

ПРОБЛЕМА ЗАБЕЗПЕЧЕННЯ СПАДКОЄМНОСТІ ВЛАДИ ГЛАВИ ДЕРЖАВИ У ВИПАДКУ ВАКАНСІЇ НА ЦЬОМУ ПОСТУ (НА ПРИКЛАДІ ПОЛІТИЧНИХ СИСТЕМ БАЛКАНСЬКИХ РЕСПУБЛІК)

Однією з найважливіших особливостей ефективності політичної системи є забезпечення стабільності влади в державі. Предметом статті є проблема забезпечення стабільності влади в 11 Балканських республіках. Автор звертає увагу на функціонування своєрідного механізму делегування главою держави своїх обов'язків на главу парламенту (або на главу однієї з палат).

Ключові слова: глава держави, глава держави *ad interim*, президент *pro tempore*, Балканські республіки.

Одной из самых важных особенностей эффективной политической системы является обеспечение стабильности власти в государстве. Предметом статьи есть проблема обеспечения стабильности власти в 11 Балканских республиках. Автор акцентирует на функционировании своеобразного механизма делегирования главой государства своих обязанностей на председателя парламента (или председателя одной из палат).

Ключевые слова: глава государства, глава государства *ad interim*, президент *pro tempore*, Балканские республики.

*One of the most important features of an effective political system is to ensure stability. Effective political system should protect the state against the lack of government. The subject of this paper is the problem of ensuring continuity in the head of state responsibilities in eleven Balkan republics. The author pays particular attention to the functioning in the region, the transmission mechanism of the head of state responsibilities to the Chairman of the parliament (or the chairman of one of the chambers), as well as in Europe, the only solution is to constitutionalise the vice president as special body set up to perform the duties of *ad interim* head of state.*

Key words: head of state, *ad interim* head of state, president *pro tempore*, Balkan republics.

Introduction. Modern constitutional systems legislators protect their countries from a lack of continuity of power, in particular through appropriate legal mechanisms. Thanks to them, in the case of republics, usually a wide range of head of state powers is passed the appropriate person (s) that perform the powers the head of state until the assumption of office of appointed by the citizens, parliament or other entity, person.

The subject of this article is the problem of ensuring continuity in the exercise of the power head of state in Balkan republics (Bosnia and Herzegovina, Bulgaria, Albania, Croatia, Montenegro, Macedonia, Serbia, Slovenia, Greece and Turkey). The author of this term is understood the person (or group of persons)

who is required to temporarily perform the duties of the head of the country with the prerogatives enjoyed by him, in case the office remains vacant, or when a person who has this office can not perform their duties permanently, and the office is vacant. It is obvious that the continuity in fulfilling the functions of the head of the state is fundamental to the stability of the political system of each country. Extremely interesting issue seem to be widespread in institutions Vice President, whose primary function is to preserve the continuity of this power. Attempting to answer this question will also be the subject of this article.

Legislators in the constitutions describe the course of actions that typically occur when a temporary vacancy in the office of the head of the state (eg, surgery under

general anesthesia), permanent vacancy in the office (eg, death, renunciation of the office), or the lack of assumption of office (eg, denial of the presidential oath.)

At the outset it should be emphasized that all the constitutions of the republics of Europe foresee a situation in which the head of state is unable to perform the duties imposed on it (them) by the constitution. Noteworthy is that almost all the fundamental laws place the rules on the head of state duties during the vacancy or temporary inability to perform its functions in the chapter regulating the systemic position of head of state at the end of this chapter (after determining how to embrace the power by the person / people holding the Presidency, and after its competence). Exceptions to this rule include Polish Constitution (which puts rules on performance of the duties before the head of state regulations concerning the competence of the President) and the Slovenian constitution (in the order selection, the head of state duties, the powers of the president).

