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## **Instytucja zastępstwa Prezydenta Republiki Chorwacji w świetle postanowień konstytucji z 22 grudnia 1990 roku**

### **ABSTRACT**

#### **Institution of Temporary President of the Republic of Croatia in Light of the Provisions of the Constitution of December 22, 1990**

The aim of this article is to discuss the legal solutions for the substitution of the President of Croatia contained in Article 97 of the Constitution of the Republic of Croatia of 22 December, 1990. The analysis covers two basic forms of deputation: temporary, which refers to the President's short-term or long-term incapacity to perform his duties, and permanent, resulting from circumstances such as death, resignation or the Constitutional Court's ruling on the President's permanent incapacity to hold office. Constitutional provisions entrust the performance of presidential duties to a temporary deputy, who is the representative of the legislature, i.e. the Speaker of the Croatian Parliament. The paper deals with the incidents of 1999, when the prolonged illness of President Franje Tuđman and his subsequent inability to perform his duties led to a serious political and constitutional crisis in Croatia and revealed significant loopholes in the existing constitutional provisions.

**Słowa kluczowe:** prezydent, zastępstwo prezydenta Republiki Chorwacji, przejściowa niemożność sprawowania urzędu prezydenta, opróżnienie urzędu prezydenta, przewodniczący Chorwackiego Parlamentu

### **1. Legal forms of deputy president – introductory remarks**

The practical application of legal regulations governing the institution of deputy president occurs when, for various reasons, the president is unable to perform his duties. Regardless of his position in

the political system, many states have recognised the need to establish regulations in this area<sup>1</sup>, adopting various forms of substitution (depending on the type of the president's incapacity to perform his functions). Depending on the model adopted in a given state, different entities may implement the substitution. In the vast majority of European states, it has been accepted that the substitution of the head of state is carried out by the speaker of parliament<sup>2</sup>. However, there are instances where some countries have deviated from this model and entrusted this function to another entity (for example, the government, the prime minister or a collegiate body)<sup>3</sup>.

The legal solutions governing the institution of the deputy head of state in Croatia are contained in Article 97 of the Constitution of the Republic of Croatia of 22 December, 1990<sup>4</sup>. This provision indicates two legal forms of presidential substitution. The first one applies in the case of temporary inability of the president to exercise his office, while the second one is activated when one of the permanent obstacles preventing the head of state from performing his functions occurs<sup>5</sup>.

The temporary inability to perform office is transitional in nature, meaning that once the temporary obstacles preventing the fulfilment of responsibilities cease to exist, the head of state automatically resumes the execution of constitutional functions<sup>6</sup>. Within this form of presidential substitution, the legislature has distinguished two categories, taking as a criterion the period during which the president remains incapable of performing his functions<sup>7</sup>. The first of these refers to the short-term incapacity of the president to perform his office. It is regulated by Article 97(1) of the Constitution, which provides that: 'In the case of short-term incapacity due to absence, illness or annual leave, the President of the Republic may entrust his replacement to the Speaker of the Croatian Parliament. The decision to return to duty shall be taken by the President of the Republic'. On the other hand, the second category indicated above concerns prolonged incapacity to perform presidential functions. Such a case is normalized by Article 97(2) of the Constitution, according to which: 'In the case of a prolonged absence due to illness or incapacity, and especially when the President of the Republic is unable to decide to entrust the duties to a temporary deputy, the Speaker of the Croatian Parliament shall assume the duties of the temporary President of the Republic on the

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<sup>1</sup> S. Vrabec, *Zamjenjivanje predsjednika republike - teorijski i terminološki okvir, uređenje i primjena u poredbenom pravu*, „Zbornik radova Pravnog fakulteta u Splitu” 2013, t. 50, no. 2, pp. 483-484.

<sup>2</sup> This is related to the parliamentary structure adopted in a given state. The substitution is then entrusted to the speaker of the first chamber or the second chamber (a parliament with a bicameral structure) or to the speaker of parliament (a unicameral parliament).

