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Directly Elected Mayors and the Problem of Cohabitation
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The new system of directly elected mayors implemented in Croatia in 2009 faced its most severe difficulties in municipalities with divided power, where the mayor and council majority represent different political options. Due to the uneasy relationship between the Mayor and the City Assembly in Zagreb, the new Croatian government decided to propose changes in the laws regulating elections and the relationship between the representative and executive bodies in the local government system one year ahead of the 2013 local elections. Mayors were explicitly given the right to elect and revoke the representatives of units of local and regional self-government in local institutions and companies. The second most significant aspect of the 'mini-reform' of the Croatian local government system is the introduction of the possibility of the simultaneous dissolution of the representative body and dismissal of the executive body, with new early elections for both bodies, in cases of the non adoption of the municipal budget.

Keywords: mayor, council, local and regional self-government, cohabitation, Croatia

1  INTRODUCTION

In many European countries, significant reforms of the institutional framework of their local self-government units have occurred in the last 15 years.¹ The most important among them is, in our opinion, the introduction of the direct election of mayors in local government. That much is admitted also in the Resolution 139 of the Congress of Local and Regional Authorities of Europe, which says that "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".² 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 local executive in Council of Europe countries.³ Almost all of Croatia's neighbours have adopted one or the other model of a directly elected local executive.⁴ With

² CLRAE, 2002: Resolution 139 on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy). This trend is present not only in Western European countries (Germany, Austria, Italy, Spain and even the United Kingdom), but even more in former communist countries. Direct elections of mayors were introduced at the beginning of 1990's in Slovakia, Bulgaria, Romania, Slovenia, Albania and Ukraine, in 1994 in Hungary, in 1995 in Macedonia, and in 2002 in Poland. However, three Baltic States (Latvia, Lithuania, and Estonia), as well as the Czech Republic and Serbia still elect their local executive by the council. For a comparative analysis of institutional design of local government systems in the countries of former Yugoslavia, see Koprić (2009: 335–365).
⁴ On different typologies of local government sys-
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 also been introduced in Croatia, specifying the abolition of cabinets, as collective executive bodies elected by the local council, and the introduction of a directly elected local executive instead. It was, as 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 regular local elections. According to the data of the State Electoral Commission, the turnout in these elections was on average 10 percent higher than in 2005, and this higher turnout could be attributed to the implementation of the new system of directly elected mayors.

After the first direct mayoral elections held in 2009 we have had the initial experience of the new system operates in practice. Our preliminary conclusions are that direct mayoral elections have brought greater legitimacy to the mayoral office, because of their direct election, greater identification of citizens with the local government (at least measured in terms of the higher turnout in elections), and a greater degree of continuity in the functioning of the local executive, because not one mayor has been dismissed by recall referendum. However, the main problem of the new system seems to be in the overlapping or ambiguous powers of mayors and local councils, especially in the situation of cohabitation, i.e. when mayor does not have majority support in council for the enactment of his/her policies.

Cohabitation was the case for several years in the Croatian capital Zagreb and the city represented a sort of test case for the new system, which still has many opponents. The conflict between the Mayor and the City Assembly in Zagreb in the last mandate between 2009 and 2013 has revealed many weaknesses of the legal architecture of the new system. The apparent shortcomings of the new system have been addressed in the amended Law on Local and Regional Self-Government passed in December 2012. The amended Law represented a sort of a ‘mini-reform’ of the local government system with the stated goal of securing “a stronger political stability in the relations between representative and executive bodies, greater efficiency in executing the tasks of these two bodies, and to define more clearly their rights, obligations and responsibilities”.

In this paper we analyse two crucial conflicts between the Mayor and the City Council in Zagreb. The first relates to the question of who has the power of appointing the members of assemblies and supervisory boards of the companies created by the self-government units, and the second relates to the question of who has the last word over the city budget. In the conclusions we point out that these two conflicts have led to the most significant changes in the Law on Local and Regional Self-Government.

2 THE PROBLEM OF COHABITATION BETWEEN THE MAYOR AND THE LOCAL REPRESENTATIVE BODY AFTER THE ELECTIONS IN 2009

The opponents of the new system of directly elected mayors often argue that the greatest problem of the new system could be the conflict between the representative body and the directly elected mayor, in a situation when he/she does not have the confidence of majority in the council, and that this would probably lead to a pa-

5 Excerpt from the Government’s proposal to amend the Law on Local and Regional Self-Government. URL: http://www.vlada.hr/hr/content/download/229927/.../ile/57.%20-%2020.pdf (November 28th, 2013).

6 Our paper was originally presented at the 22nd IPSA World Congress in Madrid in July 2012 under the title Institutional Reform in Croatian Local Government: From Cabinets to Directly Elected Mayors at RC05 panel Mayors in Comparative Perspective. Before the peer review process had been finished, the Croatian Parliament enacted amendments to the Law on Local and Regional Self-Government in December 2012. Those amendments are extremely relevant for the theme of our paper so we decided to address them in the conclusions.
After the local elections of 2009 in many municipalities, cities and counties with directly elected mayors and county governors were confronted with the situation that they no longer had the support of the majority of those in the council. According to an unpublished analysis of GONG (a Croatian NGO dedicated to the supervision of elections) considering the political membership of the mayor after the elections of 2009 in 11 local government units (about 2%) there was cohabitation of mayor and council, because in these units the absolute majority of councillors belong to different political options to the mayor. In 347 units (about 60%) the directly elected mayor had majority support in the council based on his party and/or parties that had stood behind his or her candidacy. Finally, in 219 units (about 38%) the directly elected mayor didn’t have majority support in council because the majority of councillors belonged to political options which didn’t participate in the local executive. However, this situation did not automatically mean that in all of these local government units cohabitation would prevail, although it was not excluded.