Actually (legal status on 20.07.2011), almost all the constitutions of the republics of Europe are distinguished by two separate modes, which cause the transfer functions of head of state by an authority: temporary inability to perform the office of head of state, and the permanent evacuation of the office (Romania). Such distinctions do not apply the Slovak constitution. An overwhelming number of fundamental laws distinguishes these two modes in a very limited way (including Macedonian and Greek constitutions).

Although one should not forget also about the constitutional records, which equate with political and legal consequences of the two modes (Macedonia).

The first mode is activated in the event of a temporary obstacle that hinders the person holding the office of head of state to exercise its functions. Then defined in the Constitution a person shall perform the duties the head of state until the resignation of obstacles and re-acquisition of the presidential duties by a person previously selected in the standard procedure defined constitutionally. You can specify different terms used in relation to such situations: temporary inability to perform the functions or the office appears to be vacant (Albania), as well as temporary inability to exercise his duties due to absence, illness or the use of annual leave (Croatia).

In the case of Greece, the legislator lists the cause of temporary and permanent vacancy in the office head of state, indicating that if the President of the Republic of stay abroad for more than 10 days, his death, resignation from office, lodge a motion or any other obstacle President of the Chamber of Deputies fills the head of state. In the next paragraph indicates that after 30 days of the vacancy, on whether it comes to permanent vacancy in the office, and as a result of the new presidential elections, the parliament decided by a majority of three fifths of its members. Parliament is convened, even in the event of early dissolution of the Chamber of Deputies [5, p. 34 ust. 2].

Table 1

Selected cases of head of state duties in the republics, in which ad interim presidency belongs to the Speaker or the chairman of parliament

COUNTRY	PERIOD OF PERFORMANCE THE DUTIES OF HEAD OF STATE	SOME CASES OF PERFORMANCE OF THE DUTIES OF HEAD OF STATE
Albania	24.07.1997	=> President of the Assembly Skënder Gjinushi performing duties of head of state (president Sali Berisha resigned from office)
Croatia	10.12.1999-2.02.2000	=> President of Sabor Vlatko Pavletić performing duties of head of state (due to the worsening state of health of President Franjo Tuđman and the subsequent death)
	2-18.02.2000	=> President of Sabor Zlatko Tomčić performing duties of head of state (because of the choice of a new speaker of parliament after the death of President Franjo Tuđman)
Montenegro	25.11.2002-19.05.2003	=> President of Assembly Filip Vujanović performing duties of head of state (due to the resignation of President Milo Đukanović)
	19-22.05.2003	=> Deputy Speakers of the Assembly Rifat Rastoder and Dragan Kujović performed together duties of head of state (after the speaker of parliament has resigned)
Greece	10-30.05.1985	=> President of the Chamber of Deputies Ioannis Alevras performing duties of head of state (due to the resignation of President Konstantinos Karamanlis)
Macedonia	19.11.1999-15.12.1999	=> President of the Assembly Savo Klimowski performing duties of head of state (President Kiro Gligorov following the attack he suffered blindness in one eye)
	26.02.2004-12.05.2004	=> President of the Assembly Lupczo Jordanowski performing duties of head of state (President Boris Trajkovski killed in plane crash)
Turkey	17.04-16.05.1993	=> President of the Grand National Assembly of Turkey Hüsamettin Cindoruk performing duties of head of state (President Turgut Özal died while in office)

Source: own.

Croatian Constitution further distinguishes the long disability status, but it seems that this mode should be classified to the mode specified by the author as a mode of temporary incapacity. The Constitution provides that in case the President of the Republic is prevented from discharging his/her duties for a longer period as a result of illness or incapacity and, in particular, if he/she is incapable of making the decision to entrust somebody to discharge his/her duties on a temporary basis, the Speaker of the Parliament shall assume the office of President *pro tempore* of the Republic pursuant to the decision of the Constitutional Court. [7, p. 97 par. 2]. A similar procedure is in the Polish constitution. The constitution also provides for the Estonian state, which distinguishes permanent incapacity to perform the duties of President (it is resolved by Supreme Court) and the temporary inability to exercise the function.

