist on an even higher temporal threshold as a condition for candidacy, although this would not be in accordance with recommendations of the Council of Europe.¹³

Incompatibility of Mandates

The law establishes strict separation of powers between the local executive and the representative body. The elected head of municipality, mayor or county governor cannot be at the same time also a member of the local representative body, or, for that matter, any other local or regional council and he/she cannot chair the local council.

There is a long list of functions incompatible with the duty of head of the local and regional executive. According to Article 9 of the Law on elections, the elected head of municipality, mayor or county governor may not at the same time be: President of the Republic, Prime Minister, Vice President and member of the Government of the Republic of Croatia, judge of the Constitutional Court of the Republic of Croatia, Governor and deputy Governor of the Croatian National Bank, main state auditor or his deputy, Ombudsman, Deputy Ombudsman, judge, Public Prosecutor, Deputy Public Prosecutor, Public Attorney, Deputy Public Attorney, secretary of the Croatian Parliament and deputy secretary of the Croatian Parliament, secretary of the Croatian Government and deputy secretary of the Croatian Government, general secretary of the Constitutional Court, secretary of the Supreme Court, state secretary, Ombudsman for children, Ombudsman for equality of sexes, assistant minister, ministry's secretary, head of a state administration organisation, deputy head of a state administration organisation, head of an office or director of an agen-

¹³ Mirjana Kasapović warned at the time of Croatian presidential elections in 2005 on the possibility of candidacy of numerous 'dangerous demagogues', unknown to the public, for the offices of mayors and county governors. Her prediction was related to the presidential candidacy of Boris Mikšić, who had arrived from the United States shortly before the election, and almost succeeded to defeat the candidate of the strongest party in the country (Kasapović, 2005). I'm not certain if the six months residency requirement would be enough to eliminate the possibility of candidacy of such 'dangerous demagogues'.

cy of the Government of the Republic of Croatia, president and deputy president of the Croatian fund for privatization, president and deputy president of the Croatian Social Insurance Administration, president and deputy president of the Croatian Health Insurance Administration, provost of the university, officer or non-commissioned officer of the armed forces, who is, as a military commander of the Croatian Army, appointed and relieved of duty by the President of the Republic, head of office or employee in the administration bodies and services of the same unit, member of the management of a trading company in the majority ownership of the unit, or director and employee of an institution established by the unit.

A person performing some of the incompatible duties may be nominated as a candidate for the head of the local/regional executive, but in case he is elected he shall be obliged to resign the incompatible duty.

Having in mind such a long list of duties incompatible with the post of the head of the local executive, it was expected that the duty of Member of Parliament would also be proclaimed incompatible with the local executive office, but this did not happen.¹⁴ Such propositions were heard in parliamentary debates, but several Members of Parliament holding multiple offices (MP and mayor) were against the provision of incompatibility arguing, for example, that in a strongly centralized state such as Croatia, the mayors that are not at the same time Members of Parliament can hardly be successful in accomplishing developmental projects in their towns, and that the elimination of duality of MP and mayor would bring a greater degree of partitocracy and the dependence of mayors on party leadership.¹⁵

The fact is that in contemporary systems of local government in Europe we could find the double attitude as to the incompatibility of parliamentary and mayoral duty. On the one hand, there is the German model of incompatibility of these two duties. On the other hand, there is the French model (although in France we could not speak of direct election of mayor) which allows multiple functions (*Cumul des mandats*) so that the mayors of larger cities are, in principle, members of the National Assembly, which drastically increases their political strength (Ker-

¹⁴ In an unusual explanation at the Croatian Government session it was said that the Croatian Democratic Union (the main party in the Parliament and the sole governmental party at the time) was against the combining of the duties of MP and head of the local executive, but it would leave to the Members of Parliament to decide one or the other way ('Mayors shall be elected directly' ['Gradonačelnici će se birati izravno'], *Vjesnik*, 17 March 2006). It is not logical that the main governing party respects the principle of separation of duties of MPs and mayors, but declines to propose that in the Draft law. The real explanation is that the Government did so because it depended in the Parliament on the votes of two members from the Croatian Social Liberal Party, both of whom were at the time also mayors in their respective towns.