<sup>3</sup> M.M. Wiszowaty, *Problematyka niemożności pełnienia urzędu przez głowę państwa – sede plena, sede vacante i kwestia zastępstwa jako przykłady regulacji kryzysowych na gruncie polskiej i europejskich regulacji konstytucyjnych*, [in:] *Normalność i kryzys – jedność czy różnorodność. Refleksje filozoficzno-prawnej ekonomiczno – społeczne w ujęciu aksjologicznym*, J. Oniszczyk (ed.), Warszawa 2010, p. 7.

<sup>4</sup> Ustav Republike Hrvatske od 22. prosinca 1990. (pročišćeni tekst, „Narodne novine” no. 56/90., 135/97., 113/00., 28/01., 76/10. i 5/14).

<sup>5</sup> K. Skłodowski, *System rządów w Republice Chorwacji*, Łódź 2013, p. 266.

<sup>6</sup> S. Vrabec, *Zamjenjivanje...*, op. cit., p. 487.

<sup>7</sup> B. Smerdel, *Ustavno uređenje europske Hrvatske. II. izmijenjeno i dopunjeno izdanje*, Zagreb 2020, p. 435.

basis of a decision of the Constitutional Court. The Court adopts this decision at the proposal of the Government’.

The second form, i.e. permanent incapacity to hold the office of President, has the consequence of vacating that office, meaning that it remains vacant<sup>8</sup>. The conditions the occurrence of which results in vacating the office of the president are indicated by the legislator in Article 97(3) of the Constitution. According to the scope of this provision: ‘In the case of death, resignation submitted to the President of the Constitutional Court of the Republic of Croatia, of which the Speaker of the Croatian Parliament shall be notified, or when the Constitutional Court determines the reasons for the termination of the mandate of the President of the Republic of Croatia, the duties of the temporary President of the Republic shall, by virtue of the Constitution, be assumed by the Speaker of the Croatian Parliament’. In contrast to the temporary incapacity of the President to hold office, in the case of permanent incapacity of the president, there is no possibility for the current president to return to office. The occurrence of any of the permanent obstacles entails the election of a new president within a strict deadline<sup>9</sup>. This deadline is set out in Article 97(5) of the Constitution, according to which: ‘The election of the new President of the Republic must take place within 60 days from the date on which the temporary President of the Republic assumes his duties in accordance with paragraph 3 of this article.’

Both in the case of the occurrence of the conditions for activating the procedure of temporary incapacity to exercise the office of the president and those in the scope of permanent incapacity to exercise the office of the president, the provisions of the Constitution provide for entrusting the performance of the duties of the head of state to the Speaker of the Croatian Parliament<sup>10</sup>. It should be emphasised that the substitutive performance of the functions of the head of state by the Speaker does not result in his becoming formally the president, but only entitles him to perform the tasks resulting from the actual exercise of this office<sup>11</sup>. As Branko Smerdel emphasises, the Speaker of Parliament performs the function of interim president first and foremost in order to safeguard the interests of the State and to avoid damage, and he should exercise presidential powers in accordance with the nature of his temporary office<sup>12</sup>. This means, therefore, that the Speaker who deputises for the president should only perform non-urgent activities aimed at ensuring the stable functioning of the State. The Croatian Constitution provides for one formal limitation related to the performance of tasks by the deputy, namely that: ‘The promulgation of laws by the Speaker of the Croatian Parliament

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<sup>8</sup> S. Vrabec, *Zamjenjivanje...*, *op. cit.*, p. 487.

<sup>9</sup> *Ibidem*.

<sup>10</sup> A. Bačić, *Komentar. Ustava Republike Hrvatske*, Split 2002, p. 258.

<sup>11</sup> S. Vrabec, *Zdravstveno stanje visokih državnih dužnomika kao političko i ustavnopravno pitanje – slučaj bolesti predsjednika Franje Tuđmana*, „Pravni Vjesnik” 2013, t. 29, no. 1, p. 44.

<sup>12</sup> B. Smerdel, *Privremeni zamjenik nije Predsjednik Republike*, Večernji list, 26.11.1999, s. 2 [via:] S. Vrabec, *Zdravstveno...*, *op. cit.*, p. 44.

acting as President of the Republic requires the countersignature of the Prime Minister of the Republic of Croatia.’ (Article 97(4) of the Constitution).