The second mode is activated when there is a permanent obstacle, as a result of which has come to fill the office, but because of the need to maintain certain procedures, it is not possible on the same day, in which there was a vacant office. For a period of vacancy in the office of presidential prerogative to adopt the newly-elected, his duties are performed by a person referred to in the Constitution (or person). In this mode, in principle, there is no possibility that the head of state took the person who is in this mode, the left the office. Most indicated in statutes main reasons are: the death of President in the course of the mandate of the Head of State; removal from office as a result of impeachment procedures; waiver of the office, resignation, recognizing that health makes it impossible to hold office permanently.

Noteworthy are the situations in which legislators seek to identify all possible causes for the permanent vacancy in the office of President. This creates a closed folder. That solution is used, among others, by Lithuanian legislator, which only indicates the death, resignation, removal from office on impeachment procedure and the recognition by the parliament president for health permanently prevents him from performing the duties. What's more, one can not identify provisions that indicate that the assignment of duties of the President of the Republic in other cases (...) is not possible [3, p. 89 par. 4].

However, the majority of states causes the directory as an open, probably assuming that the lawmaker can not foresee all the events in the future. Latvian Constitution provides that if the head of state is outside the state or if there are other obstacles to the exercise of its duties, Chairman of the parliament of the duties of President of the State [2, p. 52].

Republics with collegial head of state. The collegial head of state is an institution in Europe occurring in the three republics: Bosnia-Herzegovina, Switzerland and San Marino. This form of head of state has its justification mainly geographical and historical [12]. The Bosnian-Herzegovinian federation that body is a three-man Presidency of Bosnia and Herzegovina, the Swiss Federal Council of seven, in San Marino

two Captains-Regents. It should be noted that none of these three countries the constitution does not provide for the institution performing duties of head of state, which is probably due to the adoption by the constitutional premise that to collegiality of this body is not necessary to further determination of the body which could take over the powers of head of state, at least temporarily.

Constitutions provide for the possibility of cooptation members of the Head of State, in a situation where because of the death or resignation to the emergence of a vacancy occurred. The composition of the Bosnian-Herzegovinian federation head of state shall be filled by general election [6, p. 5 par. 1]. If there was a vacancy in the office before the end of term, to fill a vacancy is entitled Parliamentary Assembly of Bosnia and Herzegovina.

Republic, which Speaker of the Parliament takes over the duties of head of state. The most common solution used by European legislators is to identify the speaker of parliament as the one who will be required to perform the duties of head of state when he will not be able to perform. This solution adopted constitutions of the thirteen republics of Europe: Albania, Croatia, Montenegro, Estonia, Greece, Latvia, Lithuania, Macedonia, Moldova, Portugal, Serbia, Turkey and Hungary. In the case of the republics of bicameral parliaments representing most of the arrangements granted the President the upper house of parliament. For these countries should include Romania. Duties of the head of state given to president of the lower house of parliament, are only in two countries: Slovenia and Poland.

In the case of Albania, the procedure for taking over the head of state powers in the event of vacancy in the office of President has significantly changed in 1998 in relation to the constitution of 1991. According to the constitution of 1993, its powers passed into the hands of the President of the People's Assembly Presidium and the parliament was obliged to carry out immediate election of a new head of state. The Constitution excluded from the authority of the head of state performing duties of several presidential prerogatives, such as the use of the legislative veto, appointment and dismissal of Prime Minister and other members of the Council of Ministers, the dissolution of Parliament before the end of the term, as well as the so-called issue. of individual decrees, decrees of a normative nature and decisions [4, p. 30].

The Albanian Basic Law equates situations of temporary inability to hold office and the state of vacancy in the office head of state. Then, Chairman of the Assembly shall assume office and exercise its powers. If the President can not exercise his office by more than 60 days, the Assembly by a qualified majority 2/3 majority of all members decided to refer the matter to the Constitutional Court, which ultimately confirmed by the fact of incapacity. In case of inability to confirm the fact, the office of President remains vacant and the election of a new President begins within 10 days of confirmation of disability [1, p. 91]. The Constitution

does not provide for the powers who would cover the head of state, if it would not be able to Albanian parliament chairman.