In a situation when the mayor could count on the support of the representative body, the new system would probably function as before in the ‘local parliamentary’ system. However, the true test of the new system would be its functioning in situations of conflicting mayor–council relationship due to cohabitation. In some larger Croatian municipalities this situation emerged after the elections of 2009 (the cities of Velika Gorica, Vrbovec, Beli Manastir, and especially Zagreb, along with many more small municipalities). Therefore we turn now to the strongest and also the most important case of cohabitation between the mayor and the local council that was present in the period between 2010 and 2013, namely that in the City of Zagreb, the capital of Croatia. Because of the political, financial and economic power of this city, the function of the Mayor is the second most important executive function in the state.

3 THE CONFLICT BETWEEN THE MAYOR AND THE CITY ASSEMBLY IN ZAGREB – WHO REPRESENTS THE CITY?

The cohabitation problem in Zagreb came as a result of a rather peculiar political situation. For a number of years, the mayor of Zagreb, Milan Bandić, had been a member of the Social Democratic Party (SDP) which also nominated him as a candidate for local elections that took place in May of 2009. According to the new legislation already in force, Mr. Bandić became mayor of Zagreb once again, after defeating another candidate in the second round, on May 31st 2009.

Shortly after that, in July 2009, the SDP organized internal elections for a party candidate for the elections of the President of the Republic of Croatia, both of which were later won by the present President of the Republic, Ivo Josipović. However, having been dissatisfied with such an outcome, Mr. Bandić decided to take action himself and in early November 2009 he first suspended his membership of the SDP and then announced his decision to run for the state presidency office as an independent candidate. Consequently, having found a legal basis in its party statutory provision that precluded the independent candidacies of its members, the SDP immediately announced that Mr. Bandić’s membership of the SDP ceased. All of this, therefore, resulted in a situation that the city of Zagreb was to be run by an independent mayor, now politically disconnected from the party that had once nominated him for the position, and obviously in a potentially confrontational position with the city council.

The problem of cohabitation on local levels in Croatia has, as we have said before, not been restricted to the capital. In a number of cities one of the typical issues that gradually evolved arose out from the dispute between mayors and councils in relation to the power of appointing the members of assemblies and supervisory boards of the companies created by the self-government units.

7 The last presidential elections in Croatia were held on December 27th 2009 (the first round) and January 10th 2010 (the second round).
8 The other particular issue that this paper describes
Earlier practices in that respect have not been uniform - through decisions on the founding of companies of units of local and regional self-government, the representative bodies had often been given the rights and powers of a founder, as a single member of a company, to units' cabinets, which in turn, sitting in a function of a company's assembly, have elected the company's management and members of supervisory board. In some cases, the representative bodies themselves have performed the function of a company's assembly and, consequently, have also directly elected members of the management and supervisory boards. Notwithstanding those differences, such practices, however, have not been problematic, due to the fact that representative bodies, through their decisions on the founding of companies, have been giving particular powers to local executive bodies, which themselves had a guaranteed majority support in representative bodies. The newly established legal framework significantly changed the situation: the absence of a political consensus between the executive and representative bodies typically leads to a dispute and various attempts at the seizure of particular powers.

Bearing in mind the frequent requests related to the problem of the election of members of assemblies in companies owned by units of local and regional self-government, as well as differing practices thereof, in September 2009 the Croatian Ministry of Administration delivered and distributed to all local and regional units its own opinion on the issue.

Pointing to the relevant provisions of the Law on Local and Regional Self-Government which prescribed that representative bodies, among other things, had the power of “electing and revoking other persons determined by law, regulation or statute”, and that it was then who had a power of founding institutions and other juridical persons for performing the economic, social, communal and other activities in the interest of local and regional units, the Ministry stated that it was undisputable that representative bodies were also competent for all elections, including those pertaining to the members of assemblies in companies owned by local and regional units. On the other hand, the Ministry declined to interpret that the enumeration of powers of mayors in the article 48 of the Law on Local and Regional Self-Government in any way implied the mayors’ powers of election and revocation. Moreover, according to the opinion, “a directly elected head of a municipality, city or a county cannot have more powers than it has been given to him by law”. In its reasoning the Ministry also invoked one earlier decision of the Supreme Court of the Republic of Croatia, where it stated that a representative body, acting in the name of a founder of a company, had the power of the election of members of a company owned by a local unit. Finally, the Ministry stated that the power of election belonging to a representative body should also be specified in a statute of a local or regional self-government unit.

Only one day passed from when the Ministry delivered its opinion to when it was harshly disputed by the Association of Cities. In substance, the Association claimed that the Ministry wrongly interpreted the Law and significantly restricted powers that the directly elected mayors were given by a number of other laws which, just before a parliamentary summer break, had been harmonized with the Law on Local and Regional Self-Government. In particular, the Association claimed that, by his legally conferred power of representation (contained in article 42 par. 1 of the Law on Local and Regional Self-Government), it was exactly the mayor who had the power to represent a city in the company assembly, a fact that “the Ministry in its disputable and legally unfounded opinion completely ignored, giving other, incompetent bodies (city councils), stric-
The only legal solution to challenge an individual act of a local executive head is to submit acts that he enacted to the competent state body, and no possible review of constitutionality or legality of such acts. Therefore, there is no legal possibility to request the review of legality of work and acts of all local units is respected, but also to the practice of all commercial courts throughout the Republic of Croatia, and expressed hope that commercial courts “would not alter their procedures, so as to adjust them to the opinion of the Ministry”.

Here, we have given a wider presentation of statements made by the Ministry and the Association of Cities because we think they are directly related to a very significant issue of the competencies of the units of local and regional self-government. The comparative literature on local executive bodies asserts that one of the important qualities of a “strong” mayor is his power of election of all executive officials, i.e., his power of integration of all administrative offices and juridical persons, whose founder or owner is a local unit, under his supervision. In that sense, it is obvious that the issue of the competence in electing persons in companies owned by the units of local self-government significantly determines whether there is a “strong” or a “weak” head of local executive. The dispute that was described here is important to us not only because of the various interpretations of powers legally conferred to bodies of local self-government (whether the appropriate competence derives from the power of election belonging to representative bodies or from the power of representation belonging to the head of a local executive), but also because of the role performed by the central state bodies in resolving disputes of competence. It should be emphasized in this context that the opinions of the Ministry, in legal terms, are not a good solution. It is a fact that the opinion of a state body is not a regulation in a sense of a normative, generally binding legal act. Therefore, there is no legal possibility to request the review of constitutionality or legality of such an opinion.