## **2. Replacement performed under conditions of temporary inability to perform the office of president**

As mentioned above, the temporary inability of the president to hold office may be characterised by its short-term or long-term nature<sup>13</sup>. The conditions for the activation of the temporary presidential incapacity are characterised by a short duration and include cases such as illness, annual leave or absence of the president<sup>14</sup>. Provisions of constitutional rank do not specify the timeframe of the replacement. This means, therefore, that in such a case the replacement continues until the obstacle conditioning its activation ceases<sup>15</sup>. The decision on the commencement and termination of the exercise of the replacement of the head of state by the speaker of parliament is taken by the president himself<sup>16</sup>.

The second group of conditions, which is included in Article 97(2) of the Constitution, is used in the event of prolonged incapacity of the head of state to exercise his office. This provision specifies that these are a prolonged illness and a situation in which the president is unable to exercise his powers, especially when he cannot decide on his own to entrust his duties to a temporary deputy<sup>17</sup>. The legislator therefore chose to indicate precisely as a condition the long-term illness of the president, while in the second part of this provision it took a more general form and limited itself to the phrase: ‘when the President of the Republic is unable to exercise his powers, and especially when he is unable to decide to entrust his duties to a temporary deputy’. The procedure used by the Croatian legislator, which consists in abandoning the enumeration of specific conditions, counteracts, by definition, the situation in which it would turn out to be impossible to activate the substitution procedure due to the lack of a legal basis. According to Samir Vrabec, cases of this condition include, for example, kidnapping or disappearance. When one of these occurs, it becomes necessary to follow the appropriate procedures to enable the transfer of duties to the deputy head of state<sup>18</sup>.

In the case where the president is unable to decide to delegate his duties to a deputy, then the body legally entitled to activate the deputy procedure is the government. Namely, this body prepares a proposal on the recognition of the occurrence of one of the obstacles to the exercise of the office of

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<sup>13</sup> L. Csink, *Presidents*, [in:] *Comparative Constitutionalism in Central Europe. Analysis on Certain Central and Eastern European Countries*, L. Csink, L. Trócsányi (eds.), Miskolc-Budapest 2022, p. 333.

<sup>14</sup> S. Vrabec, *Zdravstveno...*, *op. cit.*, p. 49.

<sup>15</sup> S. Vrabec, *Zamjenjivanje...*, *op. cit.*, p. 487.

<sup>16</sup> B. Smerdel, *Ustavno...*, *op. cit.*, p. 435.

<sup>17</sup> *Ibidem*.

<sup>18</sup> S. Vrabec, *Zamjenjivanje...*, *op. cit.*, p. 487.

the president, which it then submits to the Constitutional Court. After considering the motion submitted by the government, the Constitutional Court issues a ruling on the matter and transfers the duties of the president to the interim deputy by means of a resolution. The Croatian legislature introduced this type of regulation with a view to the possibility of a situation arising in which the President is unable to inform the Speaker of the Sabor of an impediment to his office and thus delegate his duties to him<sup>19</sup>. As Vrabec notes, the question then arises as to how long the president may remain incapacitated before government action becomes necessary. The question of the length of time during which the president may not exercise his powers remains unclear, as the legislator does not indicate any time limits. The author proposes a solution that the emerging gap in this respect could be filled by the Constitutional Law regulating the issue of the temporary incapacity of the President of the Republic of Croatia to perform his duties adopted in 1999<sup>20</sup>.

### **3. Substitution carried out under conditions of vacating the office of president**

As mentioned in the introductory remarks, the vacating of the office of the President occurs in the case of one of the conditions set out in Article 97(3) of the Constitution, i.e. as a result of: the death of the President, his resignation submitted to the President of the Constitutional Court or a decision of the Constitutional Court stating the reasons for the termination of his mandate.

