

4. The Velvet Revolution: the causes and process of the decline of communist power⁸⁴

Signs of the approaching collapse of communist rule could be observed from the mid-1980s onwards. In July 1985, a large Catholic pilgrimage was organised in Velehrad, a place linked with the beginnings of Czech and Moravians Christianity. Although the communist establishment sought to prevent the pilgrimage or at least impose severe restrictions on it, they found they no longer had enough power and authority. The pilgrimage became the largest anti-regime gathering of the communist era, with nearly 200,000 people participating, almost two-thirds of them young. The presence of young people was particularly painful for the regime, as it flew in the face of communist descriptions of the Catholic Church as a concern only of a few old people (Cuhra 2001: 168-174, Halas 2004: 625-626).

Less than a year later, in April 1986, the dysfunction of the channels of power and information was made evident in the regime's inadequate response to the disaster at the nuclear power plant in Chernobyl. For ideological reasons, the KSČ absurdly refused to inform the public about the possible dangers, as by doing so it would admit that Soviet nuclear technology was imperfect. The party preferred to put Czechoslovak citizens at risk.

At the same time in the Soviet Union, the *perestroika* reform movement, linked with the elevation of Mikhail Sergeevich Gorbachev to the post of general secretary of the Communist Party of the Soviet Union in March 1985, was becoming increasingly vocal. Among other changes, perestroika reduced the pressure exerted on dissident circles. As a consequence, expressions of opposition, first cultural and later civic, became more common. The transformation of the communist bloc that was linked with the phenomena of *perestroika* and *glasnost* complicated rather than eased things for the KSČ. At its 17th Congress in March 1986 the party mostly ignored *perestroika* and sought to preserve the status quo. The KSČ leadership found itself in a blind alley. The party was led by many of the same people who had initiated the 'normalisation' nearly two decades before and for whom unconditional obedience to Moscow was the main component of their identity. To carry out *perestroika* and *glasnost* now (following the Moscow model) would mean renouncing their own policies (for the discussions and developments in the highest echelons of the KSČ, see Štefek 2014: 71-142). Thus, the 1985-1989 period was marked by careful manoeuvring – in effect, a show of disrespect towards Moscow, even though obeisance to the Moscow line had hitherto been the very essence of Czech communism. Within the structures of the KSČ, this

⁸⁴ Parts of this chapter are revised from Balík 2015 and Balík, Holzer and Kopeček 2008.

widened the gap between the leadership (the 'old guard'), who felt threatened by the reform vision, and the younger, technocratic generation of party officials whose interest was in finding a way forward that would allow them to preserve their individual positions, even if the party as a whole were to lose its monopoly on power.

Until November 1989, the latent conflict within the party between a pragmatic wing willing to admit some reform (for instance in the economy) and an ideologically orthodox wing that rejected such an option as it might unleash processes that could gradually dismantle the KSC's monopoly, did not develop into an open clash. Some of the steps taken, such as the replacement of Gustáv Husák in the post of general secretary of the ÚV KSC with Milouš Jakeš, the resignation of the ideologist Vasil' Bilak from the ÚV KSC, and the amendment of the act on elections to the Federal Assembly that allowed multiple candidates to contest a seat, cannot be described as an adequate response to the evolving situation. Rather, they indicate that the majority of the party elite lagged behind developments and desperately sought to preserve at least some power. Thus, in the second half of the 1980s the party showed numerous signs of decay. As their patron, the Soviet Union, ceased to exercise strict oversight over them, the KSC leaders found themselves in a new, historically unprecedented situation. The waning of the KSC's political monopoly in the late 1980s was accompanied by deep disillusion within the party and a merciless reality check for its leaders.

What emerged in Czechoslovakia was the situation often seen at the end of a totalitarian regime: the party-state was divided into two wings – a reform wing and a conservative wing – and an unofficial opposition including both dissident circles (Palouš 1993) and wider strata of society, which was becoming more active. Czechoslovakia nonetheless differed from most Eastern European countries in that the reform communist wing was of insufficient strength and, more importantly, lacked distinct personalities in its leadership (Výkoulal, Litera and Tejchman 2000: 592-593). Furthermore, unlike in Poland and Hungary, Czechoslovak opposition was insignificant – though increasingly active, its numbers were very low. The broader public had only a faint knowledge of the opposition leaders, including Václav Havel.

As far as the relationship between society and politics was concerned, the social contract (see Chapter 3) was being eroded during the late 1980s, primarily due to the inappropriate structure of the country's economy. The regime ceased to be able to satisfy the growing consumerist expectations of its population. These expectations – which the regime had been able to fulfil sufficiently throughout the 1970s – were raised by the visibly improving standards of living in Western Europe, and Czechoslovak citizens were

particularly sensitive to the comparisons they were inevitably making with their neighbours, Austria and West Germany.⁸⁵

From 1988 onwards, the nature of the opposition movements and their strategies gradually changed. New organisations were created, mostly by the young generation. In comparison with their predecessors, they preserved the emphasis on the defence of human and civic rights, but for the first time political arguments *sensu stricto* appeared with regime change as their aim.

Petitions became a symbol of the last years of communist rule. In the largest petition ever, supported by more than half a million people in late 1987, the Moravian Catholic Augustin Navrátil demanded religious freedom. In June 1989 the petition 'A Few Sentences' (*Několik vět*), written by Charter 77, demanded that political prisoners be released and independent movements, trade unions, and associations be allowed (it was signed by about 40,000 people, but this was still marginal support; see Balík and Hanuš 2007: 60; Otáhal 1999). Despite all this, until November 1989 the growing expressions of opposition lacked a common organisational and political platform and a coherent strategy (Měchýř 1999: 60-63; Suk 1997a: 9-11).

The course of events and change of atmosphere in society were ultimately precipitated by events abroad: the quick disintegration of communist regimes in Poland (Dudek 2002: 32-80), Hungary and the German Democratic Republic (Vykoukal, Litera and Tejchman 2000: 706-708). Crucial was the massive wave of East Germans who fled into West Germany, which affected Czechoslovakia when they headed for the West German embassy in Prague (Tůma 1999: 163).⁸⁶

4.1. The events of November 1989

Within Central Europe, Czechoslovakia is distinctive in that the two phases of transition to democracy – liberalisation and democratisation – occurred concurrently.⁸⁷ In other words, regime change was not preceded by a period of

⁸⁵ This can be supported by contemporary opinion polls. According to one, more than half of KSC members and officials mistrusted the leadership of the party and state (Vaněk 1994: 22-24).

⁸⁶ For the disintegration of the communist bloc, see Durman 1998; for the realities of Czechoslovak power, see Suk 2004: 22-27 and Vaněk 2006: 324-327.

⁸⁷ Liberalisation is the initial stage of transition, consisting of such processes as opening, reformulation, or *perestroika*, which open the hitherto closed political space to reform. Instability is a significant side-effect of liberalisation. Successful liberalisation is followed by the second stage of transition, democratisation, during which democratic institutions are constructed and democratic rules of the game established. See Przeworski 1992, Dvořáková and Kunc 1994: 90.

intentional liberalisation. Rather, the parallel unfolding of the twin processes was a sign of the old regime losing its strength. Czechoslovakia nonetheless did successfully transition to a democracy with guarantees. How did the whole process evolve?

Very broadly speaking, it was sudden and quick. Whereas in mid-November 1989 Czechoslovakia was an isolated, unreformed, communist oasis in Central Europe, within a few weeks its domestic communist regime collapsed and relinquished power. The swiftness of its capitulation and the speed with which society emancipated itself, was redolent of falling dominoes.

The trigger was provided by the police suppression of an authorised student demonstration in Prague on 17 November 1989, held to commemorate the 50th anniversary of the death of the student Jan Opletal, a victim of Nazi persecution. It was not the first time the police had taken such harsh measures against demonstrators: it beat many of them in August 1988 and in January 1989. Perhaps the crucial difference that led to the mass mobilisation of the public was the rumour that a student had been killed. Although disproved by the regime two days later, the psychological impact of the accusation was nevertheless extraordinary.⁸⁸ Outraged by the police action, students called a protest strike and were soon joined by actors from Prague's theatres. Riding the wave of spontaneous mass protest, the Civic Forum (OF) emerged on 19 November 1989, with Václav Havel as a central figure. Existing opposition initiatives along with many people outside the circles of dissent quickly joined the Forum. OF was strongly decentralised – local Civic Forums were created in small municipalities, factories, and offices, but their links with the OF centre in Prague were minimal. In Slovakia, the Public Against Violence (VPN) movement, a 'sister' movement to the Forum, was founded at practically the same time. Demonstrations in which hundreds of thousands participated began first in Prague before spreading to other large cities. They culminated in a successful two-hour general strike on 27 November 1989, confirming that the Forum commanded broad public support (for more details, see Suk 2003: 73-92).

The November demonstrations had something of a carnival atmosphere (Kenney 2003) and were led by an alliance between, on the one hand, students

⁸⁸ A range of questions and conjectures have quickly surrounded the events of 17 November, some of which will probably never be answered with any degree of certainty. Among the most discussed was the question of who ordered the brutal measures taken against the demonstrators on Prague's Národní třída and whether this was an attempt to discredit certain Communist Party officials. According to one interpretation, it was an attempt to depose the existing KSC leadership and replace it with another that would be clearly in favour of *perestroika*. The Gorbachev leadership or the Soviet secret police (KGB) supposedly connived in the operation. None of these conspiracy theories has ever been plausibly proven (Bartuška 1990: 241-248).

and intellectuals and, on the other, actors and artists. These two social groups had enjoyed a privileged position in Czech national life ever since its revival during the nineteenth century. This instance was the first of many interesting reflections of the Czech nation's past during what was called the Velvet Revolution. It was not, however, an exclusive alliance. OF also appealed to workers, and important roles in creating this appeal were played in the Forum by Petr Miller (a blacksmith) and Valtr Komárek (a well-known and respected economic forecaster), who later became ministers.

4.2. Fall of the executive power

When in its founding proclamation of 19 November 1989 OF called for the resignation of eight particularly compromised communist leaders, there was only one member of the government among them (Suk 1997a: 1). At that moment the Civic Forum was not seeking to assume executive power. The first phase focused not on altering the government, but on provoking unspecified changes within the KSČ. Lacking strategies for how to proceed, the Czechoslovak opposition was entirely unprepared to take over power.

Dialogue became its chief strategy, but the dialogue was between an ill-defined 'power' and a similarly vaguely defined 'opposition'. The terms of this dialogue were not clearly established in advance. The Forum spoke for the opposition, and after some delay the federal Prime Minister Ladislav Adamec, a reformist within the KSČ, emerged as the representative of those in power. He did so, however, as a representative of the state, rather than the party, after it became clear that the *de facto* holder of power – the leadership of the KSČ – was unable to act and unwilling to engage in dialogue. That the party had lost its 'will to power' was evident as soon as its attempt to use force through its paramilitary units in the People's Militia ended in fiasco.⁸⁹ At the same time, the mass media - state-controlled TV, radio and newspapers - also refused to obey the ruling forces, facilitating the spread of protests beyond Prague. The National Front, the body 'unifying' all the parties and those mass organisations that were permitted, equally began to disintegrate (*Poslední hurá* 1992: 70, Otáhal 1994: 110, Cysařová 1999: 297-307). The short interlude in which the KSČ replaced its general secretary with the unknown and unremarkable Karel Urbánek did not help the party.