On the other hand, the Ministry does not dispose of any instruments through which it could prevent the adoption of a mayor’s decision on, for example, electing the members of advisory board of a company owned by the unit of local self-government (taking into account that this would be done by an individual legal act which cannot be subject to the legality review). In the Croatian legal system, there exists only the possibility of a review of legality of general legal acts enacted by a representative body. There is no legally prescribed obligation of a local executive head to submit acts that he enacted to the competent state administration body, and no possible review of constitutionality or legality of such acts. The only legal solution to challenge an individual act of a local executive head is to, according to Article 77.a of the Law on Local and Regional Self-Government, request the administrative court proceedings.

Taking into account such legal gaps, we think that the best solution would be to precisely prescribe by law the competencies of the bodies of local self-government pertaining to the election of persons in juridical entities founded or owned by the local self-government unit. As far as the actual dispute on the issue of elections related to companies is concerned, it is our opinion that such a power belongs to a representative body.

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13 It should be stressed here that on behalf of the Association of Cities the opinion was signed by its president, a person who otherwise holds the position of mayor of the city of Rijeka. In practice, the Association operates as a body which represents interests of mayors, a fact that should be taken into consideration when estimating its opinions.

14 In that respect, for definition of powers belonging to “strong”, directly elected mayors in the US, see Zimmerman (1999: 171–177).

15 This was confirmed by the Croatian Constitutional Court already in 1993. See Cmij (1994: 32).
Since a representative body decides on whether to establish public institutions and other entities for performing economic, social, communal and other activities in the interest of local and regional units, it can also (in its very decision on founding) determine who will, for example, be members of a company assembly and who will elect members of management and advisory boards. It is a fact that in numerous cases representative bodies delegated the execution of ownership rights to cabinets, but this unequivocally confirms that such a power belongs exactly to a representative body, and that it cannot be interpreted as deriving from the function of representation otherwise given to the executive branch. Equally, the Law on Institutions prescribes that the institution is governed by its administrative council or another collective body, whose mode of election or appointment is regulated by law, act of founding (enacted by a representative body) and an institution’s statute (enacted with the consent of a founder and, that is, a representative body). At the same time, the power of electing an institution's administrative head can belong to its administrative council, while a law or an act of founding can determine that, on a local self-government unit level, this power belongs to a representative body.

In other words, the legal power of representation of a local self-government unit is in no way relevant for the appointments of persons in the institutions of local self-government units. Why should a different logic be applied to companies?

An identical situation to the one just described appeared in the City of Zagreb shortly afterwards, resulting in a mayor’s formal decision to suspend the application of two provisions of the City Statute, as well as two other conclusions by the City Council related to the appointment of representatives in the assembly of two companies owned by the City.17

In this respect, the relevant provisions of the City Statute prescribed that it was within the City Council’s authority to decide on the composition of the assembly of companies which are 100% owned by the City and to determine the City’s representatives in assemblies of such companies in which the City does not participate with a 100% of ownership. Based on these statutory provisions, the subsequent conclusions of the City Council then clarified that the assembly of companies which are 100% owned by the City is composed of its president (a function belonging to the mayor) and 10 additional members (elected by the City Council from its representatives).

Contrary to what was prescribed by the contested provisions of the City Statute and subsequent conclusions, the mayor founded his case on several claims: firstly, that “the member of the company is ex lege a member of its assembly”; secondly, that the Croatian Law on Companies “clearly and unequivocally determines” that the (limited liability) company assembly is composed of its members (one or more); thirdly, that the only member of two companies related to the case was the City of Zagreb; and fourthly, that it is exactly the mayor of Zagreb, by its authority of representation, who is practically the sole member of assemblies of two companies.18

As it can clearly be seen from the previous description of events, this particular problem of confrontation between mayors and city councils, as well as the Ministry of Administration, became obvious by the closing days of 2009 and it finally resulted in the Croatian Constitutional Court’s decision in favour of representative bodies, delivered on March 17th 2010.19 This decision, however, was not related to the situation in the Croatian capital, but in the City of Beli Manastir, but its consequences are applicable to all other similar cases.

In short, the contested provisions of the City Statute of Beli Manastir, enacted by the City Council’s authority to decide on the composition of the assembly of companies which are 100% owned by the City and to determine the City’s representatives in assemblies of such companies in which the City does not participate with a 100% of ownership. Based on these statutory provisions, the subsequent conclusions of the City Council then clarified that the assembly of companies which are 100% owned by the City is composed of its president (a function belonging to the mayor) and 10 additional members (elected by the City Council from its representatives).

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16 [Law on Institutions] Zakon o ustanovama from 5th August 1993, Narodne novine, No. 76/93, 29/97, 47/99, 35/08. Articles 35 and 38.
17 The decision of the Mayor of the City of Zagreb, 012-03/09-01/4; 251-02-01-09-1 (November 18th 2009). Narodne novine, No. 25 from November 30th, 2009.
18 Moreover, in his reasoning, the mayor also invoked two decisions of the Higher Commercial Court of the Republic of Croatia: XLIII Pž-2677/06-05 from 18th October 2006; LVIII Pž-5961/09-3, from 20th October 2009.
19 U-II/38101/2009 from 17th March 2010. This decision, however, was related to the situation not in the Croatian capital, but in the City of Beli Manastir, but its consequences were applicable to all other similar cases.
Council in July 2009, prescribed the authority of the Council to elect and revoke the membership of executive boards of institutions, companies and other juridical persons founded by the City, as well as its authority to elect, nominate and revoke the representatives of the City in the assemblies of those companies which are partially owned by it, and in the executive boards of those institutions which have been founded by the City.20