The death of the president, is the condition that was mentioned first by the legislator. Despite the fact that death as a social phenomenon is universally understood and most of us can identify the moment when a human death occurs, the situation is not always straightforward<sup>21</sup>. In extraordinary cases, where it is difficult to determine whether death has actually occurred, the provisions of the Ordinance on the method, procedure and medical criteria for determining the death of a person whose body parts can be taken for transplantation<sup>22</sup> can provide important support. In light of the provisions of Article 2 of the Ordinance, a person is considered dead when there has been complete and definitive loss of cerebral circulation, i.e. brain death (this is the irreversible cessation of brain function as determined by clinical examination - Article 3 of the Ordinance).

In approaching the subject of the death of the President, it also seems reasonable to provide a brief overview of the legal regulations concerning the recognition of a missing person as dead. These issues are regulated in the Non-Proceedings Act<sup>23</sup>. The legislator in section 55(1) of the Act

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<sup>19</sup> M.M. Wiszowaty, *Problematyka...*, op. cit., p. 6.

<sup>20</sup> S. Vrabec, *Zdravstveno...*, op. cit., pp. 50-51.

<sup>21</sup> G. Pastuszko, *Ustrojowy model zastępstwa prezydenta według postanowień Konstytucji RP z 1997 r.*, Warszawa 2022, p. 97.

<sup>22</sup> Pravilnik o načinu, postupku i medicinskim kriterijima za utvrđivanje smrti osobe čiji se dijelovi tijela mogu uzimati radi presađivanja od 9. siječnja 2006. („Narodne novine” no. 3/06.).

<sup>23</sup> Zakon o izvanparničnom postupku od 2. lipnja 2023. („Narodne novine” no. 59/23.).

has enumeratively indicated the cases in which the court may declare a missing person dead. According to the cited provision, this occurs when: 1) there has been no news of his or her life for the last five years and seventy years have passed since his or her birth (subsection 1), 2) there has been no news of his or her life for the last five years and the circumstances of his or her disappearance suggest that he or she is no longer alive (subsection 2), 3) the person is missing as a result of a maritime disaster, air disaster, traffic accident, fire, flood, earthquake or other imminent danger of death, and there was no news of his or her life within six months of the cessation of that danger (subsection (3)), 4) the person was missing in time of war or in connection with events of war, and there was no news of his or her life within one year of the cessation of hostilities (subsection (4)), 5) the person was missing in time of civil war or in connection with events of war, and within one year of 30 June 1996 there was no news of his life (paragraph 5)<sup>24</sup>.

Another condition resulting in a vacancy in the office of the president is the resignation of the president. According to the definition in the Dictionary of the Croatian Language, a resignation is: 'A statement by which someone willingly resigns from a particular function or leaves a particular office'<sup>25</sup>. The president's resignation from office is therefore an autonomous decision that he takes on his own, without the involvement of third parties. The Croatian Constitution clearly defines the entity to whom the President resigns, namely the President of the Constitutional Court of the Republic of Croatia. At the same time, there is also an obligation on the President to notify the speaker of the Croatian Parliament of this circumstance (Article 97(3) of the Constitution). Potential problems that may arise in relation to this condition are related to the failure of the legislature to specify the form in which this resignation should be submitted.

The last condition included by the legislator in Article 97(3) of the Constitution, the occurrence of which carries with it the necessity to activate the procedure of presidential substitution is the decision of the Constitutional Court, in which this court declares the occurrence of conditions resulting in the termination of the presidential mandate. This situation is closely related to the constitutional responsibility of the president<sup>26</sup>.

Legal regulations on the issue of presidential accountability are contained in the following legal acts: Croatian Constitution (Article 105), the Constitutional Law on the Constitutional Court of the

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<sup>24</sup> Points out that in both the first and second cases the period after which a missing person may be declared dead is five years. However, it is difficult to envisage a situation in which the assumption of presidential duties by the Speaker of Parliament would take place only after the expiry of this period, due to the need to wait for a court ruling on the matter.

<sup>25</sup> Keyword: *Ostavku* [in:] *Školski Rječnik Hrvatskoga Jezika*. Link to website: <https://rjecnik.hr/search.php?q=ostavka>, [accessed on 14.09.2024].

<sup>26</sup> K. Skłodowski, *System...*, *op. cit.*, p. 266.