In Croatia, there are three modes of transition responsibilities of head of state as chairman of the parliament. According to the first mode, for temporary incapacity to hold office (reasons cited by the constitution are: the absence of the president, illness and holidays), the president may delegate the exercise of the President of Parliament. When no longer be an obstacle president may decide to return the functions of head of state to President of the Republic. The Constitution sets out here for two reasons: the inability to exercise presidential powers (in particular, when the president is unable to take the decision to transfer duties of head of state), and disease [7, p. 96].

The second mode provides long inability to hold office. In this mode to take over duties of head of state also acquires President of the Sabor (Parliament of Croatia), but only after consent of the Constitutional Court which shall take the appropriate resolution at the request of the government.

The last, third mode, provides a situation in which the office of President becomes permanently vacant (the Constitution lists the following reasons: death, resignation submitted to the Chairman of the Constitutional Court, the cause of preventing the president took office to act (rule on the Constitutional Court), deprivation of the office of head of state as a result of the procedure by way of constitutional responsibility – impeachment). The Constitution of Croatia provides that the new head of state elections must be held within 60 days from the date of taking over the duties of the chairman of parliament [7, p. 96]. In addition, the Basic Law requires the countersignature of the Prime Minister of acquiring all of its acts.

Constitution of Montenegro (1992) provided two options for taking over the duties of the head of the state. If the office of president remained vacant, the head of state performing duties of the chairman of parliament, and when the Assembly was dissolved, the obligation to exercise presidential prerogatives rested in the hands of the Prime Minister. The Constitution adopted in 2007 excluded the head of government of the possibility of entrusting the exercise of presidential power required to perform duties of a head of state only the President of Parliament (regardless of the cause of the obstacles in the exercise of presidential functions) [10, p. 99].

The Macedonian constitution states that in case of death, resignation, absence of permanent duties or in case of termination of the mandate, the office of head of state is exercised by the President of the Assembly until the new president's inauguration. Any decision on the necessity of the transfer rule on presidential prerogatives.

The new Serbian constitution (of 2006) allows to perform the duties of head of state only for a maximum of 3 months. At the same time demands on to hold a presidential election so that it took place not later than 3 months after the incapacity of the president.

The Slovenian Constitution has a very clear distinction between two modes of performance of the duties of the head of the state. According to the first mode, the Chairman of the National Assembly temporarily perform the duties of President of the Republic during any absence. Also in the case of the permanent cessation of absence, death, resignation or otherwise, the chairman of the National Assembly is required to temporarily perform the functions of President of the Republic until the election of a new head of state. In this case, the new president's election must be held no later than fifteen days after the end of the previous president's term.

The Vice President in the Bulgarian political system. Should also highlight the republic, in which the constitutions provide for the special function of the central authorities primarily responsible (and in most cases – only) for carrying out the duties of head of state when the person to that established by constitutional provisions is not able to perform. This solution provides for example the Irish constitution, which provides a special function of the college is responsible for carrying out the duties of head of state. In turn, the Bulgarian political system works, popular in the countries of the western hemisphere, the institution of the Vice President.

According to the Bulgarian constitution, vice-president assists to head of state to assist in the performance of his duties [9, p. 92. par. 2]. Furthermore, assume the powers of President in four cases: resignation submitted to the Constitutional Court, a permanent inability to perform the duties of the presidential caused severe illness (including the rules of the Constitutional Court), removal from office on impeachment procedure, and in case of death of the president. The Constitution transmits powers of the president (but only with his consent) to Vice President: appointment and dismissal of civil servants; granting citizenship and asylum, as well as the right of grace [9, p. 104]. The Basic Law provides that if the person elected to the office of Vice President of performing duties of head of state, would be unable to perform his office, the powers of head of state passed into the hands of the speaker of parliament, until you select the president and his deputy [9, p. 104]. What is worth mentioning, early emptying the office of the Vice President does not mean resignation of the head of state or supplementary election [11].