In her motion for the review of constitutionality and legality of the City Statute, the applicant, as in previous similar cases already mentioned, claimed that the City Council deprived the directly elected mayor of their legal authority to represent the City as explicitly prescribed in article 42 par. 1 of the Law on Local and Regional Self-Government, arguing that the representation in the company assembly is, in legal terms, representation of the founder of a company. Similarly, the applicant claimed that the City Council had no authority to enact other here described statutory provisions, having found them to be contrary not only to the Constitution, but also to a number of other laws, acts of state administration bodies delivered in the review of legality procedures, and opinions of various Croatian commercial courts.21

By completely ruling-out the relevancy of other laws invoked by the applicant, the Constitutional Court based its decisions solely on the relevant provisions of the Croatian Constitution and the Law on Local and Regional Self-Government. On the strictly constitutional level, the Court relied on those articles which guaranteed the general principles of constitutionality and legality and the right to local and regional self-government, which described the particular local affairs that the Constitution reserved for the units of self-government as well as the general modalities of their conduct, and which established the authority of units of local and regional self-government to regulate by statute their internal composition and competencies according to law (articles 5, 132 par. 1 and 2, 134, 135 and 136 of the Constitution of the Republic of Croatia). As to the Law on Local and Regional Self-Government, the Court cited those provisions which specified domains to be further regulated by the statute of the local and regional units and which defined the specific powers of representative and executive bodies in such units, including the most problematic right of representation (articles 8, 35, 42, 44 and 48 of the Law on Local and Regional Self-Government).

In the relevant part of its reasoning, the Constitutional Court clarified several points. Firstly, the mayors’ right of representation of units of local and regional self-government, although generally established by law, is principally directed to “third persons” (e.g. courts and other state and public bodies) and as such it does not include their “inherent” right to elect members and representatives of units of local self-government in assemblies or executive boards of companies and institutions founded by the local self-government unit.

Secondly, the right of the election of members and representatives in the assemblies and executive boards belongs primarily to the local representative bodies, this being so because the Law on Local and Regional Self-Government itself does not contain a specific provision that would regulate the matter specifically, apart from the fact it gives the power to local representative bodies to “elect and revoke other persons defined by law, other regulation or statute” (leaving thus the issue, designated as belonging to the self-government domain, in this case to be resolved by the local unit’s statute), and because the local or regional representative bodies have the right anyway to establish various juridical persons (institutions, companies and other) for the fulfilment of activities and tasks of local interest.

Thirdly, however, having the power to regulate the issue by their statutes, local representa-
tive bodies also have two options at their disposal: either to give a right of election to mayors or to retain it for themselves.

The decision of the Constitutional Court finally settled the first great conflict between the Mayor and the City Council in Zagreb. To this, we would like to make some additional comments.

In the first place, it should be noted that the Constitutional Court only briefly mentioned possibly the most relevant provision of the Croatian Constitution related to the regulation of local and regional self-government, namely the one explicitly prescribing that the right to local and regional self-government is to be exercised through local and regional representative bodies (Article 132 par. 1 and 2 of the Constitution of the Republic of Croatia). That being so, the Court could also have emphasized much more that a kind of an “overall precedence” in ambiguous cases, like the present one, belongs to those branches of local government which are explicitly regulated by the Constitution itself, and not to those that derive their authority from a particular law.22

This is even more important in light of the fact that the executive stream, as a rule, often invoked the argument that, according to the new system, mayors were directly elected and therefore enjoyed not only a separate political legitimacy, but also more powers.23 This line of reasoning, however, is relevant only insofar as their possible accountability and revocation is concerned. On the other hand, in a state governed by the rule of law (Article 3 of the Constitution of the Republic of Croatia), the very problem of particular competencies should be precisely regulated by legal provisions, leaving potential controversies aside as much as possible. Admittedly, this is not an easily achievable task, but what is more interesting, it can, at least for the purposes of a theoretical debate, be linked to another separate kind of legal interpretation, which leads us to the next point.

The executive stream’s attempt to qualify the mayors’ power of election as “inherent” to their function was, as it was explained here, rejected by the Constitutional Court and, in our opinion, rightly so. That fact should not be underestimated when thinking of the boundaries imposed upon the local executive competencies through the 2009 Croatian legislation regulating local and regional self-government. The Constitutional Court’s opinion, on the other hand, by allowing that through their statutes local representative bodies could decide whether to give the right of election to mayors or to retain it to themselves, sanctioned a particular form of “delegation of powers”. Also, by doing this, the Court practically said that there could be ‘strong’ and ‘weak’ mayors, depending on the statutory powers delegated by council.

Moreover, it should also be stressed that in its opinion the Croatian Constitutional Court rejected the applicant’s motion to apply the relevant provisions of other laws (the Law on Institutions, the Law on Companies and the Law on Budget). In this paper, we have already pointed out that certain legal analogies in that context, at least theoretically, could still be drawn (e.g. previously explained situation of appointments of persons in the institutions of local self-government units). Nevertheless, it seems that this particular segment of the case opens quite an important general problem of the relationships between ordinary and the so-called “organic laws”.24

22 However, it should be admitted, as it has already been pointed out, that the Constitutional Court also invoked another constitutional provision pertaining to the right of local and regional self-government units to regulate their “internal composition and competencies according to law” (article 135 of the Constitution of the Republic of Croatia). But the core of the Court’s argument was from thereon construed mainly on the level of a legal, and not constitutional, interpretation.

23 In that context, one of the mayors stated the following: “For the first time we had direct elections and thus I cannot have fewer powers now than I had had after I had been elected by the council”. See “Gradonačelnici: Neka Mlakar misli što hoće, mi ne damo ovlasti”, Novi list, Rijeka (October 11th 2009), p. 5.

24 The Croatian Constitutional Court in the above mentioned case did not deal with this particular issue, but it is important to bear in mind that in the Croatian constitutional system the laws that, among other things, regulate the local and regional self-government are qualified as the “organic laws” which have to be enacted by a majority of all representatives in the Parliament (article 84 of the Constitution of the Republic of Croatia). From this point of view, in the Croatian doctrine it has already been stressed that the organic laws have a
4 WHO HAS THE LAST WORD OVER THE CITY BUDGET?

