



The Czech ratification of the Constitutional Treaty – victim of the Government crisis?

David Král
March 2005

Until recently, no - one in the Czech Republic really doubted that there will be a referendum on the European Constitution. At the same time, the likely outcome of the popular vote was judged to be likely somewhat “troublesome”, given the deep division of the Czech political class on the issue, a situation comparable to what we see in the UK or in Poland. The trend, however, is changing dramatically and in this respect various interesting scenarios emerge as to what the fate of the Czech ratification could be.

The Czech public seems to be overwhelmingly intact by the Constitution issue. This is partly because the government has done virtually nothing to communicate the Constitutional Treaty to the citizens. The only text of the Constitutional Treaty which has been published officially is on the government-financed website called Euroskop; the only printed version of the Treaty (in Czech) was distributed by the Commission through the EU Information Centre, with an absolutely insufficient number of copies and was gone immediately.

There were internal disagreements in the government concerning who should run the government-financed campaign for the Constitutional Treaty. At the Foreign Ministry, the Department of Communication Strategy which ran most of the pre-accession campaigns including the EU accession referendum campaign wanted to grasp the one on the Constitutional Treaty as well. However, it seems that the Prime Minister would like to have more control over the process, no doubt with a view of assuring the additional political points for social democrats rather than leaving the campaign to Christian Democrats who run the Foreign Ministry. So the campaign is more likely to be run by the Government Office directly.

The Eurobarometer polls show that the Czechs would, according to current estimates, rather likely vote yes. The most recent poll, published in February 2005, shows that 63% of Czechs are in favour of the Constitution, with only 18% opposed to it and 19% undecided. According to the judgement of Mr Jan Zahradil, currently the Czech MEP for ODS (right-wing conservative) party, if there was a referendum on the Constitutional Treaty, about 80% of Czechs would say “yes”. It is, however, necessary to underline that due to a negligible presence of any debate on the issue and general apathy of the Czech population, the turnout is likely to be very low.

Zahradil estimates that only 20 to 30% of eligible voters would turn up at the polling stations.

The recent developments, however, show that the scenario might look completely different. The first fact is that the Government and the opposition (ODS) can almost certainly not agree on the date of the referendum. It was announced already in 2004 that the Government wants to join the referendum with the upcoming parliamentary elections in June 2006. According to an internal source that leaked to Lidove noviny, one of the foremost Czech dailies, social democrats (CSSD) assume that this could influence positively the voters in that more of them would vote for them. According to current polls, they are losing very much on ODS but also on Communists who might become the second strongest party and become the leading force on the Left, at least in the newly elected House. For ODS, the proposed date is totally unacceptable and its leaders claim that there has to be at least half a year pause between the two votes, thus they can imagine having the referendum only in course of 2005. As in any case the referendum bill would have to be passed as a Constitutional Act, both major parties can block any proposal. This is likely to lead to a deadlock meaning that there will be no constitutional law on referendum and therefore the Treaty would have to undergo a "classical" parliamentary ratification.

It has generally been assumed that the parliamentary ratification would not pass the Constitutional Treaty, given a strong opposition from both the ODS and communists. The picture is changing in this respect as well, for several reasons.

Firstly, recently some experts make the point that for the ratification of the Constitution, a simple majority in both houses of Parliament would suffice. This is due to a slightly problematic interpretation of the Czech constitution, which requires a three fifth majority in both chambers if a treaty transfers sovereignty from the Czech Republic to a supranational institution. The argument made by those who consider the simple majority sufficient is that an overall consensus on a transfer of sovereignty has taken place already by virtue of the EU accession. This issue would have to be eventually decided by the Constitutional Court. It is, however, disputable how the process can be initiated as the Constitutional Court interprets the Constitution only in relation to some specific proceedings envisaged in the Constitutional Court Act. Therefore, we might witness an interesting precedent if the Constitutional Court accepts a request of (probably) the Parliament to interpret what majority is required to ratify the Constitutional Treaty.

The second point is a turn in the position of ODS. Despite the fact it has vociferously opposed the text, recently a shift can be seen, according to some sources even alleging that the ODS would say a lukewarm "yes" to the Treaty. This is only logical – given the current preferences of ODS reaching 30% and the fact that about 80% of its voters are strongly pro-European (entrepreneurs, highly educated people), in a long run it would be difficult for ODS to retain its rather eurosceptic profile. Furthermore, in the ODS itself, the bottom-up pressure especially from the local and regional leaders (ODS did overwhelmingly well in the autumn 2004 regional elections) who are the first to see the EU benefits through structural funds is pushing the party leaders to calm down the rhetoric. This is not to say that ODS deputies or senators will eventually vote for the Constitutional Treaty automatically. But it

significantly increases the chances of the Government bargains if the text gets down to a parliamentary vote.