Restrictions on powers of performing duties of head of state. Most of the constitutional head of state power levels to those enjoyed by the president pro tempore. This is probably the will to bring to stabilize the situation in the country in which there was an unplanned interruption of the continuity of power. These solutions are used such fundamental laws of Moldova, Macedonia, Latvia, Turkey, Germany, Finland, Belarus, Slovenia, Italy, Montenegro, Austria, Slovakia, Czech Republic, Malta, Iceland, Bulgaria and Iceland.

Some constitutions indicate a small catalog of presidential powers, which the person performing the duties of head of state can not execute. The most frequently used is the inability to ban the dissolution

of parliament. This solution provides for the constitution of Romania and Greece. However, the Constitution provides that if there had been no election of the president, performing duties of head of state can announce early parliamentary elections [5, p. 34 par. 1].

Another limitation is prohibition in referendums management. This, in turn, the solution also provides fundamental laws of Romania and Greece. Moreover, the constitution: Romanian - directing the proclamation to the Parliament. The Serbian constitution indicates the obligation of the person performing the duties of head of state required to outsource the presidential election so that they held no later than 3 months after the onset of the incapacity of the president [8, p. 120 par. 3].

The system is also protected against excessive gain power in the hands of the representative legislature (as chairman of the parliament) and executive (president). This is mainly possible due to the suspension of membership rights and/or the speaker of parliament (or one of its chambers, where we deal with bicameralism). An example of such a solution may be the Macedonian political system, where the constitution allows you to attend a performing duties

of head of state in the session of parliament, but without the right to make decisions. While President of the Assembly to replace the functions exercised by the President of the Republic, he participates in the work of the Assembly without the right to make decisions.

The line of presidential «succession». Only nine Constitution of the European republics indicate who has the competence of the person performing duties of head of state if the person named in the constitution is not able to cover their obligations (see Table 2).

The Greek Constitution provides that the replacement head of state performing duties shall first Speaker of the House of Representatives the previous parliamentary term, and in second place – the government, which exercises the powers of head of state collectively. Also, French legislator admitted the performance of duties of head of state to the government, in the absence of ability to perform this function by the chairman of the Senate. Moldovan constitutional legislator refers in this case, the chairman of the government. The constitution of Finland points to the minister, who holds the office of the Deputy Prime Minister.

Table 2

Presidential «Line of Succession» in the Balkan Republics

COUNTRY	ORGAN ESTABLISHED TO PERFORM THE DUTIES OF HEAD OF STATE IF THE PERSON HOLDING THE OFFICE SPECIFIED IN THE CONSTITUTION OF THE EXERCISE OF THE FUNCTIONS OF THE MAY NOT EXERCISE
Bulgaria	Chairman of the parliament (National Assembly)
Greece	President of the Chamber of Deputies of the previous term, then the government collectively
Romania	President of the lower house of parliament

Source: own.

In Romania, the legislator has adopted a simple solution: when the chairman of the Houses of Parliament is unable to perform the functions performing duties of head of state, then its powers automatically become the president of the second chamber (in Romania, chairman of the Chamber of Deputies). However, in Bulgaria in the case of inability to perform duties of a head of state after the Vice President goes to the president of the unicameral parliament.

Summary. One of the most important tasks of constitution is to ensure the continuity of governance in country. Often legislators writes to set the basic kind of «line of succession», which will be launched in the event of either a permanent vacancy in the office (death, resignation), or a temporary inability to exercise the highest office in the country (severe illness, traveling abroad, resulting in the suspension of prosecution). The most famous example was the adoption of the 25th amendment to the U.S. Constitution in 1967. Sanctioned the custom prevailing there, according to which the head of state after the death of his duties passed to the vice-president. In addition, states that the vice president takes over functions of head of state during a temporary inability to perform the duties of the president [13].