¹⁵ According to Ivan Čehok, MP and Mayor of the City of Varaždin ('Mayors shall be obliged to leave the Parliament', *Večernji list*, 16 March 2006).

rouche, 2005). In neighbouring Slovenia and Hungary it is also allowed to hold simultaneously the parliamentary and mayoral office so that numerous parliamentarians are also mayors.¹⁶

In principle, I do not approve of the possibility of multiple office-holding, so I would like to give some arguments against the duality of MP and mayor in the same person.

First of all, the institute of incompatibility, as remarked in one of the decisions of the Croatian Constitutional Court, is related to the concept of the separation of powers. Its main purpose is to prevent the possibility that the same person holds positions in legislative, executive or even judicial power at the same time, and it prevents also the concentration of political power of different governmental powers in the hands of any person.¹⁷ In our case, we could speak of concentration of duties of different powers (the local executive and parliamentary representative) in the hands of the same person, although not at the same level of government. The question for the Government is also, why proclaim a long list of incompatible duties with the duty of head of the local executive, with only one exemption to the rule of incompatibility?

Second, the rule of (in)compatibility of the parliamentary mandate and the duty in the local executive is not consistently prescribed in Croatian legislation. Namely, according to Article 9 of the Law on elections, there is no incompatibility of duties of head of municipality, mayor and county governor with the duty of MP. However, another law regulates this matter differently. According to Article 9 of the Law on Elections of Representatives to the Croatian Parliament,¹⁸ the duty of the Member of Parliament is incompatible with the duty of county governors and its deputies and the Mayor of the City of Zagreb and his/her deputies only. The incompatibility of the duties of county governors and the mayor of the Croatian capital (who has the rank of county governor as well) with the parliamentarian mandate is a legal relic from the time when the county governor was not only a local government official, but also a state official, whose election by the local assembly was afterwards sanctioned by the President of the Republic,¹⁹ but today it has no constitutional foundation to treat county governors differently from heads of municipality or mayors, as all of them are officials responsible only to their local/regional council, and none of

¹⁶ According to a report, more than one third of Slovenia's mayors are also Members of Parliament (CLRAE, 2004)

¹⁷ The Decision of the Constitutional Court No. U-I-952/1996.

¹⁸ *Official Gazette*, nos. 116/99, 109/00, 53/03 and 69/03.

¹⁹ In the first decade of the Croatian local government system counties were at the same time regional self-government units and units of state administration (similarly as French *départements*).

them is a state official. So, it is logically indefensible to argue that, e.g. the county governor of Primorsko-goranska County cannot be an MP, but the Mayor of the City of Rijeka (the seat of the county) could be. Or, how it is possible that mayors of the largest Croatian cities (except Zagreb) can be parliamentarians, and county governors with lesser budgets at their disposal (and some of them with lesser population in their counties) cannot be MPs?

Third, it is not an acceptable proposition that mayors should also be parliamentarians because they would be in a better position to obtain funds from the state budget for their local communities. First of all, the electoral units for the election of Members of Parliament and the electoral system itself do not correspond with the local territorial self-government units. So, the MPs are not representatives of their cities or municipalities, or electoral districts in the way American congressmen are. The question is, how could a member of Parliament (and a mayor also), elected by the voters of several counties, defend the proposition that she is in the Croatian Parliament principally to represent and uphold the interests of her city.

My last argument against the *Cumul des mandates* of mayors and parliamentarians starts from the simple postulate that in the existing system of Croatian local self-government mayors are only the heads of executive authorities. All crucial decisions are in the purview of the collective executive cabinet, and mayors also have two deputies. In the new system, as has been proscribed by the Law on elections and the Law amending the Law on Local and Regional Self-Government, mayors and other heads of the local executive will have only one or two deputies. It means that only two or three persons in the local/regional self-government unit will perform executive duties. It is pretty clear that mayors will have much more personal obligations than they do now, so it is hardly explainable to insist on the proposition that they could manage to perform two such demanding duties.