As Adamec took the initiative, the once-proclaimed and long-respected leading role of the KSČ in state and society came to an abrupt and decisive

⁸⁹ Units were called from regions to Prague where they were supposed to help the police to pacify the situation. Some of the militias never left for Prague, however, and two days later Jakeš brought the whole operation to a halt.

end. Further developments led directly to a constitutional and democratic political system.

The aforementioned successful general strike, in which 75 % of citizens participated, was a powerfully symbolic event (Suk 1997b: 84). It marked the transition from the mass demonstrations to the start of negotiations. In subsequent talks with Adamec, the Forum focussed on its vision of controlling, rather than exercising, power. This gave Adamec a free hand to form a new administration, and on 3 December 1989 he unveiled what became known as the '15+5' government, consisting of 15 communists and five non-communists. Although this proposal was based on an agreement with OF, spontaneous demonstrations began again in earnest, and the public rejected the 15+5 government, prompting OF to alter its strategy and resolve to participate directly in government. The support of economists from the Prognostics Institute of the Czechoslovak Academy of Sciences, in particular Václav Klaus, were instrumental in this change. The economists were pragmatic and understood that, by taking up posts in the executive, they would be able to influence the flow of events more efficiently than they could by merely exerting external control. In response to this, Adamec resigned (Suk 2003: 58) with a haste that was extraordinary when compared with the situation abroad. Timothy Garton Ash aptly commented that what took 10 years in Poland, 10 months in Hungary and 10 weeks in East Germany, took 10 days in Czechoslovakia (Garton Ash 1993).

Negotiations between Adamec, who had already announced his resignation, and the Civic Forum resulted in the nomination of a new federal prime minister, Marián Čalfa, a KSČ member who had been the minister for legislation until November 1989. As recently as mid-1989 Čalfa had been responsible for drafting a more repressive press law. His government, appointed on 10 December 1989, had as its chief task to lead the country to free elections. The Forum obtained a strong position within the Čalfa government. In particular, it held the main ministries concerned with the economy, but non-communists also occupied the posts of first deputy prime minister, foreign minister, and minister for labour and social affairs. In terms of party affiliations, the allocation of posts in the government did not secure dominance for the Forum: ten members of the government were communists, two were from the Czechoslovak Socialist Party, two from the Czechoslovak People's Party, and seven were non-partisans nominated by OF and VPN (Fiala, Holzer, Mareš, and Pšejja 1999: 95). However, for some of the communists, party affiliation was merely a residue of the past and in practice they no longer represented the party. In any case, this was the first government since May 1946 in which the communists did not have a notional or actual majority.

In terms of choosing people to occupy posts in the 'power' ministries of

defence and interior, which, given that regime change was not yet achieved, were of cardinal importance, the Forum leaders displayed political naïveté. The appointment of the communist General Miroslav Vacek as defence minister apparently yielded no ill effects for the country's security.⁹⁰ The ministry of the interior proved a much more serious problem. Until the end of December 1989, it was administered collectively. The portfolio was then given to Richard Sacher, who was Havel's choice for the post. The period of collective administration and Sacher's tenure were a time of anarchy at the ministry, which was exploited in particular by the secret police, who shredded a vast number of documents, including 'live' dossiers that included details of the work of secret agents (Suk 2003: 356-360).

Another fundamentally naïve step was taken before the appointment of Čalfa's government. Inspired by the Polish experience, round-table talks were initiated by the KSČ with the participation of the parties incorporated in the National Front and OF and VPN. Though the talks had minimal impact on the make-up of the new government, they helped to legitimise the KSČ as a serious actor (Hanzel 1990: 295-380) and effectively precluded a future ban on the Communist Party, something that was seriously considered at the time. Be that as it may, the Czechoslovak 'round table' was in no way an analogy of such talks in Poland and Hungary.

The figure of Prime Minister Čalfa is an interesting one. Until Čalfa's appointment, Adamec believed that he, Adamec, would preserve some influence over the executive through Čalfa. For its part, the Forum believed that Čalfa was only a short-term solution. Ultimately, it was Václav Havel who derived the greatest benefit from Čalfa. Havel established a close alliance with this technologist of power before his first election as the country's president, and their alliance survived the first free elections in 1990. Čalfa thus led the government until the 1992 elections. Indeed, Čalfa symbolised the notion of legal continuity, a key component in OF's strategy. By maintaining legal continuity with the communist regime, the transition of power to the new regime could be smooth, but another consequence was that the overwhelming majority of communist crimes could not be prosecuted, as their perpetrators acted largely within the limits of a so-called 'socialist legality'. That is to say, they had acted in accordance with the legal provisions valid at the time, even though these laws were considered illegitimate by the new regime. Still, the rejection of large-scale punishments – one of the very reasons for the descriptor 'Velvet Revolution' – was an important characteristic of the regime change.

⁹⁰ Vacek was previously the chief of the general staff of the Czechoslovak People's Army. At Havel's unexplained request, Vacek remained in office even after the 1990 elections and was removed only in October 1990,

4.3. President

The year 1989 illustrates interesting connections between older and recent Czech history. Many authors have already pointed out the extraordinary position enjoyed by the president in the Czechoslovak and Czech political systems (Šimíček 2008, Novák and Brunclík 2008). Since the foundation of the republic in 1918, the president was never the chief of the executive and did not hold political power in the true sense of the word, though he always commanded significant political influence, far surpassing his constitutional powers.

It is interesting to investigate the origins of this situation. Usually a simple reference is made to Tomáš Garrigue Masaryk, the first Czechoslovak president ('President-Liberator', as he was called; in office 1918-1935) who imbued his office with a particular *esprit*. Nevertheless, even the extraordinary figure of Masaryk cannot fully explain the deeply ingrained acceptance of the importance of the presidential office. Indeed, Masaryk only picked up the threads of something that ran deeper – the desire of the Czech nation for a just and good king, a desire once expressed for Emperor and King Franz Josef I. But Franz Josef I painfully disappointed the hopes the Czechs had placed in him: he did not fulfil their dreams to have him crowned King of Bohemia, and he did not grant them the self-government they wanted. In reference to the tradition of the independent Principality and Kingdom of Bohemia, T. G. Masaryk took as his headquarters Prague Castle, the ancient seat of Bohemian princes and kings. In the century since the foundation of the republic in 1918, Prague Castle has been the official residence of Czechoslovak and Czech presidents. The Czech Republic is one of six in Europe where the president is based in a former royal residence,⁹¹ and Prague Castle is the oldest continuous seat of a head of state in the world.

The importance attached to the presidency by Czechoslovak society is also apparent from the fact that Czechoslovakia was the only communist country in Central and Eastern Europe in which this post was never abolished or even suspended. Indeed, the most powerful men of the regime – the successive heads of the Communist Party's Central Committee – have usually felt the need to legitimise their position by having themselves elected as presidents of the Republic.

With respect to the events of 1989, another aspect of Prague Castle's history comes to the fore. Throughout Czech history, every takeover of power was incomplete until the challenger had captured the Castle and sat within its walls. Sitting on a stone seat was the practice until the thirteenth century. Later

⁹¹ Austria, the Czech Republic, Italy, Portugal, Romania, and Russia.

kings were crowned in St Vitus Cathedral, a few hundred meters from the stone seat. Even the communist takeover in June 1948 was completed only when the chairman of the KSČ, Klement Gottwald, was elected president at the Castle and took part in the ceremonial Te Deum in St Vitus Cathedral. 1989 was no different.

This explains why the Velvet Revolution culminated and the transition to democracy was confirmed in the election of a new president and not a new parliament (as in Poland and Hungary). The last communist president resigned on 10 December 1989, several hours after he had appointed a new government. At that time, it was unclear who his successor would be. The communists promoted a direct method of election in which the chances of the former prime minister Adamec would have been great, as shown by a December 1989 opinion poll (Suk 2003: 200). However, direct election was not adopted. Instead, the desire to have a new president before the beginning of a new year prevailed (this violated the constitution then in force), which left the task of electing the country's president in the hands of parliament. At that point the 'problem of parliament' had to be resolved: the body that was to elect the new (potentially non-communist) president was made up of KSČ members and supporters (formally non-partisans or members of the non-communist satellite parties) elected in 1986. This was the birth of the so-called Čalfa phenomenon: the new prime minister convinced MPs to vote for the leading figure of anti-communist resistance, the dissident Václav Havel, as the new president of the country. The close alliance between Havel and Čalfa, which continued even after the 1990 parliamentary election, dated to this time.

On 29 December 1989, Havel was unanimously elected president in an open parliamentary vote (Fiala, Holzer, Mareš and Pšejja 1999: 99). At this symbolic moment, the fall of the communist regime was complete: the man who only seven months before had been a political prisoner was now president. It was also a symbolic humiliation of the Communist Party, as every one of its MPs voted for Havel in a live TV broadcast. Havel then greeted his supporters in the courtyard of the Castle, where the stone seat once stood, and attended the liturgy of Te Deum in St Vitus Cathedral. The circle of history was closed, the change complete.

4.4. Representative bodies

It is part of the Czechoslovak/Czech political tradition that parliament is ignored at points of crisis. So it was in 1938, 1945, 1948, 1968 and 1989 as well. Parliament came into the spotlight to some extent at the point of the presidential election, and more so afterwards. In late 1989, an act was adopted that allowed the co-option of new MPs into parliament to replace those MPs

who had resigned their seats. In January 1990, a constitutional act was adopted permitting the removal of MPs and the co-optation of others into the vacant seats, but this could only take place until March 1990. The term of the parliament elected in 1986 was also shortened and the MPs' mandate was changed from imperative to free. Therefore, empty seats were filled not on the basis of elections, but on the basis of proposals by political forces (including the KSČ) (Suk 2003: 283-290). This was one of the fundamental elements of the early part of the transition. The question of elections was pushed into the background, and indeed elections to parliament took place only in June 1990, more than half a year after the November 1989 events, and nearly half a year after Havel's election as president. For that reason, the elections were not so much a fundamental break as a retroactive ratification of the break.

Half of the MPs were newly co-opted. The co-option method, necessary but problematic in itself and defensible only for a brief period, was therefore used to create a legislature, which adopted the first fundamental acts transforming the non-democratic substance of the Czechoslovak political regime (Gerloch 1999: 41-43).

The aforementioned constitutional act on co-option was also used to make personnel changes in local authorities, the national committees which were the organs of public administration in municipalities and regions. Using this act, the most compromised deputies were removed from office and representatives of the non-communist opposition co-opted in their stead. This only happened on a substantial scale in larger cities. A fundamental change in personnel only took place after the November 1990 local elections, which restored democratic local self-governance. This also meant that for the entire year following the November 1989 regime change, municipalities and towns remained under the rule of the former exponents of communist power (Balík 2009: 57-58).