The second major conflict between the mayor and the city assembly was over the power to determine the criteria for charging for the services of preschool care for children in the institutions of the City of Zagreb. This conflict was connected to the more important issue of who has the last word over the city budget.

The budget is, along with the statute of the local government unit, the most important act in the jurisdiction of the local council. According to the Law on Local and Regional Self-Government, before it was amended in 2012, these acts must be adopted by the majority vote of all the members of the representative body. Moreover, the local council may be dissolved by the Croatian Government if it fails to adopt the budget in the legally defined deadline or if it fails to make the decision on temporary funding. In the former ‘local parliamentary’ system in Croatia most of the dissolutions of local councils had occurred because of a failure to adopt the budget. The failure to adopt the budget was a sort of a vote of non-confidence to the local executive cabinet by a council, which had a negative majority against the mayor’s proposal, but not a positive majority to elect a new mayor. The dissolution of the representative body meant that there would be an opportunity after the election to elect a new mayor and his executive cabinet.

Some analysts of the new system thought that the failure to adopt the budget because of the conflict between the directly elected mayor and the council would be the major cause of council’s dissolution. This was predicted because the power to propose a budget to the council had been exclusively given to the mayor according to the Budget Law, and there are no sanctions prescribed in case he fails to fulfil this obligation.

In some American cities with the system of a ‘strong mayor’, in the process of the adoption of the city budget the mayor has the right to veto the council’s amendments to his budget’s proposal, and the council has the power to overrule mayor’s veto with the two-thirds majority of all representatives. Similarly, English mayor proposes a budget which may be amended or overturned only by a two-thirds council majority. However, mayors in Croatia don’t have the power to veto the council’s amendments, and, as we have said before, there is only a majority of all the council’s representatives required for the adoption of the budget.

In some municipalities, the process of budget adoption in the first year after the introduction of the directly elected mayors witnessed the use of a new instrument of mayoral power not anticipated by the legislation. In case of council’s amendments to the mayor’s draft budget he simply withdrew his proposal before the voting on the amendments leaving the council in situation of not having any budget proposal to adopt or amend. Mayors had been using their exclusive right to propose the budget, and also their superior means of information required to propose this complex financial document. With such conduct mayors have completely abused their legal powers, but the law did not stipulate that such conduct is prohibited and thus sanctioned. The withdrawal of the draft budget by the mayor, in the case of the council’s amendments, occurred in several Croatian municipalities in December 2009. Having found themselves in strange territory, not legally defined, the councils behaved differently – some of them agreed reluctantly to the mayor’s proposal, some of them voted their amendments, despite the mayor’s withdrawal of the draft budget, and thus adopted the amended budget, and some of them did not know what to do and simply left their municipality without a budget for the next year.

The results of the different actions of individual councils were also different, and it must be said that many contradictory statements could be heard or read at the time from one or the other side. Let me just point to two different endings of the budgetary crisis in two municipalities. The first case concerns the City of Vrbovec in which the council’s majority and the mayor were of opposing political parties. Confronted with the council’s amendments to his draft budget, the mayor withdrew it referring to the council’s rules of procedure according to which the authorized
The proposer has the right to withdraw its proposal before it is decided upon by the council. Contrary to the mayor's opinion, the council interpreted the disposition of the rules of procedure differently, considering that the procedure of adopting the budget had begun with voting on the council's amendments and that in this phase of the procedure the mayor has no authority to withdraw his proposal. Accordingly, the council finished with the voting, adopted all of the submitted amendments and finally voted on the amended budget. The mayor thought that the budget had not been adopted lawfully and refused to publish it in the official gazette of the municipality. Instead, he requested the authorized Ministry of Administration to recommend the disbandment of the council to the Government. The Ministry conducted an inspection which concluded that the council had lawfully adopted the city budget. The inspection gave the following explanation for its conclusion:

The withdrawal of the draft budget, after conclusion of the discussion, in the midst of deciding upon the amendments, on the 29th December, would represent the denial of the possibility for adopting the budget to the representative body in the lawfully prescribed time (before the beginning of the year for which the budget is adopted) /.../

It is important to point to the dispositions of the European Charter of Local Self-Government, which had by the adoption of the Law on confirmation of the European Charter of Local Self-Government /.../ become the part of legal order of the Republic of Croatia and which paragraphs had entered into force in relation to the Republic of Croatia in full. From the conception of the local self-government determined in the Article 3 of the European Charter follows that the local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population, and which right shall be exercised by councils or assemblies.

In the concrete case, the denial of the possibility of adoption of the budget to the representative body and possible creation of conditions for its disbandment directly influences the right and the possibility of the local unit to manage the essential parts of its public needs in the interest of the local population.

We agree completely with this observation – it is written with full regard to the letter and the spirit of the European Charter.

However, the Vrbovec case and the opinion of the inspection of the Ministry of Administration were little noticed in public.26 Much greater attention was given to another case in which the Ministry recommended the Government disband one council in a small municipality (Stari Mikanovci), because it had not adopted the budget and the decision on temporary funding. The council was dissolved because the mayor had withdrawn his draft when confronted with the council's amendments. In this situation the council did not adopt its amendments and the budget as amended, as was the case in Vrbovec. Instead, the council adopted the decision on temporary funding, but not on mayor's proposal. The inspection of the Ministry concluded that the council had been acted unlawfully. It is evident that in two different cases the Ministry’s inspection conclusions were opposite. In the Vrbovec case, the inspection stated that the mayor could not withdraw the draft budget in the process of council’s decision-making on the draft budget. In the other case, the (presumably different) inspection stated that the council could not adopt the budget or the decision on temporary funding if these acts had not been proposed by the mayor.