Dismissal of the Head of the Local Executive

In the political and academic discussion in Croatia, one of the most debated questions is how to arrest the possibility of emergence of some kind of 'municipal presidentialism', in which the directly elected executive might abuse his powers at the expense of the local council, thanks to his legitimacy of being directly elected by the voters. Therefore, the legal provisions on the responsibility and possible dismissal of the local executive head are especially important.

The original proposals of the Croatian Government have been hotly debated, especially by the associations of Croatian municipalities and counties, and because of their intense disagreement original solutions have been changed. Those solutions were, in my opinion, contrary to the normative solutions in other countries, and especially against the guidelines of the Council of Europe.

It was proposed that 20% of constituents of the local government unit would have the right of petition to the local council asking it to discuss the proposition for the dismissal of the local executive, but it was left to the local council to decide if the procedure of dismissal would be started. According to the German model, or correctly speaking, according to the procedure envisaged in some German *Länder* where the constituent initiative is allowed, a certain percentage of constituents' signatures is a condition for the official proclamation of a referendum for dismissal of the mayor, not for a mere petition to the local council.²⁰ It means that the voters' initiative circumvents the local council and makes possible the referendum for the dismissal of the mayor, even when the local council is not in favour of this solution. This is the only solution we find normatively acceptable.

As a result of strong opposition the original proposal was changed, and according to Article 40c of the law, the referendum initiative by the constituents is allowed. However, it was originally proposed that the local council has the obligation to adopt the decision to announce the local referendum for dismissal of the head of the local executive if this proposition was signed by at least 33% of voters of the local or regional government unit, but in the final version of Article 40c this percentage was dropped. Instead, it was proscribed that articles regulating referendums on the level of local and regional government units would apply to the local referendum for dismissal of the head of the local executive.

According to Article 24 of the Law on Local and Regional Self-Government enacted in 2001, "a referendum, on the ground of the provisions of the law and statute, is called by the representative body upon the proposal of one third of its members, upon the proposal of the executive cabinet, and in a municipality and town also upon proposal of half of the local committees in the territory of the municipality, or town, and upon the proposal of 20% of the voters registered in the electoral list of the municipality or town". With this change the threshold for initiating the local referendum for dismissal of the head of the local executive by the voters was

²⁰ Most German *Länder* have introduced the provision that mayors can be removed from office (recalled) by local referendum. The intention was to give the local citizens a procedure which could strengthen the political accountability of the elected mayor to the voters. There are two variants of the recall procedure in German *Länder*. In the more radical variant, the local electorate is given not only the right to vote on a recall referendum (under certain majority requirements), but also to initiate the recall motion (with a certain requirement of signatures petitioning the referendum). Only three *Länder* (that is, the East German *Länder* of *Brandenburg* and *Sachsen* and the West German *Land* of *Schleswig-Holstein*) have adopted this "radical" procedure. The other *Länder* have preferred a 'tamed' version of the recall procedure by reserving the right of initiating it to the local council (requiring a qualified majority vote of its members), while the local electorate is restricted to finally vote on the recall motion once it has been adopted by the council (Wollman, 2001 and 2004).

lowered from 33 to 20% of the voters registered in the electoral list of the municipality or town. I will explain afterwards how it came to this solution.

The second originally proposed solution was even more disagreeable, especially seen from the perspective of the mayors and county governors and their associations. In Article 40c of the first Draft it was prescribed:

The Government of the Republic of Croatia shall depose the head of the municipality, mayor, and county governor respectively, if the representative body enacts the decision initiating the dismissal of the head of the municipality, mayor, and county governor respectively, with the votes of two-thirds of all members of the representative body.

The petition from the previous paragraph the representative body shall submit in case:

- of permanent disability of the head of the municipality, mayor, and county governor respectively
- the head of the municipality, mayor, and county governor respectively violates and does not execute the decisions of the representative body
- the head of the municipality, mayor, and county governor respectively by his actions causes considerable material damage to the local government unit.