4.5. A Velvet Revolution?

The character of the Czechoslovak communist regime's demise was influenced by a number of circumstances. There was no distinctive, cohesive group within the Party waiting for its opportunity to replace the old guard. Nor was there an opposition group ready to take over. The absence of the former was the reason the KSČ subsequently evolved differently from other Central European communist parties, ultimately ending up on the left fringe of the political spectrum and never participating in post-communist governments. The small number of opposition activists was the reason the new democratic regime desperately lacked experts able to participate in the exercise of power.

Therefore, for the most part it had to rely not only on often unprepared people from the grey zone,⁹² but also on former communist cadres.

If the communist regime lost its legitimacy in the eyes of the public, it was neither because it failed to deliver social justice and equality, nor because of the repression of the communist secret police (StB). Its demise was a consequence of economic underperformance (Turek 1995: 47). This also explains why the secret police, its transformation, and the preservation of its archives, were not a priority for the new rulers. Although the public originally wished for StB officials, at the very least, to be punished, Havel and the other newly-powerful leaders around him did not create the conditions under which such retribution could take place.

This explains why steps to redress old injustices were not an immediate priority. And it is also an explanation for the initially-lauded and later much criticised ‘velvet’ character of the revolution. A society removing its political regime because of oppression and universal terror or injustice behaves differently from one that essentially wants to change the functioning of its economy.

When the change of regime and ultimately of the whole social arrangement failed to fulfil the expectations of many in the populace, a sense of disillusion set in that may be said to remain to this day. According to recent opinion polls, the post-November 1989 developments have failed to fulfil the expectations of more than half of the public (see e.g. ČTK 2014).

4.6. Conclusion

The fall of the communist regime in Czechoslovakia and the country’s transition to democracy should not be taken as confirming the illusion that communism was a mere derailment, a random paradox, or a temporary deviation from Czech society’s natural position in the West. In recent years a number of works in the social sciences have focussed on the functioning, features, and characteristics of Czech communism and its place in historical memory (Mayer 2009). However, a debate about its emergence, rise to power, and success has largely been lacking (Balík and Holzer 2005; Holzer 2009). The significant role of the communist movement in twentieth-century Czech politics was not a historical anomaly. It was, by contrast, one of its most characteristic traits.

In analysing this phenomenon, one cannot but respect the potential of the Czech left, which has historically been the dominant and most dynamic mover

⁹² A term coined by sociologist Jiřina Šiklová to describe the silent majority in society, who were neither communists nor dissenters.

of Czech politics (consider the substantial support for the left in the first elections held under universal male suffrage in 1907 and 1911, the Austro-Hungarian era). However, this analysis entails a certain view of politics itself. In the Czech environment, a 'procedural' understanding of politics as a sphere where freely expressed opinions clash and compromises are sought has never established itself. For more common has been a view of politics as a campaign for justice.

During the nineteenth century the Czech nation fought the Habsburgs; in the first half of the twentieth century Czechoslovak democracy fought the Germans; and throughout the twentieth century the Czech proletariat fought the bourgeoisie. The Czech left has, on the one hand, repeatedly shown a remarkable confidence in the progressive vision of a political future as best represented in Western political thought by Marxism; on the other hand, it has also occasionally shown an ability for critical self-reflection, having obtained practical experience with the methods of implementing such a vision (Reiman 2000). After World War II, Czech communists certainly did not have to struggle for power – the left had already had power for a long time. This is also the reason why the 1960s were divinised, especially in the cultural discourse, where that period is thought of as a true golden age. The contribution of the artistic community to the process of forming modern Czech national life and the building of its independent state is undeniable, perhaps even determinative, throughout all the stages of its genesis (Kusák 1998). The true conscience of the Czech nation is not a statesman, not a military leader or a man of wealth, but a writer.

The idea even suggests itself that the famous 'meaning' of Czech history, sought by Czech intellectuals since the second half of the nineteenth century, was realised during the communist era. Not only in the forty-year long attempt to implement the communist ideal of a classless society; but also in the sense that even the anti-communist movement which emerged from that period of lack of freedom conceived of politics not as a clash of interests, but, again, as a struggle of good with evil, a clash that had an evident moral dimension. The tenor of the times naturally required distinctive arguments, instruments, and personalities. The Charter 77 movement (or at least an important part of it), symbolised by the figure of Václav Havel, had all of this in abundance. The problem was that their total moral commitment – resulting from the extreme situation in which Czech dissidents found themselves – their 'non-political politics' had to lose its legitimacy after the fall of communism. Their dreams and desires were, paradoxically, aimed at the achievement of a situation where they would lose their power and appeal. This is also a reason why some in Czech society today are still disappointed by November 1989 and feel that the Velvet Revolution has been 'stolen', a feeling that survives despite all the

positive change November 1989 has brought: unprecedented freedom, strong economic growth, and substantial environmental improvements.

The authenticity of Czech communism mentioned above explains the disappointment with the 'results of November 1989' felt by another segment of Czech society. This is the only way to explain why in June 1990, in a situation of almost 100 % voter turnout, the Communist Party polled 14 % of the vote. Such strong support cannot be explained by protest voting, the harsh consequences of the economic reform, rising prices, the devaluation of savings or unemployment, as none of these factors were present in Czechoslovakia at that moment. By contrast, the failures of central planning, Czechoslovakia's lagging behind Austria and Germany, countries with which it had once boldly compared itself, and serious environmental damage, were all acutely felt. Despite all this, the Communist Party, though almost completely lacking dynamism and credible leadership, was the chosen alternative for one seventh of the populace. In November 1989, that party lost its opportunity to govern and shape society according to its ideological tenets. Since then it has represented a nostalgic memory rather than a real alternative.

5. The Velvet Divorce: the end of Czechoslovakia

At the stroke of midnight on 31 December 1992, a mere three years after the Velvet Revolution, Czechoslovakia ceased to exist and two new independent states were created in its stead. In the memories of most Czechs and Slovaks, the main instigators, or in the view of some, the ‘guilty parties’ in this velvet divorce were Václav Klaus and Vladimír Mečiar, the leaders respectively of the two victorious parties in the June 1992 elections, the Civic Democratic Party (ODS) and the Movement for Democratic Slovakia (HZDS). From the perspective of those who are nostalgic for Czechoslovakia – they tend to be of more advanced age today – it was an arbitrary decision on the part of these two politicians, one that did not respect the will of the majority of Czechs and Slovaks to preserve Czechoslovakia. Indeed, contemporary opinion polls showed continued support in both nations for the union as well as good mutual relations.⁹³ Yet such a view distorts the deeper roots and genesis of the Czecho-Slovak breakup.

5.1. Legacies of the past and Slovak nation- and state building

Past legacies played an important role in the breakup of Czechoslovakia, the most important of which was, from 1918 onwards, the Slovak question. The core concerns were the completion of the nation-building process and the position of Slovakia within the common state. Although both the Czech lands and Slovakia had been part of Austria-Hungary, their political cultures, methods of governance, and levels of modernisation were very different, which fact stemmed from the dissimilarities between the Austrian and Hungarian parts of the Empire. The Czech lands ranked among the most economically developed parts of the Empire with an almost 100% literacy rate and a mature civic culture, as well as a rich assortment of associations and political parties. The Czech nation-building process was successfully completed during the nineteenth century, not least thanks to the democratisation of Austria in the last decades of the Empire’s existence.

By contrast, Slovakia was at the end of the Empire a largely agricultural and traditional country with a high rate of illiteracy. Its politics was negatively

⁹³ For reasons of space this chapter is necessarily selective, leaving out of consideration some interesting but less essential issues such as the attitudes of the Hungarian minority towards Czechoslovakia and the influence of exile Slovak organisations in the process of Czechoslovakia’s division.

marked by the dominance of Hungary, which put severe restrictions on the political rights of Slovaks, and created a parochial political culture, all of which tended to delay nation-building (Almond and Verba 1965, Hroch 1999).

Over the decades of their coexistence in one state, the social, economic, cultural, and religious differences between the Czechs and Slovaks decreased, but never disappeared entirely. Jiří Musil, for instance, has asserted that after 1989 Slovak society was more solidary and more communal (*gemeinschaftlich*), while Czech society was more associative (*gesellschaftlich*) (Musil 1995: 87).

Between 1918 and 1938 the natural Slovak tendencies towards emancipation and autonomy clashed with the notion of ‘Czechoslovakism’, the idea of a united Czechoslovak political nation, and the centralist conception of the state (Kováč 1997, Lipták 1998, Bakke 2004). Unlike most Czechs who perceived Czechoslovakia as ‘their state’, Slovaks had more varied feelings ranging from identification with Czechoslovakia to separatism. These attitudes were influenced by political, social, and religious factors as well as the external context. It suffices to recall that the main champion of autonomy and the later founder of the Hitler-allied Slovak State was the conservative Catholic Hlinka’s Slovak People’s Party, which mobilised its adherents using protests against the ‘centralist, Hussite and atheist’ Czechs.

The unfortunate events of Munich, the successful push for Slovakia’s autonomy in autumn 1938, and the establishment of the Slovak Republic shortly afterwards firmly embedded themselves in the Czech national consciousness and were to contribute in the future to Czech misgivings about handing more powers to Slovak national institutions. This was demonstrated during the era of the Third Czechoslovak Republic and after 1948 when the centralist system was reinstated, albeit without the official doctrine of Czechoslovakism (see Chapters 2 and 3 for more details).

The Slovak question, however, was merely dormant for a time, only to be brought back to life towards the end of the 1960s in connection with the liberalisation of the communist regime. The result was a federal arrangement influenced by the Soviet model. Federalism was a means to ‘recognize and co-opt the Slovak nation and thereby limit the political and economic dominance of the Czech lands’ (Bunce 2004: 427). From the viewpoint of Slovak nationalism, it was only a partial success, as thanks to the regime of ‘normalisation’ and the KSC’s political monopoly, the new arrangement remained strongly centralist over the next two decades. The powers of the government of the Slovak Republic and its parliament were very limited. The bicameral federal parliament operated merely as a lever of power for the communist regime and the federal government was effectively subordinate to the KSC’s Central Committee.

Even if the federation was merely a facade, it did fundamentally strengthen Slovak self-confidence and accelerate the nation-building process. Valerie Bunce as well as other scholars such as Juan Linz and Alfred Stepan have argued convincingly that the late 1960s ethnofederal line dividing Czechoslovakia into two formally equal republics and the new constitutional arrangement acted subversively vis-à-vis Czechoslovakia, laying the seeds of its future disintegration (Bunce 1999, 2004, Linz and Stepan 1996). It also mattered that there was no third balancing entity with a similar degree of autonomy and similar institutional foundations. Neither the populous Hungarian minority in the south of Slovakia, nor Moravia – a historically and culturally distinct region in the eastern part of the Czech lands – were awarded such status. Paradoxically, the political monopoly of KSČ had cemented Czechoslovakia and when it disappeared in 1989, the system of republic- and federal-level institutions became an important instrument for Slovak politicians, one they could use to push their political agenda (Leff 2000).

