

# **Andrija BRAJKO – Jurica SKULIBER: Relationship between legislative and regulatory jurisdiction in the Republic of Croatia (1991–1995)**

**University of Zagreb, Faculty of Law**

DOI 10.21862/siaa.5.10

## **1. Introduction**

In this paper it will be presented an overview of the relationship between the Government of the Republic of Croatia, the Croatian Parliament and the President of the Republic of Croatia, specifically with regard to enactment of decrees based on the legislative delegation, laws and decrees with legal force in the period from 1991 to 1995. The main goal is to put it in context of the circumstances that marked the said period. Additionally, it is important to point out that a comprehensive quantitative and qualitative analysis and comparison of regulatory and legislative activities from that period does not exist in the current scientific literature so that in a certain way represents the greatest value of this research.

## **2. The Croatian Constitution of 1990 and Creation of an Institutional Framework**

The Croatian Constitution of 1990 "set the table" for the the Government, the President and the Parliament to act parallel in the enactment of laws (the Parliament) and the decrees with the force of law (the President and the Government). In two articles (Article 88 and Article 101) Constitution provided the possibility for the Government to enact decrees based on legislative delegation, and for President to enact decrees with legal

force.<sup>1</sup> For the better understanding of the role of the President, it is important to say that in that time semi-presidential system of government was in force, which gave him a lot more powers compared to Croatian President today, in the parliamentary system.<sup>2</sup>

#### Article 88

*"The House of Representatives may, for a maximum period of one year, authorize the Government of the Republic of Croatia to regulate certain issues within its scope, except those relating to the elaboration of constitutionally established freedoms and rights of man and citizen, national rights, electoral system, organization, scope and the way state bodies and local self-government work.*

*Regulations based on legal authority cannot act retroactively.*

*Decrees passed on the basis of legal authority shall cease to be valid upon the expiration of a period of one year from the date of the obtained authority, unless the House of Representatives decides otherwise."*

As one might see in the translated text of Article 88, it says that The House of Representatives may authorize the Government of the Republic of Croatia to regulate certain issues within its scope, but it's limited to a maximum period of one year and also there are certain issues that cannot be regulated by them. Those issues are relating to regulation of constitutionally established freedoms and rights of man and citizen, national rights, electoral system, organization, scope and the way state bodies and local self-government work. It is also stated that Regulations based on legal authority cannot act retroactively and that Decrees passed on the basis of legal authority shall cease to be valid upon the expiration of a period of one year from the date of the obtained authority, unless the House of Representatives decides otherwise. Which means that certain confirmation of the Croatian Parliament is needed. As you can see decrees based on legislative delegation do not depend on a state of emergency, but it is logical

---

<sup>1</sup> The Croatian Constitution 1990 NN 56/90, Article 88 and Article 101.

<sup>2</sup> BAČIĆ, Arsen: Odredbe o stanju nužnosti u Ustavu Republike Hrvatske [Provisions on the state of necessity in the Constitution of the Republic of Croatia]. *Zbornik radova Pravnog fakulteta u Splitu*. 1997, vol. 34., p. 54.

to assume they are surely being enacted more in those situations and you will later see that our research proved that hypothesis.

#### Article 101

*"The President of the Republic issues decrees with legal force and takes extraordinary measures in the event of a state of war or an imminent threat to the independence and unity of the Republic, or when state authorities are prevented from regularly performing constitutional duties. As long as the President of the Republic exercises these powers, the House of Representatives cannot be dissolved.*

*The President of the Republic will submit decrees with legal force for confirmation to the House of Representatives of the Parliament of the Republic of Croatia as soon as the Parliament can meet."*

Article 101 is about decrees with legal force of the President of Croatia. The Constitution says that the President of the Republic issues decrees with the force of law and takes extraordinary measures in the event of war or an imminent threat to the independence and unity of the Republic, or when state authorities are prevented from regularly performing constitutional duties. As long as the President of the Republic exercises these powers, the House of Representatives cannot be dissolved. And the second paragraph contains obligation for the confirmation by the House of Representatives of the Parliament of the Republic of Croatia as soon as the Parliament can meet. Unlike the decrees based on legislative delegation, that we talked about before, decrees with legal force are limited only to a state of emergency which means they can only be enacted in the 3 mentioned situations: the event of war, imminent threat to the independence and unity of the Republic or when state authorities are prevented from regularly performing constitutional duties. And that is why during the early 90s (The Homeland War period) besides laws and decrees based on legislative

delegation we also have decrees with a legal force and therefore we have 3 subjects during that time enacting regulations with the force of law.

