

Pitfalls of the Constitutional Treaty Ratification in the Czech Republic

The debate on the ratification of the constitutional treaty in the Czech Republic shows several interesting aspects. This article will briefly strive at summing up and analysing them.

First point which should be mentioned is the current uncertainty about the ratification method. The Czech Constitution counts pursuant to its Article 10a on a classical way of Parliamentary assent of both chambers of the Czech parliament by three fifths of their members. As the example of the Treaty of Accession shows, the political representation may decide for the case of an obligatory referendum, whose positive outcome directly ratifies the treaty. As there is no framework law regulating a nationwide referendum in the Czech legal system, it was necessary to adopt a special constitutional act. Pursuant to Article 2 paragraph 2 of the Constitution, only a constitutional act can regulate when and how the people exercise the power directly.

In case of the EU Constitutional Treaty, it seems that there is a general consensus on the Czech political scene that the referendum is the way to proceed. However, while some of the member states have already ratified the Constitution or at least have a very specific idea when and how the ratification will be held, the Czech politicians have not even started to discuss the draft constitutional act that would regulate this process. The difference between the largest coalition and opposition parties rests with a different attitude to the institute of referendum as such. The Social Democratic Party (CSSD) conditioned holding of a referendum on the adoption on a general framework act enabling to call for a popular vote on other issues as well. The Civic Democratic Party (ODS) does not support this as generally it is opposed to direct democracy. It claims, though, that the citizens should decide on the Constitutional Treaty as it is a next important step in European integration sacrificing yet more national sovereignty to Brussels. Regarding the fact that the ruling coalition does not have sufficient support in either of the houses of Parliament to adopt the constitutional act as it would wish, it will have to make a deal with the opposition. This means that another ad hoc act is likely to be passed, regulating thus the conditions for holding a referendum on the EU Constitution. At the moment, an ODS proposal is on the table (not submitted to the parliament deliberations yet) which reckons on having a referendum practically under the same conditions as in the case of EU accession, including non-existence of a quorum for the validity of the vote.

Another problematic point is the date of a possible referendum. Prime minister Stanislav Gross announced already in the autumn of 2004 that he would like to join the referendum with the forthcoming election into the Chamber of Deputies due to take place in June 2006. On the contrary, ODS wants to have the referendum earlier, preferably within five months or so. These statements can be in case of both major parties explained by different motives. The Social Democrats hope that the popular vote – if having a positive outcome – will limit its defeat generally expected in the next parliamentary elections. Higher participation when the referendum is held along with the election of deputies could potentially attract a higher percentage of “yes” voters. Apart from that, CSSD in a rather populist way argues with saving the taxpayers money, but it is unlikely to get her any political points. The motives for ODS advocating an earlier date can be seen largely in the fact that this party is not interested in having an in-depth and extensive debate on the Constitution. This is

because it uses largely superficial and populist arguments in her rhetoric that could be turned down in a more profound debate. Another motive is that ODS which refuses the Treaty as such relies on its capacity to convince the votes to say no. If the referendum is held as late as June 2006, ODS risks that the Czech Republic could be the last (and perhaps the only) country that will refuse the Constitution. This would clearly lead the country and its new government (whose leader is almost certainly going to be ODS) in a very uncomfortable position and under pressure that even the Civic Democrats do not dare to risk.

Late vote on the European Constitution however brings yet another subtle but potentially even more serious risk. The Constitutional Court Act envisages the possibility of a review of compatibility of international treaties (under which regime the EU Constitution still falls) with the Czech constitution. This procedure can be initiated by either of the houses of parliament or a group of deputies or senators at the time when the treaty is submitted to the parliament to give its assent with ratification. Furthermore, this can be referred to the Constitutional Court by the president. And it can happen even after a "yes" vote in a referendum, before the treaty is ratified. This means that the review process can be started at a very late stage, in summer 2006 at earliest. Although the Constitutional Court is likely to give preference to this cause, the ruling will still take weeks or months. The Czech Republic can again find itself in a precarious situation as the term for the ratification expires in October 2006. The Czech Constitutional Court Act does not provide for a preliminary reference to the Constitutional Court by the Government which is awkward regarding the fact that the government who negotiated the treaty should have a pre-eminent interest in making sure that the Constitutional Treaty complies with the Czech constitution. Apart from that, the government is automatically part to this proceedings but cannot initiate it. The Government should have the possibility to refer the case to the Constitutional Court at this stage already, thus ensuring that the ratification can proceed, as was the case in Spain for instance.

The situation will get even more complicated if the ruling of the Constitutional Court is negative. In that case the Czech Republic could not ratify the Constitutional Treaty until respective constitutional changes are undertaken. Taking into account the political constellation it cannot be assumed that such changes amendments can be passed, especially if the opposition gains substantially in the next elections to the Lower chamber. The Czech Republic can easily find itself in a situation where it cannot ratify the Treaty despite a positive outcome of the referendum and where the major battlefield where the ratification duel takes place will be the Constitutional Court.

In case of a positive outcome of the referendum, it is unlikely that either of the chambers or a group of deputies or senators will take the risk of running against the will of a majority of Czech voters and refer the case to the Constitutional Court which could subsequently slow down or block the process. In case of the president Vaclav Klaus it is not sure that he will use his power and will still ask the Constitutional Court to review the compatibility of the Constitutional Treaty with the Czech Constitution.

An important element is also a high polarisation of the Czech political scene on the EU Constitution issue. This will definitely be reflected in the public debate which will fully take off at the moment of a definite decision on the mode and date of ratification.

The first signs in this respect were borne by the recent European Parliament resolution where 17 out of 24 Czech MEPs voted against the document. President Klaus during the European Forum in Berlin expressed himself that he is “hundred per cent” against the Constitution. Apart from the aforementioned ODS the Constitutional Treaty is refused also by the Communist Party of Moravia and Silesia (KSCM) which is the third strongest party in the Chamber of Deputies. This implies that the parliamentary ratification is almost impossible at the moment. Thus in a way referendum remains the only feasible way of getting the Treaty approved by the Czech Republic. It cannot be, however, assumed that this will be as easy a process as in case of the accession referendum. It seems that in case of argumentation, the opponents are well ahead. It is not so much that the arguments would sound so much more convincingly, it is rather because their activity in the media is much more vociferous. One of the main arguments put forward by the opponents is that in case the Czech Republic says “no”, nothing much will happen as the system based on the Treaty of Nice will remain in place.

The advocates of the Constitutional Treaty, especially the current ruling coalition, are pushed to a reactive position. If the Treaty is to be ratified in a referendum, the Government as the main advocate of EU Constitution will be faced with an uneasy task of persuading the voters to vote “yes”. But the issue should be put in a broader perspective and to point out to possible serious political consequences of a negative vote, including a possible marginalisation of the Czech Republic in the European decision-making. If the government succeeds in explaining that the referendum will practically mean another referendum on EU membership, it is likely that a sufficient support will be mobilised. This applies also to other countries where the outcome of a popular vote seems highly uncertain.

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