5.2. The pitfalls of democratic transition, or was communism pure evil?

In the early 1990s the perception of the communist regime in Slovakia was less negative than in the Czech lands. Significantly contributing to this perception was not only the above-mentioned federalisation of the state, but also the modernisation and, in particular, industrialisation and urbanisation of Slovakia, which radically transformed traditional Slovak society, after 1948. These efforts were often accompanied by social engineering, yet the worst instances of this occurred in the 1950s, and the methods employed during the subsequent decades were much milder.

Also worth mentioning in this connection is the different character of the ‘normalisation’ regime in Slovakia. Already in the early days of normalisation, the purging of KSČ of reformists was less extensive in Slovakia than it was in the Czech lands, and the steps taken against those affected were likewise less harsh (Maňák 1997). Similarly, censorship of the arts was less strict in Slovakia. What could not get past the censors in Prague could, at least occasionally, be published in Bratislava. The strong continuity of the Slovak communist elites, from the period preceding the Soviet occupation of 1968 through normalisation, was a strong factor in these gentler policies (Marušiak 2008).

Given the centralism of the communist regime, this modification of the normalisation process in Slovakia must not be overestimated. Yet the ‘softer’ form of Slovak communism exerted an influence, making the local elites more

consensual, and this consensus was based on their shared ethnic origin. The funeral in 1991 of Gustáv Husák, the last communist president and the main symbol of the normalisation, provides a telling ex-post-facto proof, and a gesture entirely unimaginable in the Czech lands: it was attended by the Slovak prime minister Ján Čarnogurský and the speaker of the parliament František Mikloško, both of whom were leading Catholic dissidents before November 1989.

The proportion of the population which after 1989 had a positive view of the social and economic changes associated with the communist regime was greater in Slovakia than in the Czech lands. Only a few Slovaks considered the communist era to be without value, a feeling much more prevalent among Czechs (Příhoda 1995, Marušiak 2008). This difference between the two parts of Czechoslovakia was further evidenced during the radical economic reforms of the 1990s, when the unemployment rate increased sharply in Slovakia, but not in the Czech lands. This was not only a direct consequence of economic reform. Industrialisation in Slovakia had been influenced by the Soviet model and heavy industries dominated. With the end of the Cold War and the disintegration of the Eastern bloc, many arms factories in Slovakia simply lost their customers.

In response, Slovak society was much less welcoming to the privatisation of state property, fearing the return of 'heartless capitalism'. This provided the perfect space for social demagoguery and an interpretation of the economic transformation as a plot by Prague to exploit and impoverish Slovakia (Bútorá and Bútorová 2003: 80). Among the Czechs, in turn, this gave rise to concerns that Slovakia would become a hindrance to economic transformation, an argument exploited to good effect by many right-wing politicians and journalists.

Meanwhile, there was an intellectual environment in Slovakia that was sharply opposed to the concept of centrally administered economic reform as promoted by Václav Klaus at the federal ministry of finance (for Klaus's notion of reform, see Chapters 6 and 9). In early 1990 a group of former Slovak reform communists associated with the 'Obroda' group published their own economic proposal. Under this scheme, a significant proportion of state ownership would be preserved, the process of economic change would have to respect the specific situation of Slovakia, and the implementation of reform would be fully under the authority of Slovak national bodies. Overall, it was a statist manifesto, one that led towards separation (Šútovec 1999, Rychlík 2002). Before the 1990 elections most of the politicians and economists associated with it – for example, Augustin Marián Húska and Hvezdon Kočtúch – were key members of the main driver of the Velvet Revolution in Slovakia, the VPN, and when that movement disintegrated, they helped to found Mečiar's HZDS.

Looking at the origins of the post-November 1989 elites one does well to remember that former communists were much more strongly represented among the Slovaks than among the Czechs. Tellingly, the most popular Slovak politician immediately after November 1989 was the leading figure of the reform-communist experiment of the Prague Spring, Alexander Dubček. However, it was not only people connected with the Prague Spring, but also some highly-positioned communists of the normalisation era who managed to rise politically in the new Slovakia, and they did so without being dependent on democratic politicians. (An example of such dependency at the level of the federation was Marián Čalfa, fully loyal to President Václav Havel.) The persistence of these 'transition communists', as Soňa Szomolányi described them, is what permitted VPN to adopt the approach it did in late 1989 (Szomolányi 1999). At that time, VPN showed no intention of assuming key state offices in Slovakia and long held onto its strategy of serving as an 'external check' on government – one that the Czech OF quickly abandoned. Thus, highly positioned communists of the pre-1989 era, Milan Čič and Rudolf Schuster, became respectively the prime minister of the Slovak government of 'national understanding' and the speaker of the Slovak parliament during the Velvet Revolution. They deftly placed their bet on a rhetorical defence of Slovak interests against 'Pragocentrism', a stratagem that secured their political survival and a sharp rise in their popularity (Šútovec 1999, Szomolányi 1999, Suk 2003).

Adoption of a more or less radical nationalist line became a general trend in Slovak politics, which soon became apparent in other successful political parties, whether the Christian Democratic Movement, whose roots could be traced to the erstwhile Hlinka's Slovak People's Party, or the Slovak National Party. Indeed, the latter party was the first to espouse Slovak independence after the 1990 elections. The emphasis on a nationalist line was also characteristic of the Communist Party of Slovakia, which began not only to abandon its Marxist-Leninist identity, but also to loosen its relationship with the Czech communists, ultimately winding down the Czechoslovak Communist Party at the end of 1991. Even some of VPN's liberal founders, specifically, the leader of the Velvet Revolution in Slovakia Ján Budaj, were calling in the spring of 1990 for a 'second revolution, a national revolution' (Suk 2003: 438).

Soon after November 1989, and despite their political differences, the majority of the Slovak elite took as their objective the building of a Slovak state, which they took to be the best way of guaranteeing their nation (Rokkan 1999b). This did not rule out the preservation of Czechoslovakia, albeit it only allowed a very loose form of association. However, such notions collided with very different thinking on the part of the majority of the Czech elite and general public alike, who, as Carol Skalník Leff has put it succinctly, 'had never found a value of their own in decentralization and national self-assertion, a

perspective that would have given both sides a common starting point for a durable bargain' (Leff 2000: 45). This lack of understanding between the Czechs and Slovaks, or perhaps their indifference to each other's priorities, became fully apparent as early as 1990, first during the so-called Hyphen War, which was essentially symbolic, and later in the conflict over the purview of authorities, where political power was at stake.

5.3. The Hyphen War and the battle over powers

It was Václav Havel who unwittingly initiated the Hyphen War, when he asked MPs at a session of the federal parliament in late January 1990 to change the name of the state. Havel thought that the adjective 'socialist', being a residue of the communist past, should disappear from the official name *Československá socialistická republika* to form the new name Czechoslovak Republic. The federal parliament, however, postponed its decision on the issue, thus creating a space in which nationalist conflict could be ignited. Whereas the Czechs largely accepted Havel's proposal without objection, in Slovakia there was much resistance, as the name was redolent of the 'Czechoslovakist' First Republic. The Slovaks proposed the hyphenated version *Česko-Slovensko*, which was sharply rejected by the Czechs as it reminded them of the negatively-coloured designation of the post-Munich republic of the years 1938-1939 (see Chapter 3). A new national emblem proposed by Havel was also controversial, but of secondary importance in the ensuing discussion.

The emotional dispute over the hyphen continued throughout spring 1990 in parliamentary forums, in the media, and in city squares. The solution eventually adopted was Schweikian in its absurdity: an ungrammatical expression, *Česká a Slovenská Federativní Republika*. The unofficial short name *Československo* was to be written as one word in Czech, but with a hyphen in Slovak (Rychlík 2002: 123). All in all, it was an unsatisfactory compromise.

The Hyphen War accelerated Slovakia's progress to nationalism (described above), but it also had an important impact in the Czech lands, where the historical analogy with the year 1938 renewed concerns about Slovak demands. The first call to separate from Slovakia appeared at the time, but it was still politically marginal. The idea and the slogan 'Let them [that is, the Slovaks] go' (*at' si [Slováci] jdou*) entered the Czech lexicon. It was expressed using literary hyperbole in May 1990 by the writer Ludvík Vaculík: 'The younger Slovak brother has grown up, he wants his own bed, and the older Czech brother is to give it to him. But as we know the younger brother, he'll want the bed next to the window in the summer and the one next to the

heater in the winter. No bed for you, brother; have a house of your own' (Měchýř 1999: 307). The feelings of alienation were mutual and subsequently reinforced by the fatigue that set in as negotiations concerning the future character of the state dragged on. The discussion about federal budgetary transfers from the Czech lands to Slovakia also intensified. These transfers helped to balance the economic differences between the two parts of the federation and, in the context of other Slovak demands, met with increasing disapproval on the part of many Czechs.

Another dispute that was important for political elites was that over the new division of powers between the federation and the two republics. Discussions about the proposals, intended to remove the communist legacy of centralism, took most of 1990 and were accompanied by steps verging on political blackmail. During his visit to Prague, the Slovak Prime Minister Vladimír Mečiar (then the leader of VPN) had a surprise announcement to make to his Czech counterpart, Petr Pithart: the Slovak parliament, Mečiar alleged, was ready to declare that its acts were sovereign over acts passed by the federal parliament if Mečiar's proposed act on powers was not adopted. Such a declaration would constitute a *de facto* end of the federation. Mečiar, however, was not telling the truth and his strategy only increased the mistrust present in Czech-Slovak relations (Wolf 1998, Rychlík 2000 and 2002).

The act eventually adopted in December 1990 significantly curtailed the powers of the federal authorities and strengthened those of the republics, but was not without issues. It did not clearly delineate the boundary between the authority of the federal and republic institutions, thus opening space for disputes over powers. In terms of the functionality of the new arrangement, a particularly large question mark hung over the fact that in some areas such as economic reform and transport, legislative power remained with the federation, but the implementation of legislation was in the hands of the republic-level authorities (Stein 1997). In consequence, some politicians of the emerging Czech right harshly criticised Prime Minister Pithart for being too soft during negotiations. The dispute over powers weakened the position of moderates in Czech politics and the result achieved was evidently only a temporary compromise.

5.4. Deadlocked negotiations and nearly incompatible constitutional ideals

After an agreement was reached over powers, there followed protracted and ultimately only partially successful negotiations on the new constitutional foundations of the state. These negotiations included, variously,

representatives of the Czech, Slovak and federal governments, leaders of the national parliaments and the federal parliament, and sometimes also representatives of individual parliamentary parties as well as President Havel. In what was considered a crisis of Czechoslovakia, Havel sought to find mechanisms to help to resolve the situation. He was instrumental in the establishment of the Constitutional Court, which was to resolve the emerging conflicts over the scope of federal and republic powers. However, the Court could not be a panacea for what was an evident lack of political consensus (Stein 1997).

Similarly stillborn was the idea of enshrining in the constitution the possibility of calling a referendum. Havel, who was the chief champion of the idea, hoped that a referendum would demonstrate support for preserving Czechoslovakia. However, the problem was that a general question: 'Are you in favour of a common state?' would solve nothing under the circumstances, as the answer would certainly be in the affirmative in both republics. Yet the general public in the two parts of the federation had dramatically different notions of what 'a common state' entailed. Opinion polls showed that, whereas in the Czech lands most people were in favour of a unitary state or a federation, in Slovakia the majority preferred a much looser arrangement and there was a sizeable group advocating independence (IVVM 1991). Quite expectedly, the federal parliament was unable to come to an agreement on the wording of the referendum.