Republic of Croatia<sup>27</sup> (Articles 83 and 84) and the Rules of Procedure of the Croatian Parliament<sup>28</sup> (Article 118). According to the constitutional provisions, the President of the Republic of Croatia bears constitutional responsibility and is liable for violations of the Constitution committed by him while in office (Article 105(1) of the Constitution). The activation of the procedure to hold the President of the Republic of Croatia responsible for violations of the Constitution begins with the submission of a motion by at least one-fifth of all parliamentary representatives (118(1) of the Parliamentary Rules of Procedure). This motion must be in writing and contain a detailed description of the facts, the legal basis and evidence of the President's violation of the Constitution (Article 83(1) of the Constitutional Court Act and Article 118(2) of the Parliamentary Rules). This motion shall be submitted to the Speaker of Parliament no later than 30 days before the scheduled sitting of Parliament at which it is to be considered (Rule 118(2) of the Rules of Parliament). Importantly, this request shall also be submitted to the President of the Republic, who shall have the right to prepare a written opinion in order to respond to the allegations made against him within 30 days of receipt of the document (Article 118(3) and (4) of the Rules of Procedure of Parliament). In addition, before deciding to initiate proceedings, the Speaker of Parliament refers the request to the Committee on the Constitution, Rules of Procedure and the Political System, which has three days in which to deliver an opinion on the admissibility of the allegations (Article 118(5) of the Rules of Procedure of Parliament). On the basis of the opinion issued by the aforementioned Commission, Parliament decides, within fifteen days of its receipt, by a two-thirds majority vote, to initiate proceedings against the President of the Republic for violation of the Constitution (Article 118(6) of the Rules of Procedure of Parliament). Subsequently, once the Parliament has taken its decision, the motion, together with the reasons for it, is sent to the Constitutional Court, which is obliged to examine it within 30 days and then make an applicable ruling on it (Article 105(4) of the Constitution). This ruling is made by a two-thirds majority of all judges (Article 105(3) of the Constitution). In the case where the Constitutional Court finds that the President has violated the Constitution, the consequence of the ruling is the automatic termination of the office of the President (Article 105(5) of the Constitution), which naturally entails the need to entrust the temporary performance of the President's duties to the Speaker of Parliament.

#### **4. Presidential substitution in the constitutional practice of Croatia**

At the end of 1999, Croatia found itself in a difficult political and constitutional situation related to the serious state of health of President Franje Tuđman. The long-term illness with which the president

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<sup>27</sup> Ustavni zakon o Ustavnom sudu Republike Hrvatske od 3. svibnja 2002. (pročišćeni tekst, „Narodne novine” no. 49/02.).

<sup>28</sup> Poslovnik Hrvatskoga Sabora (pročišćeni tekst, „Narodne novine” no. 81/13., 113/16., 69/17., 29/18., 53/20., 119/20. - Odluka Ustavnog suda Republike Hrvatske i 123/20.).

was struggling prevented him from performing his duties<sup>29</sup>. The crisis situation of the state was further complicated by the fact that the mandate of the Chamber of Representatives<sup>30</sup> was due to expire on 27 November 1999, necessitating the calling of parliamentary elections. In Croatia, such a power is only vested in the president (no other body can do so), nevertheless, due to illness, the then president was unable to exercise it<sup>31</sup>.

Under the circumstances, it seemed reasonable to activate the procedures related to the deputy head of state. The provisions of the Constitution of the Republic of Croatia of 22 December 1990<sup>32</sup> contained relevant legal regulations found in Article 97 according to which: '1. In the case of death, resignation or permanent incapacity of the President of the Republic to perform his duties, as determined by the Constitutional Court of the Republic of Croatia at the proposal of the Government of the Republic of Croatia, the duties of the President of the Republic shall be temporarily assumed by the Speaker of the Parliament of the Republic of Croatia. (2) The election of the new President of the Republic shall be made within 60 days from the day on which the previous President ceases to hold office'. Thus, the only authorised body to initiate the procedure for the determination of the President's permanent incapacity to hold office was the Government. However, the government of the day did not act accordingly, fearing the need for early presidential elections<sup>33</sup>. Furthermore, the government, together with the Medical Council, considered it immoral to apply to the Constitutional Court to declare the President permanently incapacitated, arguing that Franjo Tuđman was still alive and only temporarily unable to perform his duties<sup>34</sup>.