Such a procedure was, to my knowledge, contrary to the recommendations of the Congress of local and regional authorities of Europe. In its document – *Recommendation 113 (2002) on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy)* in the *Appendix (Principles governing relations between the public, the local assembly, and the executive in local democracy)* it is stated: “Where those in charge of the public authority are directly elected by the people, any dismissal must be endorsed by the people” (CLRAE, 2002c). In line with this Recommendation is the procedure established in those German *Länder* in which the electorate has the power to initiate the recall referendum. On the other hand, in Slovenia its Local Government Act does not give either to the representative body or to the electorate the possibility of initiating the recall of the mayor. The original Article 90b of the Local Government Act gave the power of dismissal of the mayor to the Slovenian Parliament, but on strictly prescribed conditions.²¹

²¹ This article is not in force any more. It was abolished by the Slovenian Constitutional Court in 2003, as incompatible with the constitutional right on local self-government. The new Article 90b, enacted by the Slovenian Parliament, prescribes that the mayor may be dismissed if he does not execute the decisions of the Constitutional Court or the final judgments of the Administrative court, and that he must be warned by the Parliament before the decision on the dismissal and given a deadline to remove or eliminate the unlawful acts.

The Croatian Government abandoned quickly the power to dismiss the heads of the local executive confronted with the protests of local government officials and accused to act contrary to the recommendations of the Council of Europe. Instead of the original article, the Government proposed in June 2006 a new text of Article 40b which says in paragraphs 1 and 2:

The head of municipality, mayor, and county governor respectively and their deputy may be dismissed.

The representative body shall officially proclaim the referendum on the dismissal of the head of municipality, mayor, and county governor respectively and their deputy in case

- of disability to perform the duties of the head of municipality, mayor, and county governor respectively
- they violate and do not execute the decisions of the representative body
- they by their actions cause considerable material damage to the local self-government or regional self-government unit.

Formulated as it was, this very important provision was unclear as to the possible causes for the initiation of the procedure for dismissal of the chief executive in a municipality or county. What should we think about “disability to perform the duties”? It is certain that this disability is not a deprivation of business capacity, because this is regulated in Article 40a. The question of ‘disability’ should not be left to political judgement of the local councillors. Another imprecise wording was “considerable material damage” caused to the local government unit. What is ‘considerable’? It is impossible to define it legally. Instead of these unclear conditions for the initiation of dismissal, in the public debate on the Draft law I suggested the following provision:

The representative body shall officially proclaim the referendum on the dismissal of the head of municipality, mayor, and county governor respectively and their deputy in case

- she shall not propose the budget of the local or regional self-government unit according to the terms of the law
- according to the opinion of the representative body she acts against the law, or contrary to the statute of the local or regional self-government unit,
- she does not execute the decisions of the representative body
- she concludes a contract not authorized by the representative body, when this is so required by the act of the representative body, and
- abuses her powers in any other way.

In the new version of the Draft law amending the Law on Local and Regional Self-Government, another significant change has been made. Namely, originally it

was prescribed that the representative body must adopt its decision on the initiation of the referendum with the 2/3 majority of its members. However, in the final draft this 2/3 majority was dropped from the provision, i.e. no special majority was required. This could mean, practically, that the representative body could reach such a remarkable decision with a mere majority of members attending the session. This omission was registered in the final discussion in the Parliament and it was stipulated that for the council's decision to initiate a referendum on dismissal of the local executive the qualified majority (majority of all members of the council) is required.

The next important question was the percentage of required participation of voters in the referendum. Some Members of Parliament (also mayors) argued against the originally proposed paragraph that "the decision on dismissal of the chief executive is accepted if it is supported by the majority of voters in the referendum, with the additional condition that at least 33% of the electorate of the local or regional government unit is participating in the referendum". In their opinion, it was unacceptable that the chief executive could be recalled with a mere third of voters of the local government unit participating in the referendum, even if this threshold is not unusual in other countries. In the end, their opinion prevailed in the Parliament and it was determined that the head of the local executive would be dismissed if, according to the Law on referendum, the proposition receives the votes of the majority, on condition that this decision shall be valid if the majority of voters of the local or regional government unit had participated in the referendum.

