

CONSTITUTIONAL EVOLUTION

The discussion about the future of Europe from the Czech Perspective

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During the last twenty years the geographical, political and conceptual map of Europe has significantly changed. Several processes occurred simultaneously: transformation and accession, deepening and widening. When ten countries from Central and Eastern Europe plus Cyprus and Malta joined the EU in 2004, Romania and Bulgaria in 2007 the number of EU member states reached 27. The momentous project which fulfilled the dreams of several generations of Europeans to form a peaceful prosperous continent helped to overcome and heal the wounds after World War II and Cold War. The never ending discussion about the shape of a common European house got new impulses. During the Big Bang the European Union was facing new challenges connected with the demands of new millennium, but it was also seeking new paradigms for itself. It was asking questions about its future and it is still in search for new visions, among others on the fundamental question whether the future architecture of Europe should give more power to the EU institutions or the member states and how to provide a decent life for its citizens and contribute to peace and stability in the world.

In addition, calls for bringing the EU closer to the citizens, to make it more 'user friendly', and to give it new tasks, including that of becoming the most efficient economy, have led to a public debate (*Le Grand Debat*) about the EU's objectives, launched at the turn of the millennium.

The new stage of the constitutionalization process in the European Union on the eve of the enlargement decided to launch the Convention at the summit in Laeken in 2001. The task for the Convention was "to draw up a final document which may comprise either different option, indicating the degree of support which they received, or recommendations if consensus is achieved....the Intergovernmental Conference will take the ultimate decision."¹ The

¹ European Council: Declaration on the Future of the Union, pp. 169-175, available at: www.evropska-unie.cz (last accessed: 1 May 2008).

Declaration emphasized the necessity of improving and controlling the democratic legitimacy and transparency of the EU and its institutions, which would bring them closer to the people in the member states.² The debate on the future of Europe, which had already been launched in 2000, had to have its forum. National debates were to be included. European citizens were supposed to get closer to the European design and institutions, the reform had to organize politics and the European political area in an enlarged Europe and the EU was supposed to become a stabilizing factor on the world stage.³

After 2000 the Czech Republic and other candidate countries were involved in the whole discussion *Le Grand Debat* about the future of Europe together with the member states. The debate was foreshadowed by German Minister of Foreign Affairs Joschka Fischer in his famous speech at Humboldt University in 2000.⁴ The cacophony of voices was heard also from the Czech national debate. European political scene noted two speeches given by a Czech President Václav Havel first in French Senate in 1999 and then in the Strasbourg building of European Parliament in 2000. Europeanness is for him connected with the set of values, ideals and principles.⁵ The main part of his contribution Havel devoted to European values based on the respect to the individual and his freedom, rights and destiny. Havel proposed the establishment of the constitution summarizing the basic principles and values of the EU, second part was supposed to describe the institutions and their competencies.⁶ The creation of a second Chamber of the European Parliament inspired by American Senate and composed by the representatives of national parliament received lesser backing.

The different tone sounded from the “Manifesto of Czech Eurorealism” authors of which were led by Jan Zahradil, the Shadow Minister of Foreign Affairs from the opposition Civic Democratic Party. The Manifesto rejected strengthening of the role of the European

² Cf. European Council: Declaration on the Future of the Union, pp.170-175, available at: www.evropska-unie.cz, (last accessed: 1 May 2008).

³ Cf. Norman Peter: *The Accidental Constitution. The Story of European Convention*, EuroComment, Brussels 2003, p.21.

⁴ "From Confederacy to federation - Thoughts on the finality of European integration" Speech by Joschka Fischer at the Humboldt University in Berlin, 12 May 2000, http://www.auswaert.../index_html?bereich_id=17

⁵ Projev presidenta republiky Václava Havla před poslanci Evropského parlamentu, Štrasburk, 16.února 2000,s.1 <http://www.euroskop.cz/euroskop/site/oko/analyzy/havel.html>

⁶ Projev presidenta republiky Václava Havla před poslanci Evropského parlamentu, Štrasburk, 16.února 2000, s.2

institutions as well as adopting the constitution. It endorses flexible and multi speed "*Europe á la carte*".⁷ The authors proposed scenarios of Switzerland, Norway or special relationship with the USA and joining NAFTA even though the trade exchange between the Czech Republic and the USA represents only 4%. The broad diapason of opinions vis-à-vis the EU was heard on European as well as Czech political scene and covered many approaches from federalist ones till Eurosceptic.