The lack of decisions by the government and parliament led to a serious crisis that almost paralysed Croatian state institutions. It was impossible for the President to sign laws and therefore key decisions remained in limbo. In addition, the Constitutional Court could not operate at full strength as some of the new judges needed to be sworn in by the President<sup>35</sup>. The situation was complicated by growing intra-party conflicts within the Croatian Democratic Community (*Hrvatska Demokratska Zajednica* - HDZ), led by F. Tuđman<sup>36</sup>. Eventually, the ruling party HDZ began talks with the opposition to resolve the crisis. The HDZ proposed to pass a law regulating the temporary

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<sup>29</sup> S. Vrabec, *Zdravstveno...*, *op. cit.*, p. 37.

<sup>30</sup> The parliament at that time had a bicameral structure, consisting of the Chamber of Representatives (*Zastupnički Dom*) - as the first chamber of the Parliament of the Republic of Croatia, and the Chamber of Župania (*Županijski Dom*) - the second chamber: T. Jankowski, *System polityczny Chorwacji*, [in:] *Systemy polityczne państw Europy Środkowo-Wschodniej*, W. Sokół, M. Żmigrodzki (eds.), Lublin 2005, p. 191.

<sup>31</sup> S. Vrabec, *Zdravstveno...*, *op. cit.*, p. 38.

<sup>32</sup> Ustav Republike Hrvatske od 22. prosinca 1990. („Narodne novine” no. 56/90.).

<sup>33</sup> K. Skłodowski, *System...*, *op. cit.*, p. 79.

<sup>34</sup> S. Vrabec, *Zdravstveno...*, *op. cit.*, p. 39.

<sup>35</sup> *Ibidem*.

<sup>36</sup> *Ibidem*, pp. 39-40; J. Karp, M. Grzybowski, *System konstytucyjny Chorwacji*, Warszawa 2007, p. 32.



incapacity of the president to hold office, while the opposition insisted on appropriate constitutional amendments<sup>37</sup>.

Only at the moment when President Tudman's health condition became critical that the Chamber of Representatives on 24 November 1999 passed, with a two-thirds majority, the Constitutional Law introducing the institution of temporary incapacity of the President of the Republic of Croatia to perform his duties<sup>38</sup>. According to Article 2 of the Constitutional Law on the temporary incapacity of the President of the Republic of Croatia to perform his duties<sup>39</sup>, the substitution could take place on the basis of a written declaration of the President or a decision of the Constitutional Court, issued at the proposal of the Government. The Government had to initiate proceedings on the matter within 30 days from the date on which it determined that the President was unable to perform his duties. When the Government forwarded the request to the Constitutional Court, it had 24 hours to issue a decision in this regard (Articles 3 and 4 of the Constitutional Act on the temporary incapacity of the President of the Republic of Croatia to perform his duties). The Constitutional Court then ruled that the substitution would last for 60 days, and if the conditions of temporary incapacity did not cease after that time, the Government could again request the Court to extend the timeframe of the deputation (Article 6 of the Constitutional Act on the temporary President of the Republic of Croatia's incapacity to perform his duties).

After the adoption of the Constitutional Law by the Parliament, the Croatian Government on 25 November 1999 submitted an application to the Constitutional Court, together with the opinion of the Medical Council, to declare President Tuđman temporarily incapable of fulfilling his duties. The Constitutional Court found this request to be justified and on 26 November 1999 issued a decision declaring Franje Tuđman temporarily incapable of performing the duties of the President of the Republic of Croatia<sup>40</sup>. Consequently, the substitution of the office of the President was then entrusted to the Speaker of the Parliament of the Republic of Croatia<sup>41</sup>, who was at the same time the Speaker of the Chamber of Representatives of the Republic of Croatia, as stipulated by Article 79 of the Constitution of 22 December 1990 before the 2001 amendment (abolishing the bicameral Parliament) - this function was then held by Vlatko Pavletić<sup>42</sup>. Upon assuming his presidential duties, Pavletić

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<sup>37</sup> *Ibidem*, p. 40.