Although some of the ODS leaders claim that being pro-European is not the same thing as being pro-Constitution, they are taking into consideration possible consequences of a failure to ratify. Mr Zahradil has recently pledged the Commission for a response to 4 legal questions on the consequences of non-ratification. It is almost sure what the Commission will respond – there is no mechanism for country leaving the EU when it fails to ratify and no sanctions can be imposed on it. However, the consequences will rest in a political domain and therefore it is doubtful whether the Commission was the right body to address. It is an acknowledged fact that Gerhard Schröder has committed a study on a possible legal scenario to get around a constitutional gridlock if one or more countries fail to ratify and the others still want to move ahead. Maybe it would be wiser for Jan Zahradil to talk more to the political leaders of the other member states who continue to have the main say over the EU primary law.

The third, and arguably the most important point of the changing picture of the Czech ratification, is the ongoing government “crisis” in Czechia. Without having to go into too much detail of the developments, we can envisage different scenarios as how the process of the debate and ratification will be influenced by some kind of deal between the government and ODS.

In scenario one, the current government would support the pending ODS proposal coming from the Senate to have a referendum in the autumn of 2005. For this, the Civic Democrats would have to make some sort of deal with CSSD. This can be done in return for ODS keeping the government in power for the rest of the election period. It is unlikely to happen because it would seriously damage ODS credibility and the party has no reason to risk this. But rumours say that other negotiations are on the table, for instance the constitutional amendment in which the election system in the Lower House would be switched from proportional representation to majority. This could be very important for social democrats, who are falling in preferences behind the communists, because majority system would marginalise the communists. On the other hand, it could enforce ODS even more. But the key question is whether the majority system would be one or two rounds. ODS seems to prefer the one-round system and this is unlikely to be approved by social democrats.

The second scenario is that ODS would agree to have the parliamentary elections and referendum joint as proposed by the government. This is the most unlikely scenario as the government has no leverage on ODS in this respect, except the claim that it saves the taxpayers’ money and increases the turnout. On the contrary, it is ODS which is trying to initiate preliminary elections.

Another scenario is that the two main parties cannot agree on a constitutional act and there will be no referendum. In that case, the Constitutional Treaty will go to the Parliament. The key element will be the ruling of the Constitutional Court as to what majority is required for the ratification. If it says that a simple majority suffices, then it will get through without problems. If the Court says that three fifths are required, the government will have to beg for support among ODS or communists. It is more likely to ask the ODS for a support, although much will depend on the outcome of the

Social Democratic Congress to take place in two weeks. Again, the government will have to offer ODS something for a support. It could be again a switch to majority system, or perhaps even a resignation of the current cabinet. It would be great if the government could sacrifice the success of ratification to sorting out internal political problems. However, given the Czech political reality, it would be too optimistic to expect that.

The last scenario is that before the ratification even gets to the Parliament, there will be early elections. In that case, ODS is going to win and will assume majority in the House, probably in coalition with Christian Democrats. In that case, it can comfortably call for a referendum (with a likely support of social democrats in opposition) that will approve the Constitution and the ODS will not have to change its opinion or rhetoric too radically. The campaign will probably have a low profile, with balanced set of arguments in favour and against. It can be argued that ODS, once in power, would like see the Treaty ratified even more, for at least two reasons. Firstly taking into account its likely coalition ally, a largely pro-European Christian Democrats, this will have a moderating effect on ODS rhetoric. Secondly it will not be a nice start for the new government in power to deal with the other EU-leaders on political consequences of non-ratification and possibly withdrawal from the EU.

Although it is difficult to judge at the moment which scenario will prevail, it is almost certain that the ratification is already becoming a victim of internal political crisis. As the current government is struggling with agony to keep in power, not least in a view of some important steps to be accomplished like the privatisation of the Czech Telecom, it will probably not want to sacrifice an early election in return for the ODS supporting the Constitutional Treaty. In a view of both ODS and social democrats trying to gain additional points on domestic scene, the likelihood that they will agree on a referendum date diminishes significantly. Therefore, what we are likely to see is that the Treaty will actually get down to a parliamentary vote, with the social democrats seeking support across the political spectrum. And it is likely to find it among ODS which might split at this point, due to appeals of its voters and regional and local leaders. But it would be a very complicated process with an unsure outcome. In terms of maintaining the consistency of political claims of the key political players, it would be wise if the government makes a concession and agrees to having the referendum earlier as the ODS suggests. It would still allow to start a debate which would not take place if the treaty goes to the Parliament and which is badly needed in the Czech context. It will allow to separate the issue of European Constitution from the other topics that will certainly dominate the national election. And even if it means a loss of some political points for the governing coalition, it will be the right way of getting the approval of the people for the Constitution which the Government defends so vigorously.

David Král is the Chairman of EUROPEUM Institute for European Policy