Czechs and the Cleavages in the Convention

The cleavages, which occurred in the Convention were based on the affiliation to political families, representatives of the governments, parliaments and the EU institutions, divisions between federalists and intergovernmentalists, small and big states etc. The one division that was missing was the cleavage between old and new member states. For the rest, the representatives from the candidate countries took part at the meetings of their political families, they gathered according to the components [governments and parliaments] or their approach to the reform of institutions etc.

During February and March 2003 was established the group of so called "*like minded countries*", or "*friends of communitarian method*", uniting mainly small countries of the EU. The most active role was played by Portugal, Ireland, Austria and Finland. They were joined by Sweden and Denmark, which were expressing some comments to the proposal of small states accepting the role of the permanent President of the European Council. Benelux played sort of double role, at the beginning joining the group, then during the last sessions of the Convention cooperating more with the French-German axis and coming back at the end. This applied mainly to the Netherlands and Luxembourg. The group was joined by nearly all new member states: the Czech Republic, Slovakia, Slovenia, Hungary, Estonia, Lithuania and Latvia. Active role belonged to Malta and Cyprus too.⁸

⁷ The Manifesto of Czech Eurorealism, Manifest českého eurorealismu (zkrácená verze), Jan Zahradil, Petr Plecítý, Petr Adrián, Miloslav Bednář, Praha 2001, s.4

⁸ The meeting of the group of like minded countries was held during the last days of the Convention in July 2003. All above mentioned countries took part and expressed their willingness to coordinate their attitudes during the upcoming IGC. They also accepted the invitation for the meeting of the group organized in Prague at the Ministry of Foreign Affairs on September 1, 2003.

The main topic for the group was preservation of as equal position of the member states as possible and stressing of the communitarian principle. One of the main tasks was the conservation of the principle of equal rotation on the head of European Council and the principle “one country = one Commissioner” in the European Commission.⁹ During the duration of the Convention the groupings were changing and at the end it was even Great Britain who supported idea of “one country = one Commissioner”. Poland, which on one hand did not join the group of like minded countries on the other hand, expressed many similar views. Poland even took part at the meeting of the group in Prague in September 2003. It was not difficult for the Czech delegation to join the group, because the Czech governmental draft “Non paper”, which was published on the Convention web page in January 2003, was nearly identical to the proposal of “*like minded group.*”¹⁰

Czechs in the Convention

The division in the Czech political scene as well as in the Czech society found its expression also in the participation at the Convention. The representation at the Convention was organized according to political affiliation. The representative of the Czech Government, Mr. Jan Kavan, was a former Minister of Foreign Affairs and he belonged to Social Democratic party. In summer 2002, after the election, he was replaced by his Alternate Mr. Jan Kohout, State Secretary and First Vice Minister of Foreign Affairs responsible for European matters, from the same political party. The Lower House of the Parliament sent to the Convention Mr. Jan Zahradil, member of ODS, Civic Democratic Party and Shadow Minister of Foreign Affairs. The Senate was represented by Mr. Josef Zieleniec, the former Minister of Foreign Affairs, he is affiliated to US, Union of Freedom party.¹¹

The Government representative of the Czech Republic Jan Kohout followed his political family PES and especially was involved in the group of “*like minded states*” or “*friends of*

⁹ http://european-convention.eu.int/doc_wg.asp?lang=EN

¹⁰ http://european-convention.eu.int/doc_wg.asp?lang=EN

¹¹ The Alternate for Mr.Kohout was Lenka Rovná, Professor of Charles University, no party. The Alternate for Mr.Zahradil was Mr.Nečas, MP from ODS. The Alternate for Mr.Zieleniec, the Senator Kroupa came from KDU/CSL.