Moreover, there was the issue of the inconsistency of opinions or impossible couplings, as pointed out by some surveys, mainly in Slovakia. For instance, almost a third of those in Slovakia who supported federation also demanded the primacy of Slovak laws over federal laws, a demand inconsistent with federation (Aktuálne problémy slovenskej spoločnosti 1992). Politicians responded to this situation: Mečiar's HZDS, which won the 1992 elections in Slovakia, took ambiguous positions, preferring a confederation while not entirely ruling out a federation. By contrast, in the Czech lands, ODS had outlined its goals clearly ahead of the elections: either a 'functional' federation, by which was meant a strong centre of state, or a division into two states.

Václav Havel's attempt to save the common state by mobilising citizens also ended in failure. The president, a capable playwright by profession, dramatically chose the date of the second anniversary of the Velvet Revolution for a televised speech outlining his idea of large-scale constitutional reform in Czechoslovakia (Havel 1992a). This would involve a substantial strengthening of the president's powers, including the option of calling a referendum, dissolving the federal parliament and issuing decrees until new parliamentary elections were held, as well as a far-reaching reform of the federal parliament including its electoral system. Havel's appeal brought thousands of people out to the squares of several large Czech cities, but in Slovakia, where his authority

had much declined in the meantime, it failed to elicit a significant response. The federal parliament subsequently rejected all of the constitutional reforms proposed by Havel. The strategy of mobilising the masses, so successful in November 1989, faced a radically different situation two years later.

Havel's decreasing popularity in Slovakia reflected a more general local trend of fading trust in federal institutions and politicians, especially members of government, even though they were often Slovaks themselves. The expressions 'federal Slovak' or 'Prague Slovak' were pejorative in Slovakia, suggesting that the person described was not sufficiently defending Slovak interests, serving rather as an ally to Czech politicians. This understandably had negative consequences for the popularity of those so designated. The (Slovak) federal prime minister Marián Čalfa (1989-1992) provided the best example: his considerable popular support in Slovakia melted away over time. The negative perception of 'Prague Slovaks' had older analogies which reached back to the communist era and even further to the First Republic; it was also partly grounded in reality (Leff 2000). During negotiations over the constitutional arrangements after 1989. Federal politicians usually came closer to the opinions of Czech (republic-level) politicians. But rather than being a 'betrayal' of their national interests by Slovak federal politicians, this situation reflected the logic of their position at the centre of the state and their concern with keeping this centre strong.

These times were not without interesting paradoxes. For instance, the federal minister of finance, chair of ODS and soon to be one of the two 'fathers' of the division of the state, Václav Klaus, was interested not only in carrying through radical economic reform and in having a strong centre of the federation, but also in keeping the Slovak economy afloat, i.e., preventing an economic collapse. During negotiations in late 1991 about the new federal budget, Klaus successfully pushed for a compromise that preserved some of the financial transfers from the Czech lands to Slovakia for the next year, despite opposition from Pithart's Czech government and Klaus's own party (Stein 1997, Kopeček 2012a).

The final attempt to negotiate a new arrangement for the common state was made in February 1992 in Milovy – a remote village with difficult access for journalists. In this relative isolation a compromise was reached in which both sides made significant concessions, yet the agreement was subsequently rejected by the Slovak parliament, with not only the opposition but also some representatives of government parties against it (Stein 1997). The failure of the Milovy agreement had a significant impact on the atmosphere before the elections and radicalised moods. Symptomatically, in early 1992 the group of those wanting Czech independence was marginal, yet at the time of the elections in June, opinion polls showed that 13% of respondents supported independence (IVVM 1992).

Even if the Milovy agreement were in force, it would not have secured stability and peace in Czech-Slovak relations because Slovak politicians did not consider it a lasting solution – not even those who negotiated it. The attitude of a leading Slovak negotiator, the chair of the Christian Democratic Movement and Slovak Prime Minister Ján Čarnogurský, is telling.⁹⁴ Before the Milovy agreement was concluded, Čarnogurský spoke about his vision in which Slovakia would have its own star on the European Union flag, and said that his ‘ultimate goal was the independent membership of Slovakia in European integration structures and international organisations’ (Čarnogurský 1997: 238). Čarnogurský later confirmed that he envisaged the Milovy agreement remaining in effect, at most, until the accession of Czecho/Slovakia to the European Communities (Rychlík 2002). To sum up, on the eve of the 1992 elections the Czechs and the Slovaks – both elites and masses – had very different ideas about their preferred constitutional arrangement.

5.5. Institutional blockage

The ethnofederal model proved destructive to Czechoslovakia, and it is worth illustrating in more detail some of the specific issues impeding its functioning in the early 1990s. The federal parliament in particular merits attention. Its lower chamber, the Chamber of the People, reflected the actual distribution of the populace in the country, whereas the upper chamber, the Chamber of Nations, was divided into two halves, Czech and Slovak. In order to become laws, a substantial range of bills had to be passed by a majority of all MPs in the Chamber of the People as well as majorities in both sections of the Chamber of Nations. In some cases, such as constitutional acts, a three-fifths majority was needed (Constitutional Law 1968). Thus, a relatively small group of MPs in one of the two sections of the Chamber of Nations could block the passing of any law. A proposed constitutional act, for instance, could be blocked by 31 MPs out of the total of 300 MPs in the federal parliament (Stein 1997).

This issue became manifest in the very first months of the democratic era, when what previously had been one of KSC’s levers of power was transformed into a genuine legislative body. The quick disintegration of OF and VPN after the 1990 elections and the continued fragmentation of other parties turned the legislative process into the Achilles heel of the political system. By then it was too late to change the absurdly complex mechanism – such change might have

⁹⁴ In spring 1991 Vladimír Mečiar was removed from the post of prime minister. He then successfully reinvented himself as the main martyr of the ‘struggle for Slovakia’ and became the principal leader of the opposition

been possible in the revolutionary atmosphere of 1989, but not in the competitive atmosphere that followed, as it went against too many interests, especially those connected with Slovak national aspirations. For Slovak politicians the option of easily blocking a decision constituted an achievement that they were unwilling to renounce (Linz and Stepan 1996, Stein 1997, Wolchik 2000, Kopecký 2000, Suk 2003).

It is important to note that the 1992 elections created in the two parts of Czechoslovakia two entirely separate party systems, thus paralysing the parliament for the future. Nevertheless, the process which separated the Czech and Slovak party systems did not start with the 1992 elections, but during the establishment of the democratic regime (Fiala 2001). OF and VPN had emerged as two independent 'national engines' of democratic transition. Though originally connected by informal links between their founding elites (most of whom were former dissidents), the two organisations diverged in terms of institution-building and personnel. Linz and Stepan have pointed out the disintegrative tendencies inherent in Václav Havel's decision not to attempt to establish a country-wide party in 1989, a decision they explained by reference to Havel's anti-political and anti-institutional thinking, which was also characteristic of most of his advisers (Linz and Stepan 1996: 331).

Here it must be added that the emergence of two distinct formations, OF and VPN, was in no small part due to the differences in the nature of the dissident movement in the two republics. Slovak dissidents tended to be Christian, while Czech dissidence was mostly 'civic' in character. Perhaps even more important were the limited contacts between Czech and Slovak dissidents – a consequence of the repression in communist Czechoslovakia – and the much smaller number of Slovak dissidents overall, decreasing their importance in VPN relative to OF. In any case, Havel's attempt at pro-Czechoslovak citizen mobilisation, described above, lacked the support of political parties, and his influence on the political successors to OF and VPN had also waned by then.

Also important for the separation of the two party systems were the failures of other attempts at common, or at least cooperating, Czech-Slovak parties, including the already-mentioned (ex-)Communists, but also the Christian Democrats, the Greens, and the Social Democrats. Towards the end of its existence, Czechoslovakia faced an institutional blockage, to which the mutual isolation of its two national party systems contributed significantly.

5.6. Dismantlement

The experience of the first years after November 1989 fundamentally influenced the actions of the two parties victorious in the 1992 elections, ODS

and HZDS. The key role was played by the chair of ODS, Václav Klaus, who proved to be an effective crisis manager. Having established that HZDS would not accept a federation with a strong centre, Klaus together with other ODS politicians pushed HZDS to accept the division of Czechoslovakia in early summer 1992, although this was only confirmed two months later when a timetable of the division was agreed. The two independent republics were scheduled to come into existence on 1 January 1993. The new federal government headed by Jan Stráský, appointed in July 1992, had as its task to prepare for the division. That its mandate was temporary was signalled by its comprising only ten members, allocated on the basis of national parity: four members from ODS (plus one Czech Christian Democrat) and five members from HZDS. Klaus and Mečiar preferred to become prime ministers of their respective republics. When in mid-July the Slovak parliament adopted a declaration of Slovak sovereignty, Havel resigned the presidential office, saying that he did not want to be 'a hindrance to historical development [...] or a lame-duck president sitting out the few weeks before ultimately leaving his office.' (Havel 1992a: 198) Havel's bid to be re-elected by the federal parliament failed shortly before that, chiefly due to resistance from HZDS. The federal parliament did not manage to elect Havel's successor. In early September the Slovak parliament adopted a new constitution; the Czechs only passed theirs in mid-December 1992.

The dismantlement of Czechoslovakia in the second half of 1992 was not entirely smooth, chiefly due to vacillation on the part of HZDS politicians who mostly perceived 'full' independence as a risky leap in the dark. Vladimír Mečiar even attempted to resuscitate the idea of an economic and defence commonwealth. Due to these hesitations the bill dissolving the federation was not at first passed by the federal parliament. It was rejected not only by most of the Czech and Slovak opposition parties, but also by some HZDS MPs (Stein 1997, Rychlík 2002). Still, there was no mutually acceptable alternative on the table. Klaus's party refused to negotiate a looser political arrangement under the heading of Czechoslovakia.

In early October 1992 ODS and HZDS issued a joint proclamation confirming the validity of the agreement on separation. Mečiar took on the role of the 'father' of independence, which was to become an important source of his political legitimacy in independent Slovakia. In late November the federal parliament accepted, in its second attempt, the division of the state. By that time, a significant part of the Czech opposition, consisting mostly of the left and the centre-left, had acquiesced in the separation. This confirms Carol Skalnik Leff's more general observation that 'Czechoslovakia was a state that everyone wanted, but no one wanted enough' (Leff 2000: 45).

The last months of 1992 were filled with negotiations over a series of agreements on a large number of issues from border traffic and citizenship to

duty-free trade. Also concluded was an agreement on the property of the state being dissolved: real estate was to pass to that successor state wherein it was located, whereas movable assets and those located abroad were divided in a 2:1 ratio to the benefit of the Czechs (this ratio reflected the size of the populations of the successor states). However, not all the agreements lasted and not everything was resolved satisfactorily. The joint currency was divided in spring 1993, even though originally there was to be a monetary union between the two states. Yet given the differences in the economies of the two countries this was a necessary step. There were several items concerning the division of property where no satisfactory solution was found, and these were only resolved definitively in the late 1990s. Nonetheless, it was a quiet and civilised separation overall, and one that was in strong contrast to the bloody disintegration of Yugoslavia and the chaos that marked the end of the Soviet Union.