In the end, the council in the Municipality Stari Mikanovci was disbanded by the Government, and afterwards this decision was confirmed by the Administrative Court. It was the first case of the disallowance of a representative body after the election of 2009, and therefore the impression was, especially among the councilors in many municipalities, that the mayor could cause the disallowance of council simply by withdrawing his draft budget, if confronted with

26 The minutes of the inspection are an internal document of the Ministry, and therefore not available to the public. We obtained this document from the president of the City council of Vrbovec.
unwanted amendments.\textsuperscript{27} Regrettfully, it must be pointed out that the Ministry of Administration did not react in this situation by proposing changes to the Law on Local and Regional Self-Administration or to the Budget Law. Therefore, the ambiguities in the law and the inconsequential nature of the actions of the authorized Ministry created a false impression that mayors have a de facto veto on the council's amendments to their draft budget. We had to explain this situation, created in the first year after the 2009 election of new mayors and councils because it is of relevance for our discussion of the conflict between the mayor and the city assembly in Zagreb.

The conflict over the budget in the City of Zagreb did not occur in 2009, because at the time the attention was focused on the forthcoming presidential elections in December 2009, in which Mayor Bandić and the candidate of the Social Democratic Party Ivo Josipović were the favourites for the Presidency. When Bandić lost the election in the second round in January 2010, his relationship with the city assembly, dominated by the SDP, rapidly deteriorated.

It has to be emphasized that Bandić was without any support in the assembly – he could not count on any party to support him. It is also important to notice that the main opposition party in Zagreb, the Croatian Democratic Union, was also the governing party in Croatia at the time, and used the conflict between the SDP and its former long standing member to its advantage. This was especially visible in 2011, when the conflict between the assembly and the Mayor erupted over the issue of the compensation of services for the preschool care in Zagreb.

This conflict began with the adoption of the city budget for 2011. The mayor proposed in the accompanying program of public needs in the preschool upbringing and education and the care of children of preschool age that parents who have their children in the preschool institutions of the City of Zagreb would have to pay for daily care according to their average family income. Up until

\textsuperscript{27} Altogether, 15 councils in different municipalities were dissolved after the election of 2009 and 12 were because they had not adopted the budget.

\textsuperscript{28} The City Assembly conclusions of 17th May 2011 regarding the Mayor’s suspension of the City Assembly Decision.
claiming that the decision was contrary to the City budget and requested the Assembly to remove the detected shortcomings within fifteen days. This power of suspension is among the longstanding powers of Croatian mayors, but it has been used extremely rarely. But now, in situations of cohabitation, this power was welcomed by mayors faced with hostile councils. As we have said before, if the representative body fails to remove shortcomings, the mayor is obliged to inform the head of the 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 about it, within eight days.

The Assembly reacted to the Mayor’s suspension of its Decision by claiming that it has the right to adopt general acts and specifically that its decision is based on the Law of preschool upbringing and education, which gives the representative body the power to determine compensation and benefits for parents with children in the preschool facilities of a local government unit. In its conclusions, the Assembly stated that if its decision was not consistent with the City budget, it is accordingly the duty and obligation of the Mayor to propose changes in the budget. However, the Mayor declined to do so and instead informed the Ministry of Administration of his suspension of the Assembly’s decision. On the other side, the Assembly requested from the Ministry of Science, Education and Sport its opinion as to the legality of the Decision. So, the local conflict between the mayor and the representative body was raised to the state level.

In the following months, no fewer than three state ministries issued their opinions regarding the disagreement between the local government bodies in Zagreb. The Ministry of Administration, the Ministry of Science, Education and Sport and the Ministry of Finance stated that the Assembly had the legal right to adopt the decision regarding the compensation and benefits for parents with children in preschool facilities. However, the Ministry of Finance also stated, which was obvious from the beginning, that the Assembly’s decision from April 2011, was not in agreement with the city budget, because these two acts prescribe different criteria for parental participation in the financing of preschool care. So, the Ministry concluded that “there are no legal obstacles for the implementation of the decision of the City Assembly, but this decision must be accompanied with changes to the city budget for 2011 and the changes of the program (of public needs in preschool care)”.

After months of legal discussions, the conflict was still not resolved. It was, moreover, only at the beginning – the Assembly was convinced that it had acted lawfully, and the Mayor was supporting the valid city budget, which had been adopted by the Assembly and was unwilling to propose amendments to it. It has to be emphasized that during most of the year parents with children in the city preschool facilities didn’t know what they would have to pay – was it to be according to their income, as proscribed in the City budget and the accompanying program, or according to the Assembly’s decision, which was suspended by the Mayor. Conflicting statements from the Mayor and the president of the City Assembly confused parents and the whole story looked like a nightmare. It seemed that there was no legal solution for the impasse.

Why did the Assembly not initiate the process of the Mayor’s removal through a referendum? As we have said before, the representative body could initiate a referendum for the dismissal of the local executive in two cases and one was if they violate or fail to execute the decisions of the representative body. So, there were certainly the legal grounds to initiate a referendum, and there was also the necessary majority in the Assembly which could have adopted this decision. The problem with the referendum was in the disposition that in the referendum on the Mayor’s removal two conditions has to be fulfilled – one is that the majority of voters have to vote for dismissal, but also that a majority of all voters in the local government unit have to participate in the referendum (the so called quorum of participation). And precisely this second condition was seen as problematic by Assembly leaders and the SDP. In the mayoral election in 2009 the turnout in the first round was only 41, 69 %, and in the second round only 33,62 %. Because of the prog-
nosis that there was little chance of fulfilling this quorum of participation, the Assembly gave up the idea of initiating a referendum. It has to be pointed out that this quorum was the main reason why we have witnessed only one referendum on mayoral dismissal in Croatia in the last three years, and this had been implemented in a small municipality. Even there the quorum was not attained, although the majority of voters participating in the referendum voted for the mayor’s dismissal.