Another interesting theme is the issue of moving the head of state powers in the event of a vacancy in that office. While not subject to doubt that the vast majority of European republics of the first Head of State shall transmit powers in the hands of the chairman of the parliament, it is very interesting to further order of placement of the head of state functions, the first in order the person designated in the constitution is not able to perform the duties imposed on it. In fact, only 9 out of 33 European republics points to another organ.

The legal position in which the line of succession ends with only one organ, seems to be undesirable and dangerous for any political system. It seems that the best legislator secured the Greek political system, where the performing delegated head of state after the speaker of the parliament on the government, which carries out the duties of the president as a body, which certainly protects the system against excessive strengthening of the authority of one person, plus the states in political solutions its political system based on a strong presidential powers (so-called «super-presidential system» or «superpresidentialism»).

Remains questionable, however, even the grant of the presidential prerogatives to the chairman of parliament. Citizens in a way only an indirect have influence of who will be chairman of the parliament

and the executive power will pass into the hands of a representative legislature (which can disrupt the balance), it should be noted that the prime minister is usually elected by the citizens only indirectly.

At the end it should be emphasized that the constitutional arrangements adopted by the Balkan republics legislators intended to provide only temporary presidential duties until election of new head of state. The exceptions to this rule include situations in which the president pro tempore shall exercise the prerogatives of head of state to end presidential term interrupted. This solution works in the Bulgarian political system [14]. Question posed at the beginning of such a rare institution in Europe, Vice President (in the systems of North and South America seems to be the usual functioning of such institutions, if only the state has a republican form of government), it seems to have many answers. Probably one of them is the adoption by the vast majority of European republics legislators parliamentary model in place of the popular presiden-

tialism in the western hemisphere, which is almost inseparable idea of isolating a specific body responsible for replacing the head of state in each case (whether temporary or death for example). Another possible answer may be to economization of the political system: due to the relatively rare cases of temporary inability (and even less frequent permanent) office, the head of state, no need to invoke additional authority responsible only for replacement of the president. This function can be performed equally well by different person, chosen by universal suffrage. It seems to be sensible, that it was a person who not only enjoys high social trust, but the same deputies to the parliament, so it's common in Europe, an indication of the Constitution the president of one of the houses of parliament as an organ responsible for carrying out the duties of head of state in the event of a vacancy. One might therefore ask why head of government has no such permission. The answer seems to be willing legislator not release to the situation of the assembly in one hand full of executive power.

Table 3

Persons performing the duties of President in the event of resignation or death

COUNTRY	PERSON ELECTED OFFICE	ORGAN	PERSON RESPONSIBLE FOR THE PERFORMING THE DUTIES OF HEAD OF STATE
Bosnia and Herzegovina	B. Izetbegović (Bosnian) Ž. Komšić (Croat) N. Radmanović (Serb)	Person (the same nationality as the person who left the presidency), co-opted by the parliament	
Republic of Bulgaria	G. Pyrwanow	Vice-president	A. Marin
Republic of Albania	B. Topi	President of parliament	J. Topalli
Republic of Croatia	I. Josipović		L. Bebić
Republic of Montenegro	F. Vuĵanović		R. Krivokapić
Republic of Greece	K. Papoulias		P. Petsalnikos
Republic of Macedonia	G. Iwanow		T. Veljanoski
Republic of Serbia	B. Tadić		S. Đukić-Dejanović
Republic of Turkey	A. Gül		C. Çiçek
Romania	T. Băseescu		President of the upper house of parliament
Republic of Slovenia	D. Türk	President of the lower house of parliament	P. Gantar

Source: own. As of 17.07.2011.

It seems that the best solution to the problem of continuity of presidential power is to break it to several people gathered in one organ of state. This solution works only in three European republics (San Marino, Switzerland and Bosnia & Herzegovina). In the case of temporary inability to hold office for one person

being a member of collegial head of state, the body can function, in the case of permanent incapacity to be a member of the Presidency, parliaments could appoint his successor. The disadvantage of this approach is, however, a prolonged decision-making.

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