5.7. Ex-post considerations

The discussion about what could have saved Czechoslovakia continues to this day. Some authors consider the possibility of a consociational arrangement, for which Czechoslovakia had certain precedents in place. However, they add that such a solution would have required a different tradition and a mutual willingness to compromise among elites. This solution would need to have been cultivated over the long term in order to keep together two national societies who were growing distant from each other (Rychlík 2000, Kopecký 2000). After the 1992 elections it was already too late for a consociation. Institutionally, Czechoslovakia was close to collapse, and trends were toward an increasing and potentially dangerous national polarisation. Today the quick and 'velvet' divorce therefore still seems to have been a rational solution.

One of the positive aspects of the velvet divorce was the good mutual relationship between the Czechs and Slovaks it created for the future. Irrespective of their party affiliation, the political elites of both countries continually emphasise the superior quality of their relationship. Although it is not always clear what its real political content is, personal contacts between the two nations continue to be excellent as is cooperation in a number of policy domains. The Czechs consider the Slovaks their closest nation, which in the words of one sociological survey 'is not actually understood as very alien' (CVVM 2010). The Slovak view of the Czechs is similar. Current views of the division of Czechoslovakia are more positive than was the norm at the time. Many of those who disagreed then have re-evaluated their opinion over time (CVVM 2012). Czechoslovakia was a state in which several generations lived their lives, yet its demise was not a turning point with fatal consequences.

6. Czech political institutions and the problems of parliamentary democracy

Since 1993 the Czech Republic has undergone changes which have tested the functionality of its institutions. This chapter first describes how the Czech constitution was adopted and then analyses the key elements and mechanisms of the country's political regime, considering both formal institutions and political practice. The intention is not to overwhelm the reader with exhaustive lists of powers granted to the individual authorities. Rather it is to provide an intelligible overview introducing the basic institutions and their mutual relations along with an analysis of the problems of contemporary Czech democracy.

6.1. The adoption of the Czech constitution: circumstances, influences and controversies

The dismantlement of Czechoslovakia required the urgent establishment of the institutions of the new Czech state and the adoption of a constitution was a crucial part of this process. Although the 1968 constitutional act on the Czechoslovak federation envisaged a separate Czech constitution, none was adopted and attempts to create one after 1989 were hampered by unresolved issues in the Czech-Slovak relationship (Stein 1997). After the 1992 elections, two commissions were created to prepare the constitution, one in the government and the other attached to the Czech National Council (the Czech parliament). Whereas the personnel of the governmental commission reflected the make-up of the centre-right coalition government led by Václav Klaus (ODS), the parliamentary commission included representatives of all parliamentary party groups, including the opposition (Filip 2002). Nonetheless, the conviction soon prevailed that it was sensible to entrust such an ambitious document solely to the governmental commission, which consisted of politicians and constitutional experts, the latter mostly academics and civil servants. It was largely the constitutional experts who wrote the constitution, yet the roles of several politicians cannot be ignored, as they naturally sought to include their own particular preferences in the constitution. Worth mentioning especially is the chair of the governmental commission, Prime Minister Klaus, whose vision was close to a majoritarian democracy inspired by the British model, that is, a strong executive which faces few obstacles in realising its programme.

Although Klaus dominated politics at the time, he was only able to implement his vision to a limited extent. Not only was he busy dismantling Czechoslovakia, but the opposition kept their significant influence over the creation of the constitution and were interested in constitutionally limiting executive power. The Czechoslovak constitution stipulated that three-fifths of all deputies in the Czech National Council must vote in favour of a new constitution. The government did not command such a majority and thus needed the votes of at least some opposition deputies. This forced the government to make concessions, as perhaps best demonstrated by the failure of Klaus's proposal that constitutional acts be adopted by an absolute majority of deputies and senators. This would make changes to the constitution relatively easy to adopt. The opposition, however, was able to enforce a greater, three-fifths, majority (Stein 1997, Kopeček 2010a).

This and other controversial points were discussed over several days in the first half of December 1992, during a session of the Czech parliament's constitution committee, which worked out the complete text of the constitution. Its adoption by the Czech parliament – by a majority much larger than necessary – on 16 December 1992, two weeks before the new state came into being, was relatively smooth. The only parties not to support it in the final voting were the extreme right Republicans and the Moravians, whose proposed administrative division of the state was not adopted.

The introduction of majoritarian elements into the constitution was hindered not just by the opposition, but also by the initial conception of the constitution as chosen by the governmental commission in summer 1992. This conception was inspired by the Czechoslovak constitution of 1920 and reflected the contemporary view that Masaryk's republic was the best model of democracy. The governmental commission refused to draw on communist constitutions, as the commission – quite naturally – sought to distance itself from a communist legacy that was perceived negatively (Němeček 2010). Several well-known constitutional theoreticians who had political leanings to the left were not invited to participate in the governmental commission. This reflected the centre-right profile of Klaus's government and probably also influenced the decision to adopt the 1920 constitution as the model. The problem with this was that the 1920 constitution relied heavily on the constitution of the Third French Republic (1870-1940), which had often been criticised for an excessive dominance of the legislature over the executive. Despite the differences, such as the somewhat stronger position of the prime minister in the Czech constitution, traces of this inspiration remained visible.

The historical distance from interwar Czechoslovakia is evident in the constitution's preamble, which for understandable reasons contained no mention of the 'Czechoslovak nation' – as in the 1920 constitution. The preamble of the 1992 constitution opened with the words 'We, the citizens of

the Czech Republic', and referenced the 'time of the reconstitution of an independent Czech State', 'inalienable values of human dignity and freedom', 'respect for human rights', 'civil society', the Czech Republic as 'a member of the family of European and World democracies', and the principles of the rule of law.

Human rights were not just mentioned in the preamble, but also firmly anchored in the constitutional system. Instrumental in this was the pre-Velvet Revolution tradition of dissent, for which human rights were the key issue. In 1991, the federal parliament had adopted a special constitutional act, the Charter of Fundamental Rights and Freedoms, which included a large number of political, economic, social, minority, and other rights. However, the Charter became one of the most contentious points during the adoption of the constitution. The opposition deputies insisted that it be included in the constitution. Prime Minister Klaus refused, arguing that this would be 'an infestation of the constitution with what are often merely nominal and unenforceable rights' and pushed for a much narrower definition of human rights (Lidové noviny 1992). The dispute was eventually resolved by the invention of the concept of *ústavní pořádek* (a constitutional order), which included the constitution, the Charter and other constitutional acts, each of equal importance.⁹⁵ Thus, the Charter did not become a formal part of the text of the constitution narrowly understood, but the opposition essentially obtained what it wanted (Výborný 2003).

The opposition was less successful with its demand to include in the constitution the option of calling a referendum. Although the constitution did mention direct democracy, the implementation of a referendum was conditional upon the adoption of a special constitutional act. Although several attempts have been made since the adoption of the constitution to pass such an act, to date all but one has been unsuccessful. The only national referendum in the era of the independent Czech Republic, and indeed in the whole of Czech history, was the referendum on the country's accession to the EU in 2003. A one-off constitutional act was adopted for this vote. By contrast, referendums are often used at the local level, but they can only be concerned with affairs that fall within the purview of the municipality. Since 2010 regional referenda can also be held, but so far this option has not been utilized.

Besides the government and opposition, a number of other actors were material to the birth of the constitution, of which the most remarkable was Václav Havel. Having resigned the presidential office of Czechoslovakia as it was about to disappear, Havel quickly set his sights on the presidency of the new, smaller Czech state. Given his international reputation and high

⁹⁵ The constitutional system also includes international treaties on human rights and fundamental freedoms. This is based on a somewhat disputable interpretation put forward by the Constitutional Court (Filip 2010).

popularity at home, he was a natural candidate. Havel's interest in constitutional matters is evidenced by his consultations with some of those who were preparing the constitution – at that time he was a private citizen rather than an office holder – and especially in his own concept of the constitution. Particularly worthy of note are Havel's pleading for the direct election of the head of state and 'a president who is strong or at least stronger than before' and with 'at least such powers as would allow him independent political action' (Havel 1992b). Havel's vision of a strong president was evidently influenced by his experience in the first years after the Velvet Revolution, when the head of state wielded enormous political influence, as well as by the traditionally high prestige of the presidential office.

However, Havel's vision clashed with the prevailing balance of power, that is the domination by Klaus and ODS, who pushed hard to minimise the president's powers and under no circumstance would have allowed direct presidential elections. Klaus's attitude was influenced by the history of his conflictual relationship with Havel. Though Klaus was willing to support Havel's candidacy, he was definitely not interested in creating a competing locus of power at Prague Castle, one that could rely on the legitimacy provided by a direct presidential election. By contrast, the idea of a stronger president was welcomed by the opposition as well as by some politicians in minor government parties, who viewed Havel as their natural ally. The result was a compromise. Ultimately, the scope of presidential powers enshrined in the constitution was narrower than Havel would have liked, but the head of state also did not become a figurehead. Thus in the executive were sown the seeds of political dualism, which was to have significant consequences for the functioning of the political regime. There is some historical irony in the fact that in 2003 Klaus became Havel's successor as the country's president.

It was not just Václav Havel who was trying to influence the shape of the constitution. Others were fighting for the survival of their institutions. The chair of the Czechoslovak Supreme Court Otakar Motejl provides an illustrative example: he managed to convince the governmental committee preparing the constitution that – unlike most federal institutions – his should not be abolished, but continue as the Supreme Court of the new state (Jiránek and Pečinka 2000, Kopeček 2010a). The existing Czech Supreme Court was transformed into two high courts, and existing regional and district courts were likewise preserved. Thus a complex four-level judicial system came into being and resisted later attempts to simplify it. Paradoxically, it was Motejl as minister of justice, who in the late 1990s spearheaded these attempts, arguing that the four-level system 'gives rise to questions of jurisdiction' and a three-level one 'would be more effective' (Motejl 1999).

Despite the haste with which it was adopted, the constitution did provide a solid basis for the functioning of the new state. Some unresolved issues and

problems that arose over time should have been easy to fix, but the necessary broader consensus and political will were sometimes lacking. The introduction of direct presidential elections in 2012 proved to be riskier, as it introduced into the political regime a strong destabilising element, as described below.

6.2. The parliament and fragile cabinets

The constitution set out a parliamentary regime for the Czech state. This is clearly stated in its article 68, according to which the government is accountable to the Chamber of Deputies, the 200-member lower chamber of parliament (the Chamber was created in 1993 by transforming the existing Czech National Council). The Chamber of Deputies is the key arena where the government clashes with the opposition. The constitution also features other typical traits of a parliamentary regime such as the opportunity for deputies to table oral or written questions to the government, and the possibility of simultaneously serving as a member of government and parliament.