communitarian method" as they called themselves.¹² These countries were for the preservation of the rotation system in the European Council, because they were afraid of strengthening the role of bigger states. They also supported the principle "one state, one Commissioner". It was not difficult for Mr.Kohout to follow this group, the main thoughts of their common statement were already expressed in Czech "*Non-paper*" published at the end of 2002.¹³

The Czech Government and their representative Mr.Kohout supported a "*mixed model*" based on the balance between intergovernmental and supranational, federal models. This method can lead to the "derived federation" model which exists, for instance, in Canada. Thus an "ever closer Union" would respect nation states and their positions as to key question, on the other hand it will strengthen cooperation in all fields.¹⁴

Mr.Zieleniec, the representative of the Czech Senate was based in the political family of EPP, European Peoples' Party. He supported the transfer of competencies on the federal level. His model of federal state seems to be a decentralized asymmetrical unitary state. Mr.Zieleniec hopes for the further politicization of the decision making process of the EU on the basis of political affiliation. The President of the EU will be elected by European parliament and the choice would be based on his belonging to a political family. Zieleniec's slogan was: "If we give Europeans European politics, they will give Europe their hearts and trust"¹⁵.

Mr.Jan Zahradil affiliated himself with a group of European Democrats led by a eurosceptic member of European Parliament from Denmark, Mr Jens-Peter Bonde. His model is close to pure confederation, in which every step forward requires the confirmation by national institutions. Mr. Zahradil supports economic integration of the EU, but he rejects the political one. On June 12, the day before the final document of Part I of the Constitution was accepted, Mr. Zahradil left the Convention. The day after he called in Prague a press conference in which he reproached Valéry Giscard d'Estaing for manipulating the procedure. This was the

¹² Maximum 19 members supported this group. The most active were Portugal, Austria, Finland, Ireland, partly Benelux, Denmark, Sweden, Hungary, Czech Republic, Slovenia, Baltic countries etc.

¹³ Non paper on the reform of EU institutions, The European Convention, The Secretariat, CONV 485/03, 15 January 2003, Brussels

¹⁴ The author as an Alternate member of the Convention was using internal materials of the government.

¹⁵ Speech to the Convention by Senator Josef Zieleniec, 21.3.2002, zieleniec@senat.cz

day when the referendum about the accession of the EU was held. This was a very rare moment when Czech public was thinking "European", and the proclamation did not fail to catch attention¹⁶.

After loosing a close ally Mr. Zahradil who became MEP as well as Czech ODS cooperated intimately with British Conservatives and after the elections in 2009 formed a new group in the EP. Mr. Zahradil who was the leader of ODS to the European elections got a strong message by the voters who by preferential votes gave priority to more pro European leader of Northern Moravian region Tošenovský.

Ratification Process and Czech Reflections

There is considerable amount of political competition over European matters in the Czech Republic. The Government, the President, political parties, as well as civic society express a multi-faceted variety of opinions. The Prague Castle (the seat of the Czech President) represents a strong Euroskeptic voice, echoed by a part of ODS and by the Communist party. The lack of consensus over European matters, among others, resulted in the non-adoption of the Euro. The Czech Republic did not even state a prospective date. The dispute was connected with a strong rejection of the President Václav Klaus who is responsible for the nomination of the members of the National Bank Council. As a result, the experts who are inclined to postpone the adoption are in the majority. The present debate is also influenced by the economic crisis and there is a fragile consensus among the economists and politicians that the decision has to be done very cautiously. Some stated that the country missed an opportunity by not having joined together with Slovakia, others praised the fact that having its own currency enables the country to respond to the economic crisis more flexibly. Only time will tell who was right.