<sup>38</sup> K. Krysiński, *System polityczny republiki Chorwacji*, Poznań – Chorzów 2007, p. 99; K. Krysiński, *Ewolucja systemu politycznego w Chorwacji 1990–2010. Próba bilansu*, „Przegląd Prawa Konstytucyjnego” 2010, no. 2-3, p. 248.

<sup>39</sup> Ustavni zakon o privremenoj spriječenosti Predsjednika Republike Hrvatske za obavljanje svojih dužnosti 24. studenoga 1999. („Narodne novine” no. 123/99.).

<sup>40</sup> Odluka Ustavnog suda Republike Hrvatske, broj U-VIII-1017/1999 od 26. studenoga 1999. („Narodne novine” no. 124/99.).

<sup>41</sup> *Ibidem*.

<sup>42</sup> K. Krysiński, *System..., op. cit.*, p. 99.

immediately ordered elections to the first Chamber of the Parliament of the Republic of Croatia (for 3 January 2000), which was equivalent to bringing the crisis situation in the state under control<sup>43</sup>.

The illness and death of President Tuđman<sup>44</sup> and the problems related to the calling of parliamentary elections revealed loopholes in the Constitution, which at the time did not contain legal regulations that were properly applicable in the case of the temporary incapacity of the head of state to hold office<sup>45</sup>. These events significantly affected the functioning of the Croatian political system and initiated a number of changes<sup>46</sup>. In 2000, the political system was changed from a semi-presidential to a parliamentary-cabinet system, and in 2001, the bicameral Croatian Parliament was converted to a unicameral one, abolishing the Chamber of the Župania<sup>47</sup>. Due to the inadequacies of the provision regulating the institution of presidential substitution, which became apparent when it had to be applied in practice, it was amended by the Law on the Amendment of the Constitution of the Republic of Croatia of 16 November 2000<sup>48</sup>.

## 5. Concluding remarks

On the basis of the Constitution of Croatia of 22 December 1990, the concept of presidential deputy has been adopted, which implies that it is entrusted to a parliamentary representative. Such a solution is commonly used in European countries<sup>49</sup>. In the light of Article 97 of the Constitution, two forms of substitution are distinguished: temporary (short-term and long-term) inability of the President to perform the office and permanent inability of the Head of State to perform the office<sup>50</sup>.

In the case of temporary incapacity of the president, which is activated by the occurrence of, presumably, short-term obstacles such as illness, annual leave or absence, the president himself delegates his duties to the Speaker of Parliament<sup>51</sup>. However, if the president is unable to take the decision to delegate his duties as a result of a prolonged illness or other circumstances preventing him from performing his functions, then the government applies to the Constitutional Court, which formally approves the delegation of duties to the head of state for the duration of the prolonged incapacity<sup>52</sup>.

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<sup>43</sup> *Ibidem*.

<sup>44</sup> President Dr. Franjo Tuđman died on 10 December 1999. Link to website: <https://www.tudjman.hr/>, [accessed on 16.11.2024].

<sup>45</sup> K. Krysieniel, *System...*, *op. cit.*, p. 99.

<sup>46</sup> K. Krysieniel, *Ewolucja...*, *op. cit.*, p. 248.

<sup>47</sup> T. Jankowski, *System...*, *op. cit.*, p. 191; J. Karp, M. Grzybowski, *System...*, *op. cit.*, p. 16

<sup>48</sup> Promjena Ustava Republike Hrvatske od 16. studenoga 2000. („Narodne novine” no. 113/00.).

<sup>49</sup> B. Dziemidok-Olszewska, *Instytucja prezydenta w państwach Europy Środkowo-Wschodniej*, Lublin 2003, p. 189-195; M.M. Wiszowaty, *Problematyka...*, *op. cit.*, p. 7.

<sup>50</sup> K. Składowski, *System...*, *op. cit.*, p. 266.

<sup>51</sup> B. Smerdel, *Ustavno...*, *op. cit.*, p. 435; K. Składowski, *System...*, *op. cit.*, p. 266; M.M. Wiszowaty, *Problematyka...*, *op. cit.*, p. 5.