### **3. Quantitative and qualitative analysis of normative legal acts in the period from 1991 to 1995**

In this part we will represent a comprehensive representation of the legislative activities of all three actors of government during the first five years of the Croatian state, but also the analysis of the content of these acts, their consequences and intercourse of these three actors. Furthermore, we will present the Laws of the Croatian Parliament, Decrees Based on Legislative Delegation of the Croatian Government, as well as Decrees with Legal Force of the President of Croatia. For the purpose of qualitative analysis, we divided the regulations into five categories - internal affairs, economy and finance, justice, health, science, culture and education and international affairs. The division itself that does not find its roots in the literature or legislation, but is the result of our deliberation as the simplest and yet comprehensively display the content of the acts. Also, division is necessary for a better understanding of the theme itself, and later studying the interconnections.

#### **3.1. Laws of the Croatian parliament**

It is logical to start with the Croatian Parliament as the first, since it is the main and natural legislator. This stems that its legislative activity was the greatest, which can be seen from the table.

	<b>Internal affairs</b>	<b>Economy and finance</b>	<b>Health, science, culture, education and sport</b>	<b>Justice</b>	<b>International affairs</b>
1991.	51	60	27	9	42
1992.	49	39	20	21	1
1993.	43	64	20	14	3
1994.	27	50	18	6	0
1995.	30	43	14	8	0

*Table 1. Laws of Croatian parliament (1991-1995)*

The conducted analysis shows that the Parliament of the Republic of Croatia enacted the largest number of laws, in accordance with the expectations, in 1991.<sup>3</sup> Thereafter, the number of laws declined every year, with the exception of 1993. The parliament's activity was most dominant in the field of economy and finance and internal affairs, which is understandable due to the nature and volume of these categories. The quantity of the law enacted in observed period, clearly shows a balanced dynamic. What, in terms of the Parliament, however, is surprising is the fact that the Croatian War of Independence did not have a significant negative impact on the number of laws made, i.e. did not decrease and prevented the law of the law.<sup>4</sup> In conclusion, since the legislative activity of the Parliament is expected the key problems arise from the actions other two actors originally do not have legislative authority.

---

<sup>3</sup> We expected that The Parliament would enact largest number of laws exactly in the first year of our independence because there were many issues that needed to be regulated, especially in the Internal Affairs and Justice.

<sup>4</sup> It would be logical to assume that the Croatian War of Independence would affect the enactment of laws in a much more larger way.

### 3.2. Decrees based on legislative delegation of the Croatian Government

Croatia was in a situation where the action of the Government, as a homogeneous and yet numerous smaller body, was important for quick-making decisions. This surely significantly affected the volume of the regulations passed based on the legislative delegation.

	<b>Internal affairs</b>	<b>Economy and finance</b>	<b>Health, science, culture, education and sport</b>	<b>Justice</b>	<b>International affairs</b>
1991.	8	21	3	0	4
1992.	17	71	12	4	5
1993.	15	65	4	0	3
1994.	1	66	2	0	2
1995.	5	48	2	0	3

*Table 2. Decrees based on legislative delegation of the Croatian Government (1991-1995)*

Unlike the Parliament where the first two categories have been emphasized, here is the domination contained exclusively in the category of economy and finance. This data is not surprising because this category falls into the description of government powers. Yet this number is truly stunning and even goes beyond the activities of the Parliament in the area. In addition, from the data to conclude that the government was most active in the period from 1992 to 1994.<sup>5</sup> As we have said, this kind of dynamics

---

<sup>5</sup> That is because in the 1991, during the formation of the Republic, issues that were regulated first were naturally under the jurisdiction of the Croatian Parliament.

can be justified by the fact of the war but should not be forgotten that the institute of the legislative delegation was newly introduced, which resulted with the fact that the mechanism of controlling such government action was also lacking.

**3.3. Decrees with legal force of the President of Croatia**

The last, but no less important actor is the president of the Republic of Croatia. He based his actions on the constitution and on the semi-presidential system as well. His legislative activity was relevant just in 1991 and 1992.