All this changed at the end of 2011, after SDP won the parliamentary election held on 4th December. In the new situation, the Mayor grasped that he could not continue his conflict with the Assembly (dominated by the same party), as now there was real and imminent threat that the SDP-led parliamentary majority could quickly change the Law on Local and Regional Self-Government, making the dismissal of the mayor much easier, as had already been speculated. In the new circumstances, Mayor Bandić suddenly became cooperative with the Assembly – he accepted all of the Assembly’s amendments to his draft budget for 2012, he even accepted (finally) the Assembly’s decision on the compensation and benefits for parents with children in preschool facilities (the same one he refused to implement in April 2011). In return, SDP gave up initiating a referendum on the dismissal of Mayor Bandić. After all, more than half of the regular mayoral term had already passed and the referendum would bring excessive costs and eventually a new mayoral election just 15 or 16 months before the regular elections in 2013.

5 THE 2012 AMENDMENTS TO THE LAW ON LOCAL AND REGIONAL SELF-GOVERNMENT (THE AFTERMATH OF THE “CONFLICT”)

The new system of directly elected mayors implemented in Croatia in 2009 faced its most severe difficulties in municipalities with divided power, where the mayor and council majority represent different political options. In those situations, the legal framework has proved insufficient, especially as to the questions of mayor’s responsibility to execute the council’s decisions and the supervision of central state administration of local government acts.

The previous descriptions of the cases we offered here revealed that a significant part of the problem of cohabitation, at least as it was in the Croatian capital, could be a result of an “ex post emancipation” of mayors from the political parties who had once supported them. Such “developments” probably depend more upon the actual personalities involved and their particular interests or peculiar political circumstances of the day, than upon the fact that a new system envisages the separate and independent political legitimacy of directly elected executive officials. In other words, if a claim that such a danger of political emancipation is by definition inherent and unavoidable is to be sustained, one would first have to prove that it regularly appears on all levels (e.g. with directly elected state presidents). That is not the case, but whether the political legitimacy of directly elected executive officials in a new system nevertheless, to borrow the famous words of Justice R. H. Jackson, “lies about like a loaded weapon” to be invoked in future cases, remains to be seen.

Due to the uneasy relationship between the Mayor and the City Assembly in Zagreb, the new Croatian government decided to propose changes in the laws regulating elections and relationship of representative and executive bodies in the local government system one year ahead of the 2013 local elections.

As we have mentioned in the introduction, the Government’s officially stated goal of the local government system ‘mini-reform’ was to secure “a stronger political stability in the relations between representative and executive bodies, greater efficiency in executing the tasks of these two bodies, and to define more clearly their rights, obligations and responsibilities”. However, in our opinion, the amendments to the Law have led to a much stronger overall position of the mayor in the Croatian local government system.

The Croatian Parliament enacted amendments to the Law on Local and Regional Self-Government in December 2012. Focusing thus

on those articles of the Law which previously appeared relevant for the arguments submitted by the various parties and the Constitutional Court itself, we should emphasize two crucial points.

Firstly, in one of the most important parts of the new version of the Law, local (and regional) executive heads were, unless otherwise prescribed by a special law, explicitly given the right to elect and revoke the representatives of units of local and regional self-government in bodies of institutions, companies and other juridical persons founded for performance of economic, social, communal and other activities in the interest of local and regional self-government units. Moreover, this right of election and revocation of executive heads is not limited in choice and their only obligation is to submit their decisions to local representative bodies within eight days of their enactment and to publish them in the local official gazette.

In this way mayors have been given a strong instrument to influence not only the decisions of all municipal institutions and companies, but also to secure majority support in the representative body by appointing the members of the council to various governing councils of municipal public institutions and supervisory boards of municipal companies. The government’s logic for giving such great authority to the local executive has been to make it more accountable for the functioning of municipal institutions and companies. However, with this particular power the local executive has ample means to ‘corrupt’ the local council, not only to secure its support for his program, but also to eliminate the necessary control of the council over mayoral policies as much as possible.

The amendments to the Law changed neither the overall right of representation of local and regional units belonging to the executive heads (Article 42 of the Law on Local and Regional Self-Government) nor the general clauses defining the scope of powers belonging to both the local representative bodies and local executive heads.

Therefore, in light of the fact that the present version of the Law on Local and Regional Self-Government now contains an explicit provision as to who has the right of election and revocation of representatives in companies founded by local and regional units of self-government, it seems that in this particular segment of general relationships between local executive and representative bodies there should be no further conflicts. But, in our opinion, the present Law also reaffirms another rather important “message”: namely, that broad invocation of “inherent powers” and broad interpretations of a “power of representation” is not legitimate and that a very specific legal definition of particular prerogatives of bodies of local and regional self-government is an indispensable solution in a system governed by the rule of law. Additionally, it seems that the present Law also affirms another very important general conclusion: that, insofar as the whole problem is now regulated by the Law and not left to regulation by various local statutes, there should, at least in this particular segment, be no differences between “strong” and “weak” local executive heads. Such a “uniformity” approach thus seems a good solution.

However, we should also emphasize that in our previous commentaries to the whole problem, we offered a normative interpretation of the whole issue which was quite different from the approach taken by the Croatian Parliament. Therefore, we stress that we opted for a solution according to which the right of election and revocation of representatives in companies and other subjects founded by local units should belong to representiative, and not executive bodies.

31 [Law on Local and Regional Self-Government] Zakon o lokalnoj i područnoj (regionalnoj) samo-upravi from 10th April 2001, Narodne novine, No. 33/01, 60/01, 129/05, 109/07, 125/08, 36/09, 36/09, 150/11, 144/12, 19/13. Article 48.

32 Ibid.

33 As this concerns the local representative bodies, this pertains to their right of election and revocation of ‘other persons’ as well as their right to found institutions and other juridical persons for the performance of economic, social, communal and other activities in the interest of local and regional self-government units. On the other hand, in relation to local executive heads, the present version of the Law still prescribes that they perform (other) tasks as they are prescribed by local statutes and law (articles 35, 42 and 48 of the Law on Local and Regional Self-Government).

34 Here, and for the sake of legitimacy of our doctrinal approach, we emphasize that our previous
Our starting point in that respect was that, taking into account very important legal gaps that existed at the time we were writing our earlier commentaries, the best solution would be to precisely prescribe by law the competencies of bodies of local self-government pertaining to the election of persons in juridical entities founded or owned by local self-government units.