<sup>52</sup> *Ibidem*, p. 435; K. Składowski, *System...*, *op. cit.*, p. 266.

On the other hand, permanent incapacity results in the vacating of the office of the President in the case of his death, resignation or a decision of the Constitutional Court declaring the termination of the mandate of the Head of State. In such situations, the speaker of Parliament remains in office until a new president is elected. Under the provisions of the Constitution, presidential elections must be held within 60 days of the interim deputy taking office<sup>53</sup>.

This means, therefore, that the provisions regulating the issue of the presidential deputy of the Republic of Croatia contain legal mechanisms for taking action in the case of both temporary and permanent obstacles to the head of state's office. However, it should be borne in mind that the legal basis for the action of the presidential deputy has not been characterised by such a high degree of detail since the beginning of the Croatian Constitution. The Constitution of 22 December 1990, prior to its amendment in 2000, provided only for the existence of permanent obstacles excluding the possibility of the President's office, entrusting the tasks of the Head of State to the Speaker of the Croatian Sabor, who is also the Speaker of the Chamber of Representatives<sup>54</sup>.

The content of Article 97 in the current Constitution took shape after the 1999 crisis, which was caused by the illness of President Franje Tuđman and his consequent inability to perform his duties. The application in practice of the then established provisions on presidential substitution showed that they were not perfect, which in turn prompted the legislator to amend them. Consequently, the provisions governing the institution of the deputy president were refined and systematised<sup>55</sup>. When introducing the amendments in 2000, the legislator entrusted the presidential deputy to the speaker of parliament. Prior to 2001, when the Croatian Parliament had a bicameral structure, this duty belonged to the Speaker of the Chamber of Representatives, who at the same time acted as the parliamentary representative. After the amendment of the Constitution in 2001, when the Parliament became unicameral, the function of deputy president was taken over by the speaker of that body. Despite the change in parliamentary structure, the deputy model was retained, as presidential duties continued to be assigned to the representative of the legislature - first to the speaker of one of the chambers of the bicameral parliament and then to the speaker of the unicameral parliament.

Given the lack of application of the amended Article 97 of the Constitution in constitutional practice, it is difficult to unequivocally assess its effectiveness. Nevertheless, it may be concluded that the Constitution more effectively prevents the potential threat of a break in the continuity of presidential power. It is worth emphasising that, despite its expansive nature, this regulation is not

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<sup>53</sup> *Ibidem*, p. 436; M.M. Wiszowaty, *Problematyka...*, *op. cit.*, p. 12.

<sup>54</sup> K. Krysieniel, *System...*, *op. cit.*, p. 99.

<sup>55</sup> S. Vrabec, *Zdravstveno...*, *op. cit.*, p. 51.

without certain imperfections, which may in the future lead to problems with the effective implementation of procedures concerning presidential substitution<sup>56</sup>.

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<sup>56</sup> *Ibidem*.

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## ABSTRAKT

Celem niniejszego artykułu jest omówienie prawnych rozwiązań dotyczących zastępstwa Prezydenta Chorwacji, zawartych w art. 97 Konstytucji Republiki Chorwacji z 22 grudnia 1990 roku. Analiza obejmuje dwie podstawowe formy zastępstwa: czasową, która odnosi się do krótkotrwałej lub długotrwałej niezdolności prezydenta do pełnienia obowiązków, oraz trwałą, wynikającą z okoliczności takich jak śmierć, rezygnacja lub orzeczenie Sądu Konstytucyjnego o trwałej niezdolności prezydenta do sprawowania urzędu. Przepisy konstytucyjne powierzają wykonywanie obowiązków prezydenckich tymczasowemu zastępcy, którym jest przedstawiciel władzy ustawodawczej, czyli przewodniczący chorwackiego parlamentu. Analiza obejmuje wydarzenia z 1999 roku, kiedy długotrwała choroba prezydenta Franje Tuđmana i związany z nią brak możliwości pełnienia obowiązków doprowadziły do poważnego kryzysu polityczno konstytucyjnego Chorwacji i ujawniły istotne luki w obowiązujących przepisach konstytucyjnych.

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