Of essential importance is the investiture vote, taken by the Chamber after the president has appointed the government. The government needs to win an absolute majority of votes of the deputies present. As governments lacking a parliamentary majority are relatively common (see Table 6.1), winning the investiture vote is sometimes tricky. As early as 1996 the existing government coalition lost its majority support. It won confidence thanks to an agreement with the opposition, the Czech Social Democratic Party (ČSSD), whose deputies left the Chamber when the motion of confidence was made, thus lowering the number of votes needed to win confidence. The situation reoccurred in 1998, with a different constellation of forces, when ODS decided to tolerate ČSSD's minority government. Thanks to this arrangement, dubbed the Opposition Agreement, the ČSSD government remained in office for the entire electoral term (see Chapter 8 for more detail).

During the first decade and a half of the twenty-first century, there were moments when the will was lacking to come to an agreement that would protect a government without a majority in the Chamber. The experience of the Opposition Agreement, which elicited a very negative public response and lost ODS the 2002 election, played an important role here. After the 2006 election the situation became extreme, as for more than half a year no government could win the Chamber's confidence, since the left and the non-left parliamentary camps each controlled exactly half of the deputies. In order to win confidence, the centre-right coalition government of Mirek Topolánek persuaded two deputies from the opposition to support his government. These 'political turncoats' also supported the government when it was pushing through its legislative agenda. This and other similar cases were controversial and were

accompanied by allegations of corruption and other misdeeds. Such incidents are unhealthy signs and highlight the country's problematic political culture.

The government can also ask for a confidence vote during the electoral term. The vote is decided in the same way as the investiture vote, the government has to be supported by an absolute majority of the deputies present. Such a vote of confidence is usually linked with the passing of an act of particular importance for the government. The government might also be seeking to confirm that it commands sufficient support in the Chamber. In spring 2012, for example, Petr Nečas's government called and won a vote of confidence after another member of the coalition, Public Affairs party, was pushed out.

For a vote of no confidence to succeed, there is a stricter requirement than for a vote of confidence: an absolute majority of all deputies, whether present in the Chamber or not, must vote against the government. A motion of no confidence needs 50 votes to be tabled by 50 deputies, a requirement which is a hindrance to the opposition, but not an insuperable one. The first motion of no confidence took place in 2003, and since then the opposition has frequently tabled such motions, though only one has succeeded. The successful vote brought about the demise of Mirek Topolánek's cabinet in 2009, the fifth attempt on the part of the opposition to overthrow that government. When a government commands a significant majority in the Chamber, the aim of the opposition is not so much to remove the government as to attract media attention.

The prime minister organises the work of the government, chairs its meetings and acts in its name (Article 77 of the constitution). According to the constitution, he or she does not enjoy a privileged position in governmental decision-making, and when votes are taken in the cabinet, his vote is of equal weight to those of any other government member (Just 2012). However, the position of the prime minister within the executive is strengthened by the fact that some decisions made by the president have to be countersigned by the prime minister (or another authorised government member). Importantly, it is usually the chair of the party that won the election who becomes prime minister and, according to an established interpretation of the constitution, his resignation means the end of the government. Furthermore, the prime minister has a strong say (at least according to the constitution) in appointing and removing ministers, as that is done by the president acting on the basis of the prime minister's recommendation. In reality, however, the prime minister decides only about the portfolios held by his own party. The constitution does not allow the president to remove a prime minister who enjoys the confidence of the Chamber, and neither is the president allowed to circumvent the prime minister in appointing or removing ministers or to act independently of him.

Despite this, the head of state has substantial space to manoeuvre, and may complicate the prime minister's position, as described below.

Czech prime ministers also face other limits, which diminish or even threaten their position and also weaken the effectiveness of the government. The most serious among these is government instability, which has been chronic during several electoral terms. For instance, the 2002-2006 term saw three different cabinets even though formally the government coalition remained intact. The next electoral term, 2006-2010, also featured three cabinets (see Table 6.1). The average duration of a cabinet since 1992 has been less than two years. The Czech Republic thus exhibits significantly lower government stability than is the norm in Western Europe. Yet in the context of the 'new' democracies of Central and Eastern Europe, this is not exceptional as short-lived governments are a relatively common phenomenon in the region (Müller and Strøm 2000, Havlík 2011b, Grotz and Weber 2012, Döring and Hellström 2013).

One consequence of the instability of Czech governments is the occurrence of technocratic or, as the case may be, 'semi-political' cabinets, which are used as an expedient to overcome political crises (Hloušek and Kopeček 2013). Analogies to this solution can be found in interwar Czechoslovakia as well as in other European countries such as Italy and Greece. However, in a parliamentary democracy based on elections, frequent recourse to governments of unelected technocrats is a problematic practice, even though a technocratic government must be approved by a vote of confidence in the Chamber.

The main causes of government instability are weak backing from the Chamber and, above all, the heterogeneity of government coalitions, which are often made up of parties that are ideologically diverse. This complicates their ability to communicate, to agree on a common programme, and to implement their policies. The fact that, as a rule, government coalitions are made up of three parties, does not make it easy to coordinate government activities. The coalition of the left-wing Social Democrats, centre-right Christian Democrats, and liberal Freedom Union, in office from 2002 to 2006, provides a telling example: it was plagued by constant dissension, mainly due to the parties' dissatisfaction with the implementation of their respective programmes. Towards the close of the electoral term the largest party in government, the Social Democrats, actually pushed through some of its agenda with the help of the opposition Communists (Cabada 2006, Čaloud, Foltýn and Havlík 2006). Furthermore, factions sometimes appear within parties that are in government, and this can be very destructive. For instance, the already-mentioned government of Mirek Topolánek, in office from 2007 to 2009, consisted of the Civic Democrats, the Greens, and the Christian Democrats. These parties were rather remote from each other in terms of their programmes; this caused much intra-party frustration, giving rise to factionalism and disloyalty on the part of

some deputies and providing the opposition with an opportunity to table a successful motion of no confidence.

Factionalism and the substantial decentralisation of parties have weakened the prime minister's position. It is not just the heterogeneity of coalitions, but prime ministerial weakness which has commonly caused government crises. For example, in 2004 the Social Democratic Prime Minister Vladimír Špidla resigned after the failure of his party in European elections provoked a wave of intra-party dissent. Prime ministers' main role in Czech politics is to moderate conflicts and interests within government coalitions, and their ability to do so varies significantly. Only rarely can a prime minister be described as the indisputable leader of the government. Thus, the position of a Czech PM is very different from that of a British PM or a German chancellor (Hloušek 2015).

The position of the government is weak in part because the constitution has not endowed it with instruments that would allow it to influence the agenda of the Chamber, the rate at which individual items are debated or the manner in which the Chamber deals with government bills. There is no need to seek the government's approval of amendments made to bills, and the government has no power to close a parliamentary debate. The mechanisms that govern the functioning of the Chamber are not interlinked with those of the government. This fact, combined with the recurring fragility of governments, substantially bolsters the political autonomy of the Chamber (Kysela 2013).

Many features of Czech parliamentarianism are similar to what Giovanni Sartori calls 'assembly government' (Sartori 1994), in which the domination of parliament over government is typical. Czech coalition cabinets are not very stable, they are often not able to act and speak with a single, clear voice, and they have difficulty pushing through their legislative agenda. Prime ministers cannot act quickly and decisively. Governments are afforded little protection from the Chamber of Deputies, which can easily threaten a government's existence. Due to significant government instability, political responsibility for the exercise of governmental power is often unclear (Novák 2004, Kubát 2013). Both the constitutional design (including the proportional electoral system) and the party system play a key role here and are reflected in the character and make-up of parliament and government. Nor can one ignore the political culture and the sometimes very questionable behaviour of political actors. The culture of the Chamber of Deputies, is symptomatic in this respect, as there appears to be an unwillingness to create firm rules and a tendency to circumvent rules already in place (Wintr 2010). This phenomenon, furthermore, is not limited to the Chamber, but constitutes a general trait of Czech politics and society.

However, the Czech situation is better in some respects than Sartori's example of a typical assembly government, the French Third Republic. The

constitutional protection given to the government against parliament is somewhat stronger. Also positive is the fact that party discipline in the Chamber of Deputies is relatively high, giving some cohesion to parties and preventing the atomisation of power. Rule by parties, though viewed by the Czech general public with much disdain, in fact prevents the country from becoming an unmanageable ‘republic of deputies’.

Table 6.1: Governments in the Czech Republic since 1992

Government term	Prime minister and party affiliation	Parties in government	Support in the Chamber of Deputies (number of deputies of governmental parties at the formation of the government)	Type of government
July 1992- July 1996	Václav Klaus I (ODS)	ODS, KDU-ČSL, ODA, KDS	105	Minimal winning coalition*
July 1996- January 1998	Václav Klaus II (ODS)	ODS, KDU-ČSL, ODA	99	Minority coalition
January 1998- July 1998	Josef Tošovský (non-partisan)	KDU-ČSL, US, ODA, non-partisans	61	Semi-political government
July 1998- July 2002	Miloš Zeman (ČSSD)	ČSSD	74	Single-party minority government dependent on agreement with ODS
July 2002- August 2004	Vladimír Špidla (ČSSD)	ČSSD, KDU-ČSL, US-DEU	101	Minimal winning coalition
August 2004- April 2005	Stanislav Gross (ČSSD)	ČSSD, KDU-ČSL, US-DEU	101	Minimal winning coalition
April 2005- August 2006	Jiří Paroubek (ČSSD)	ČSSD, KDU-ČSL, US-DEU	101	Minimal winning coalition
September 2006- January 2007	Mirek Topolánek I (ODS)	ODS	81	Minority government, which did not win confidence of the Chamber
January 2007- May 2009	Mirek Topolánek II (ODS)	ODS, KDU-ČSL, SZ	100	Minority coalition**
May 2009- July 2010	Jan Fischer (non-partisan)	-	-	Technocratic government
July 2010-	Petr	ODS, TOP 09, VV	118	Minimal winning

July 2013	Nečas (ODS)	(LIDEM, which split off from VV, replaced VV in government)***		coalition
July 2013- January 2014	Jiří Rusnok (non-partisan)	-	-	Technocratic government, which did not win confidence of the Chamber
January 2014-	Bohuslav Sobotka (ČSSD)	ČSSD, ANO, KDU-ČSL	111	Minimal winning coalition

Source: Havlík and Kopeček 2008, updated.

Note:

- * The term minimal winning coalition means that no party is superfluous.
- ** Not strictly a minority, as the government had exactly half the number of deputies in the Chamber.
- *** Following the schism in VV and the emergence of the new party LIDEM in spring 2012, Nečas's government could be considered a new government, i.e., Nečas II, as the make-up of the government coalition changed, and its support in the Chamber diminished. However, the whole period 2010-2013 may be considered one government term: VV was the smallest party in government and played a minor role. Furthermore, there was no change in the perception of Nečas's government among the public or media.