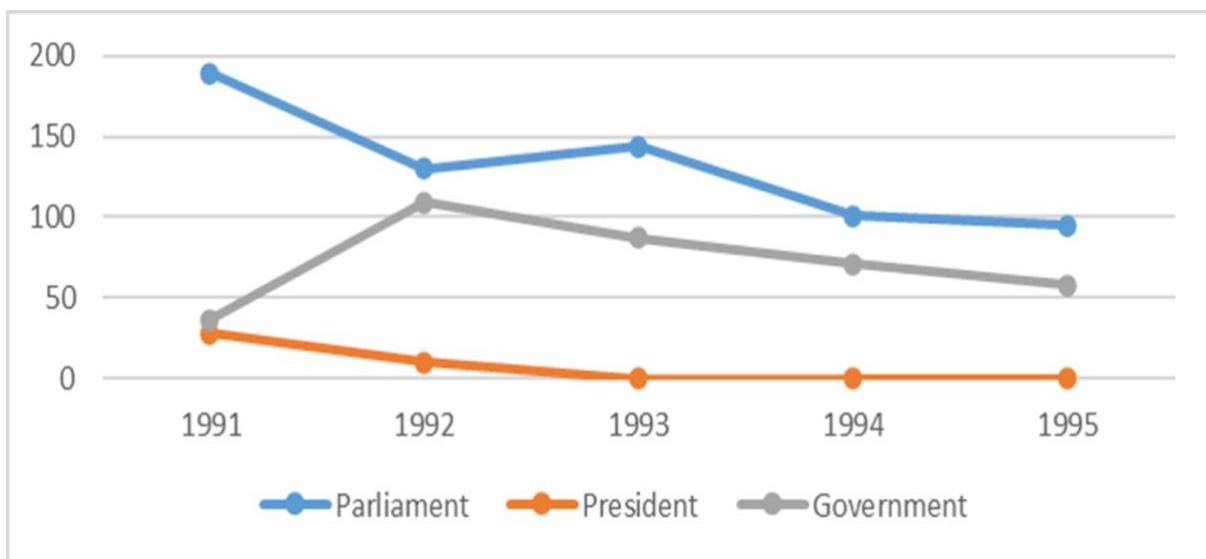
	<b>Internal affairs</b>	<b>Economy and finance</b>	<b>Health, science, culture, education and sport</b>	<b>Justice</b>	<b>International affairs</b>
1991.	13	5	5	5	0
1992.	3	0	3	4	0

*Table 3. Decrees with legal force of the President of Croatia (1991-1995)*

Despite the fact that the number of its regulations is significantly lower than the Government and the Parliament, their qualitative diversity is almost equal to other two actors. The only category without president’s interference was the category of international relations. After all, the key problem of President’s presence in the legislative activity is the justification of adoption of the decrees with legal force and his position in the system of government.

#### 4. Conclusion

By studying the interrelationship of three actors, it is clear that all three actors acted in parallel, which represents a disbalance.<sup>6</sup> Although the Government and the President, as had been shown, had legislative powers, it is important to emphasize that the acts of the Government and the President are still so-called "other regulations".



*Figure 1. Dynamic of enacting Decrees with Legal Force*

Namely, as a legislative body initially did not pass government's acts, and since they had to be subjected to the confirmation of the Parliament, these acts were time limited. In addition, the constitutional provisions of the extraordinary state of emergency limited the decrees with legal force of the President as well.<sup>7</sup> The formulation "other regulations" confirms our thesis that the two primary executive

---

<sup>6</sup> This results in an impression that the Government and the President are equally present in the legislative activity as the Parliament.

<sup>7</sup> KOSNICA, Ivan: Uredbe iz nužde predsjednika RH iz 1991–1992 [Emergency decrees of the President of the Republic of Croatia from 1991–1992]. *Zbornik Pravnog fakulteta u Zagrebu*. 2011, vol. 61., no. 1., p. 177.



bodies had taken their legislative powers too extensively.<sup>8</sup> In addition, the presence and domination of a governing political party throughout the observed period, also could form insecurity and mistrust.<sup>9</sup> However, it is important to note that the process of creating a state is a very systematic and complex process that is almost impossible to grow without mistakes, and the fact of war, certainly did not make it easier. Nevertheless, all the mistakes that inevitably occurred in this process, although affected the later development of the state, in our opinion can serve as a valuable experience for improvement in the organization of the Republic of Croatia.

---

<sup>8</sup> ARLOVIĆ, Mato: Ocjena ustavnosti i zakonitosti drugih propisa [Assessment of the constitutionality and legality of other regulations]. *Pravni vjesnik: časopis za pravne i društvene znanosti Pravnog fakulteta Sveučilišta J.J. Strossmayera u Osijeku*. 2014, vol. 30., no. 3–4., p. 19.

<sup>9</sup> SOBERG, Marius: Hrvatska nakon 1989. godine: HDZ i politika tranzicije [Croatia after 1989: HDZ and the policy of transition]. In: RAMET, Sabrina P. – MATIĆ, Davorka (eds.): *Demokratska tranzicija u Hrvatskoj – transformacija vrijednosti, obrazovanje, mediji* [Democratic transition in Croatia – transformation of values, education, media]. Zagreb, 2006, Alinea, p. 39.