And now we see the consequences of connecting the procedure of recalling the local executive with the ordinary referendum procedure envisaged in the Law on referendum: the originally proposed threshold for initiating a referendum by voters has been lowered (from 33 to 20%), but a new high threshold has been set – the participation of more than 50% of the voters in the referendum on dismissal of the local executive. To put it differently, the consequences will be that the referendums initiated by voters would be easier to propose, but, at the same time, it would be much harder to reach a decision on dismissal of the local executive. In my opinion it would be much better to prescribe the following conditions for dismissal of the local executive:

- number of voters equal to or greater than the number of those who elected the local executive must vote in favour of the recall
- this number must also be a majority of those voting in the referendum, and
- the number of voters is equal to or greater than 25% of the total number of registered voters in the local or regional government unit.

There was one more provision in Article 40b that attracted great attention. The Government proposed an unusual solution. It was a provision I could not find in any other country's local government act: "If in the referendum the decision on

the dismissal of the head of municipality, mayor and county governor respectively, and their deputy, shall not be adopted, the Government of the Republic of Croatia shall dissolve the representative body". Such a decision is absolutely unnecessary (it leads to new elections for the representative body), and in the countries having in their legislation provisions for the recall referendum, such a provision is not usual.²² In a way, this provision seems to be a mechanism for some kind of 'checks and balances' between the local executive and the local council. Looking at it in that way, the dissolving of the local council would be, in a sense, a punishment for initiating a recall referendum, which, in the end, would not be supported by the electorate. It was in my opinion a drastic measure not proportionate to the cause. In the documents of the Congress of Local and Regional Authorities of the Council of Europe I could not find anywhere a suggestion or a recommendation to the member states to adopt such a provision. It was my recommendation that it would be much better to prescribe that the local council is forbidden to adopt a new decision on the recall referendum for a period of at least one year, and that recommendation was accepted in the end.

In the final text of the law the causes for the initiation of the referendum for recalling the local executive have been elaborated more carefully and it is stated that the representative body could initiate the referendum for dismissal of the local executive in case

- he violates and does not execute the decisions of the representative body and
- he causes by his actions considerable material damage to the local government unit, and that damage is defined as financial damage of 1% of the local government budget or at least 500.000 HRK (approximately 70.000 €).

The Powers of the Directly Elected Local Executive

In the former 'local parliamentary' system, the head of municipality, mayor or county governor had few powers. They represented their municipality, town or county. Further, they were responsible to the central bodies of the state administration for the performance of tasks of the state administration transferred into the scope of activity of the municipal, city or county bodies. While performing the tasks from the self-governing scope of activity of the local government unit, they had the right to suspend from execution a general act of the representative body if they were of the opinion that this act violated the law or another regulation, and to request from the representative body to remove the detected shortcomings within fifteen days. If the representative body failed to do so, they were obliged to inform the head of the

²² To my knowledge, it is present only in Poland (see Swianiewicz, 2008).

central body of the state administration competent for the supervision of the legality of work of the bodies of local or regional self-government units, within eight days. As we can see, the duties of the heads of the local executive in Croatia were not significant.

The crucial executive powers were given to the cabinet as a collective executive body. This collective executive authority had the powers to

1. prepare the proposals of general acts,
2. perform or ensure the execution of the general acts of the representative body,
3. guide the activity of the administrative bodies of local or regional self-government units in the performance of tasks from their self-governing scope of activity and supervise their work,
4. manage and dispose of the immovable and movable property owned by the local or regional self-government unit, as well as its revenues and expenses, in compliance with the law and statute, and
5. perform other tasks determined by the statute of the local or regional self-government unit.

In the first draft the directly elected local executive was supposed to take over all of the current powers of collective executive bodies, except item 4, which is, by the way, the most important of all. This would belong to the local council. As the directly elected local executive is by this provision completely divorced from the policy of disposition and management of the local government property, we have suggested that he should be given some powers in this domain. We have proposed that he should have the right to dispose with the immovable and movable property owned by the local or regional self-government unit, the value of which does not exceed 0,5% of the local government budget. In a somewhat different formulation this provision has been accepted by the Government and in the Parliament.