Another topic whirled the public opinion on the eve of the elections: the ratification of the Lisbon Treaty. The coalition government of Mirek Topolánek negotiated the final shape

¹⁶ Zahradil opustil Konvent, [Zahradil left the Convention], Lidové noviny, June 13, 2003, p.1

of the treaty and the Prime Minister, together with Karel Schwarzenberg, the Minister of Foreign Affairs, added their signatures. The Czech Republic was the last member state to start the ratification process. The President and a group of ODS Senators appealed to the Constitutional Court, questioning Lisbon's compliance with the Czech Constitution. The Court ruled on November 26, 2008 after seven months of examinations, that the Treaty did not contradict the Constitution. (<http://www.euractiv.cz/budoucnost-eu/clanek/ustavni-soud-rozhodl-lisabonska-smlouva-je-v-souladu-s-ceskou-ustavou-005349> as of July 15, 2009)

Unfortunately, the decision did not concern the Treaty as a whole, but addressed only the specific questions asked. The Parliament approved the Treaty with a majority of 125 votes (there are 200 seats in the House), 61 against (mainly from ODS and the Communist party), 11 abstained and 3 were not present on February 2, 2009. The Senate, under the influence of a strong opposition of Euroskeptic Senators from ODS voted on May 6 and approved the Treaty with a majority of 54 votes with 20 Senators against, 5 abstentions and 2 non-attendance. The ratification by both Houses of Parliament was severely criticised by President Václav Klaus who encouraged the group of resentful Senators to appeal again to the Constitutional Court. Klaus refused to finalise the ratification (even though it is his constitutional duty) until the Constitutional Court gives its opinion and the Irish people decide in a second referendum.¹⁷

Some critics suggested that the President should resign. Despite this political commotion, the debate about the ratification of the Lisbon Treaty did not attract any special attention of the broader public.

Jacques Rupnik, a Professor of Political Science from Science Po in Paris summarized" It is evident, that Václav Klaus fundamentally influenced the way how the debate about the European Union in the Czech Republic is led. Instead of discussing about things, which are

¹⁷ In personal conversation at French Embassy Václav Klaus told me: „I am sure that Lisbon Treaty will not be adopted. If I sign it I would have to commit hara-kiri. “ Prague July 14,2009

really defining the European Union, the President installed an acute thesis and than this is up to the other to disprove it.”¹⁸

Using the results of the team from Jean Monnet Centre of Excellence at Charles University in Prague we can classify the attitudes into three groups:

1. The **“traditional sovereigntist” critique focused at the democratic deficit at the EU level and the lack of democratic accountability of the EU institutions** (in particular the European Commission and the European Parliament) **corresponds to Klaus' critique of activities of those structures in the Czech Republic** which do not fit to the standard political party models (NGOs and citizens movements with the political aspirations in particular). From this (Klaus') perspective, the European Union lacks the legitimacy to intervene in the domestic affairs of the Czech Republic in the analogous way as the NGOs and citizen's movements lack the authority to intervene in the domestic politics driven by standard political parties and constitutional structures.

2. The **“selective Eurorealist approach” supports the economic integration process and the integration in the majority of the other policy areas**. However, it tests or “filters” further development of the EU regulatory framework by the impact on the interests of the Czech Republic as well as the changes in the EU institutional framework by their impact on the negotiation potential of the Czech Republic in the European Union. Clear example of this “selective realist approach” was Czech reluctance to support the transfer of the agenda of the “judicial and police cooperation in criminal matters” from the third EU pillar to the framework of the European Community (the first pillar) as proposed during the Finish Presidency in 2006. The rejection of the project of the EU Constitutional Treaty is shared by the representatives of the “selective realist approach” with the supporters of the “traditional sovereigntist”

3. The third concept present in the Czech political debate, is the **“supranational” or “community method driven”** leitbild. It supports the community method of governance in the EU and is not opposing further transfers of competencies from the Czech Republic to the

¹⁸ Daniel Anýž, Jacques Rupnik: Řekněme si, co od Unie vlastně chceme, Jacques Rupnik, Let Us Say What We Want from the Union, Mladá fronta Dnes, 2.4.2005, p.E IV

European Union. The representatives of the “supranational” leitbild dominated the government of the Czech Republic during the accession negotiation to the EU and during the preparation of the EU Constitutional Treaty. The Social Democratic Party (key party of former government), Christian Democratic Party (both in former and current governments) and Green Party (member of current governmental coalition) are the most visible representatives of his supranational leitbild in Czech political life.

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