Furthermore, as far as the actual dispute on the issue of elections related to companies was concerned, it was our opinion that such a power belonged to a representative body. We essentially construed our interpretation by arguing the following: since a representative body decides on whether to found public institutions and other entities for performing the economic, social, communal and other activities in the interest of local and regional units, it can also (in its very decision on founding) determine who will, for example, be members of a company assembly and who will elect members of management and advisory boards.

We also stressed that it was a fact that in numerous cases representative bodies delegated the execution of ownership rights to cabinets, and concluded that this unequivocally confirmed that such a power belonged exactly to a representative body, and that it could not be interpreted as deriving from the function of representation, otherwise given to the executive branch.

Finally, we pointed to two, in our opinion, rather relevant possible comparisons to the Law on Institutions: first, that this Law prescribed that the institution is governed by its administrative council or another collective body, whose mode of election or appointment is regulated by law, act of founding (enacted by a representative body) and an institution’s statute (enacted with the consent of a founder, and that is a representative body); and second, that the power of electing an institution’s administrative head could belong to its administrative council, while a law or an act of founding can determine that, on a local self-government unit level, this power belonged to a representative body. In conclusion, we stated that since a legal (executive) power of representation of a local self-government unit is in no way relevant for appointments of persons in the institutions of local self-government units there was no logic to apply such an approach where companies were concerned.

Taking into account all of the further developments in the field (i.e. amendments to the Law on Local and Regional Self-Government), these earlier interpretations of ours nowadays seem obsolete. However, we would nevertheless like to make one final comment on the whole issue. Despite the fact that the present Law on Local and Regional Self-Government now explicitly prescribes that the executive head has a right of election and revocation of representatives of local and regional self-government units in bodies of “their” institutions, companies and other juridical persons, it seems that such a solution in itself, at least theoretically, provokes a kind of inconsistency in meaning. If the “core meaning” of executive branch is to “execute” and the “core meaning” of the representative branch is to “represent”, it seems that a more logical approach of the Law would be to prescribe that local and regional self-government representative bodies, and not executive heads, have the right of election and revocation.

In that respect, we are using the term “representation” not in its technical meaning as it surely belongs to executive heads and extends, as the Constitutional Court rightly pointed out, towards “third persons”, but in its political meaning, as...
a right logically and “inherently” emerges from representative bodies’ general, and even more importantly constitutional (Article 133 of the Croatian Constitution), “power of representation” of citizens on local and regional level and that it is exactly them who could logically “delegate” this power of representation further on.

The second most significant aspect of the ‘mini-reform’ of the Croatian local government system is the introduction of the possibility of the simultaneous dissolution of the representative body and the dismissal of the executive body, with new early elections for both bodies, in cases of the non-adoption of the municipal budget. This mutual dissolution/dismissal could be triggered from both sides: the mayor was given the sole authority to propose the municipal budget and also the power to withdraw the draft budget before its approval by the council; and the council, on the other hand, could simply vote against the mayor's budget proposal.

This simultaneous dissolution of the representative body and dismissal of the executive body has some resemblance to the Italian model of the non-confidence vote of the council against the mayor, with the automatic disbandment of two bodies and new elections. However, in the Italian model such a scenario is possible at any point during the mandate. The local or regional council may adopt a reasoned motion of no confidence against the executive that is adopted by roll call vote with an absolute majority of members. On the other hand, the voluntary resignation of the executive implies not only his resignation, but also the dissolution of the council.41

The Croatian model has several shortcomings in comparison to the Italian one.42 Firstly, the automatic disbandment of two bodies could only occur as a consequence of the non-adoption of the municipal budget, and this procedure only occurs once a year. Secondly, in the case of the non-adoption of the municipal budget, the disbandment of two bodies and the following early election, the concerned municipality would be paralysed for several months, perhaps even longer. Thirdly, and most importantly in our opinion, the mayoral veto over the municipal budget is hardly compliant with not only the Croatian Constitution, but also with some major documents of the Congress of Local and Regional Authorities. According to the Croatian Constitution, the right to self-government is to be realized through local representative bodies and not through mayors (Article 133, par. 2). As to the documents of the Congress of Local and Regional Authorities they clearly position the local council as the highest organ responsible for overall local responsibilities. For example, in the Resolution 139/2002 on relations between the public, the local assembly and 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 (underlined by the authors) 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”. However, in our opinion, these principles have not been met, not only in practice, but also in the Law itself, because according to the Law the local executive has a sort of absolute veto over the council’s adoption of the municipal budget.

41 On the Italian model see Fabbrini (2001:47–70).
42 See Podolnjak (2013).

including various social, political, economic and other interests which are to be reflected in the composition of representative bodies themselves, be they representative bodies of local and regional self-government units or representative bodies of various companies, institutions and other juridical persons “belonging” to those units. However, it also seems true that an important further distinction could be made as far as it is a fact that companies, institutions and other subjects also have their own “representative” and “executive” bodies and that therefore, perhaps, some powers of election and revocation should still be given to local executive heads, but only when it comes to election and revocation of “executive representatives” in such companies, institutions and other subjects. We leave this particular issue for some future discussion.
6 CONCLUSION

It is difficult to predict the functioning of the new system and the relationship between the mayor and local council in subsequent years. At the time of the writing of this article (six months after the local elections of May 2013) the process of the adoption of the first municipal budgets has not even started, and therefore it is impossible to analyse this particular process in municipalities with divided power. However, we are convinced that the mayoral position in potential conflict with the local council would be much better than in the former mandate, chiefly because of its immense power of appointment, which gives control over all municipal institutions and companies.

It is somewhat ironic that the new, predominantly Social-Democratic government which was for the latest local government reform had designed the new ‘imperial mayoralty’ convinced that it would regain local executive power in the major Croatian cities, and especially in Zagreb, after the local elections of 2013, but this expectation was not fulfilled – Milan Bandić, as incumbent, won the mayoral election in Zagreb as an independent candidate, and the Social Democratic Party lost its majority in the City Assembly for the first time in twelve years.

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