A few months before the 2009 local elections the Croatian Parliament passed almost 20 laws regulating the distribution of powers belonging to earlier collective executive bodies between the local representative bodies and new directly elected mayors. Almost as a rule these powers were transferred to mayors and this was done, in our opinion, without due care. The coherence of the legal system has been severely disrupted; certain powers have been given to mayors unwarily, and without reasoned explanation. This could potentially strengthen the danger of the rise of some kind of “municipal presidentialism” in Croatian local government.

Numerous mayors and county governors, and their associations also, have asked for much greater powers. I do not find it justified. It must be pointed out that all documents of the Congress of Local and Regional Authorities position the lo-

cal council as the highest organ responsible for overall local responsibilities. In the Resolution 139/2002 on relations between the public, the local assembly and the executive in local democracy it is stated that “at all events and however they are elected or appointed, all executive organs have an obligation to account, at regular intervals, for the way in which they exercise their authority” and also that “representative assemblies must enjoy safeguards under domestic law which provide for effective supervision of the executive in accordance with Article 3, paragraph 2 of the Charter, notably through powers to approve the local budget and local taxes, adopt reports on the execution of the budget and town planning projects, and approve local policies, for the full term of their electoral office”.

In the Explanatory memorandum of the Report on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy) – CPL (9) 2 Part II, it is also specifically underlined that

the assembly’s fundamental mission is to set out political goals and directives, which the executive body has to implement. It is the assembly – not the executive body – which has to define the fundamental political priorities at local level. What needs to be controlled is the fulfilment and execution of those goals. In this respect, the Charter clearly provides that the executive organs are responsible to the assembly. (CLRAE, 2002a)

The Report insists on the principle that “in a system based on democracy the executive organ should be politically responsible before the assembly whatever the mechanism of its election or designation”. It means that even if the electorate “directly elects the executive organ there should be clear rules of accountability, which should, at the same time, guarantee effective control of the executive by the assembly” (CLRAE, 2002a).

Conclusion

The new Croatian model of the ‘local presidential’ system is defined in the most important aspects concerning the electoral model, the position, the powers, the relation with the local council, and the accountability of directly elected heads of municipalities, mayors and county governors. It is impossible, only one year after the local elections of 2009, to predict how some original solutions (e.g. the direct and connected election of the head of the local executive and his/her deputies) would influence the decisions on pre-electoral coalitions of different parties and solve the problem of possible cohabitation between the local executive and the local council, if the council’s majority does not belong to the local executive’s party or coalition. This could well be the theme of another paper.

What could be preliminarily stated is that the Croatian model is a very specific model with certain features resembling other contemporary systems of 'local presidentialism' in Europe, but also with some peculiarities similar to the model of some American cities (the model of electing mayor and deputy mayor on the same ticket), which points to the conclusion that the Croatian model is a new variant of the 'local presidential' system. Its main characteristics are the following:

- commitment to a direct and separate election of the heads of the local and regional executive (the German model), and not quasi-direct or merged election of the executive and the local council as is the case in Italy;
- the winning candidate must receive the absolute majority of votes of participating voters as a condition for his election, and if no candidate receives such a majority in the first round, in the second round only two candidates with the most votes in the first round are participating, and the winner is the candidate receiving most votes;
- the length of the mandate and the timing of election of the executive and the local council are synchronized;
- the *Cumul des mandats* is partially allowed in the sense that heads of municipality and mayors (but not county governors) could also be members of Parliament;
- in the joint election of the head of the local executive and his deputies, the Croatian model does not follow any contemporary local government model, and it reminds mostly of the American presidential model;
- legally (but not prescribed as in some Austrian *Länder*) the possibility is allowed that the candidate for the local executive office may at the same time be a leader of slates of candidates for the local representative body, which could have the effect of diminishing the possibility of *cohabitation*, i.e. different political options winning the executive and the majority in the local council, and
- in the procedure of dismissal of the head of the local executive, the model adopted in some German *Länder* (the initiative of the local council or the local electorate, and the decision of the electorate via the recall referendum) has been accepted.

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