6.3. The Senate's image as an unnecessary institution

One of the serious disputes at the time of the constitution's writing was over the establishment of parliament's upper chamber, the Senate. It was not just the opposition who rejected the Senate; many politicians in government and constitutional experts who prepared the constitution had their doubts as well. In the end, a Senate comprising 81 members was included in the constitution chiefly thanks to the efforts of the politicians of the Civic Democratic Alliance (ODA). The main arguments put forward by the supporters of the Senate were that there had been a second chamber in the First Republic and that many other European countries had one. What these arguments failed to consider was that most of these countries were federations, or were ethnically or otherwise heterogeneous. Unlike interwar Czechoslovakia, the Czech Republic was and is a relatively homogeneous country. Another proposal was for a sort of

division of labour between the two chambers of parliament, with one dedicated to private law and the other to public law, but this suggestion was unrealistic. Similarly, the idea that the Senate would become a 'house of sages', where party affiliations would be unimportant, was not pursued (Němeček 2010). Today most senators are elected on a party ticket, though their party affiliation is often weaker than is the case with deputies.

A specific contemporary consideration that aided the inclusion of the Senate in the constitution was the idea that initially it would be filled with the Czech deputies from the federal parliament who would be losing their jobs. This vision of a smooth transition into the new institution and of obtaining attractive new positions contributed to the painless end of Czechoslovakia. In practice the Senate was not filled with federal deputies. Paradoxically, this was due to resistance mounted by ODA, the party that had pushed for the establishment of the chamber in the first place. ODA was the only party in Klaus's government coalition not to have had representation in the federal parliament. The Senate came into existence only after a delay in late 1996. In the interim period the Chamber of Deputies exercised the powers of the Senate. This delayed creation of the Senate strengthened the tendency to question its meaningfulness (Kysela 2004, Just 2012). Characteristically, the opposition Social Democrats and the far-right Republicans sought to have the Senate removed from the constitution, but were unsuccessful.

The first elections to the Senate meant that new political offices were created, reconciling previously doubtful politicians to its existence. But a sceptical public still saw the Senate as unnecessary, and largely continues to see it that way. Voter turnout for Senate elections has traditionally been much lower than the Chamber of Deputies, despite the fact that the Senate uses a majority electoral system, which works to personalise the elections (for more details see Chapter 7). When, as is usual, the first round of Senate elections is held on the same day as regional or local elections voter turnout tends to improve, but it declines rapidly in the second round (Lebeda, Malcová and Lacina 2009). For instance, in 2014 turnout for the first round was 38%, but in the second round only 17%. At the time of Czechoslovakia's demise, fears that it would sow the seeds of future secessions militated against the logical principle of a Senate representing the country's individual regions (Kysela 2004, Dvořáková and Kunc 1999). The law for Senate elections defined single-member constituencies, however, for the most part these are not homogeneous entities and lack a clear connection with the regions, which were established only later. This too contributes to the low public interest in the upper chamber.

The constitution sets a senator's term at six years, compared with four years for a deputy. The Senate is renewed gradually, with a third of the seats contested every two years. Shifts in voters' electoral preferences thus affect the composition of the Senate less than they do the Chamber of Deputies. In addition, unlike the Chamber of Deputies, the Senate cannot be dissolved.

Some constitutional experts and senators argue that this makes the Senate a stabilising element within the political system, ensuring its political continuity (Pithart 1999, Kysela 2004, Bahýľová 2010). This stability, however, cannot address the Senate's essential weakness: it has few powers, which is a consequence of the fact that it has never been much in demand.

This weakness is most conspicuous in the law-making process. According to the constitution, the government, deputies, senators, and regional assemblies can initiate legislation.⁹⁶ However, senators (and regions) rarely do so, and they account for only a small percentage of bills. Governments have traditionally been the most active, introducing slightly more than half the total number of bills. They are followed by deputies, who introduce about 30 to 40 % of bills (Syllová 2013).⁹⁷ In order to pass a bill in the Chamber, a majority of deputies present have to vote in its favour. When the Chamber has passed a bill, it is referred to the Senate, which has several options: it can pass the bill, resolve not to consider it, reject it, or amend it. In the first two cases the bill is approved. If the Senate rejects the bill, the Chamber of Deputies can override this decision relatively easily with an absolute majority of all deputies. A majority of deputies present is needed to accept the amendments. In order to reject amendments, the same conditions apply as when the Chamber votes on a bill rejected by the Senate, that is, an absolute majority of all deputies.

The changes the Senate makes to the bills coming from the Chamber of Deputies are often minor. This reflects its role as an "inspector" of legislation, and there is a relatively high chance that the Chamber will accept such amendments. Yet at some times the Senate shows a more pronounced tendency to act as a political corrective. This is connected with the preponderance (or lack thereof) of opposition in the Senate. The opposition is naturally hostile to the legislative agenda of the government. To illustrate, one may compare two electoral terms, 2006-2010 and 2010-2013. The number of bills referred from the Chamber to the Senate was about the same in both, and a government led by ODS was in power most of the time. In the first term 2006-2010, when there was a majority of parties in support of the government in the upper chamber, the Senate defeated only nine bills and returned 46 with amendments. In the second term 2010-2013, when the opposition prevailed in the Senate, it defeated 37 bills and returned 80 with amendments. Thus, the upper chamber shifted from relative acquiescence and passivity to noticeable activity (Syllová 2013).

⁹⁶ The text of the constitution stipulates that only the Senate as a whole may initiate legislation. However, since 2004 the parliamentary procedure of this body allows even a single senator to introduce a bill, as long as the Senate passes the proposal.

⁹⁷ The only exception was the period of instability from 1996 to 1998, when deputies introduced almost half of the bills.

As it is relatively easy for the Chamber to override a Senate vote, the opposition can rarely make use of the upper chamber as a veto on governmental proposals (Tsebelis 2002). This can be illustrated by the fact that, out of the above-mentioned 37 bills defeated by the Senate in 2010-2013, the Chamber was able to override all except 9 (Syllová 2013). However, the chances of a Senate victory increase if the governmental parties do not have a strong majority in the Chamber.

The Senate is not the parliamentary opposition's only weapon. It can also ask the Constitutional Court for judicial review of legislation. The Court can annul all or part of an act if it contravenes the constitution. Judicial review can be initiated by a fifth of deputies or senators. During the first two decades of the Czech Republic's existence, more than 100 such motions were tabled, and about a third were partially or fully successful. Opposition members of parliament initiated three-fifths of these motions, and senators have been very active during some electoral terms (Kopeček and Petrov 2015).

When the Chamber is dissolved, the Senate assumes the power to adopt legal measures proposed by the government. However, such measures must subsequently be approved by the newly-elected Chamber. In practice this power was first employed in 2013, more than 20 years after the adoption of the constitution, and was accompanied by debate concerning its necessity. Hence the question remains open as to whether it will become a common practice.

Exceptions, where the Senate is a strong veto player, are the passing of constitutional and electoral acts and international treaties. In these cases the approval of the upper chamber is necessary. A three-fifths majority of all deputies and of voting senators is required to pass constitutional acts and some international treaties. A simple majority in both chambers is sufficient to change the electoral laws (and some international treaties as well). In practice, these situations are rare but not negligible. They were most conspicuous during the era of the Opposition Agreement (1998-2002), when the Senate was able to block attempts made by ODS and ČSSD to change the constitution.

Another of the Senate's important powers is that it confirms the president's nominees for the Constitutional Court. The smoothness of this process depends on the occupants of these institutions. In the early years of Václav Klaus's presidency, the Senate was largely hostile to the president and rejected his nominees. This partially paralysed the Constitutional Court, as several positions remained vacant (Kühn and Kysela 2006). To a lesser extent, the problem reappeared at the end of Klaus's presidency.

There have been repeated attempts to give more powers to the upper chamber. They have all foundered. On the contrary, with the introduction of direct presidential elections in 2012, senators lost their power to elect the president alongside the deputies, and the televised elections were one of the few moments that reminded the general public of the Senate's existence.

The Czech parliament is asymmetrically bicameral. The upper chamber is so weak that it rarely influences politics in important ways, and this fact affects public perceptions. As a result, an image has emerged of the Senate as an unnecessary institution. The public knows little about it and believes it lacks a purpose. Senate elections are thus often thought to be pointless.

6.4. Regional arrangements: a complicated genesis and a problematic result

One important issue remained unresolved when the constitution was adopted: the territorial division of the state. This was connected with the Moravian movement. Their fundamental demand was that the eastern part of the country, Moravia, be made a coherent entity, which was historically called a land, and be given significant powers (Mareš and Strmiska 2005, Springerová 2010). The right-wing parties who won the 1992 elections, however, were worried about the implications of granting autonomy to Moravia. What they wanted to avoid, in the wake of the division of Czechoslovakia, was to encourage another secession. Furthermore, it was unclear how the western part of the state, Bohemia, would be administratively divided. Although other opposition parties and the governmental KDU-ČSL supported a territorial arrangement based on the principle of historical lands, the issue was of fundamental importance only to the Moravians.

After 1993 several attempts were made to find a workable solution to this issue, but they quickly foundered over incompatible views and the Civic Democrats' unwillingness to support swift decentralisation. Led by Václav Klaus, the party feared that the new territorial units might become bastions of the opposition and hinder the centre's control over economic reforms. Only after the Moravians were politically marginalised was a compromise found in autumn 1997 concerning the character and boundaries of the new regions, yet their actual inception was postponed until 2000. Various ideas and interests influenced the character of the 14 regions that were created. Politicians in different parts of the country had different ideas about the shape of their region, ideas that crossed party lines. This led to significant differences between the regions in terms of their sizes and populations.⁹⁸ Even more importantly, the new regions, with a few exceptions, were mostly artificial creations, often lacking homogeneity and the loyalty of their residents (Šimíček 2001, Balík

⁹⁸ Most of the regions were relatively small and paradoxically it soon became necessary to combine two or three regions into larger units (the so-called NUTS II) for the purpose of obtaining EU funding.

2005). The building of regional loyalties proved to be a long process with varying degrees of success. It was necessary to harmonise the structures of public authorities with the new regions, a protracted and expensive business that in some cases still remains unfinished. For example, the jurisdiction of regional courts and public prosecutors does not correspond to the boundaries of the self-governing regions. Another controversial point was decision not to respect the historical border between Bohemia and Moravia. The motivation was to prevent any recurrence of Moravism.

The regions today enjoy several independent powers, typically in managing their own property and establishing their own legal entities. They also exercise some powers delegated to them by the state in areas such as land use planning, education, welfare, health, and transport (Hledíková, Janák and Dobeš 2005). However, the contents of these policies is sometimes determined by the central government or the scope of regional authority is limited to more technical matters, for instance, repairs to less important roads. There is thus less space for political decision-making at the regional level than at the national level. A consequence of this is that in campaigns for the regional assemblies, the differences between parties' programmes tend to be slight, and national rather than regional issues tend to be key for winning these elections (Eibl et al. 2009, Eibl, Gregor and Macková 2013).

The introduction of regions has other effects. The very first regional elections were held in the middle of the national electoral cycle. They proved a debacle for the ruling Social Democrats, as many voters used the regional elections to express their dissatisfaction. This 'retribution' by voters against governmental parties is a frequent feature of Czech regional elections. For example, in 2008 some media pundits tellingly dubbed the regional elections an 'orange tsunami' because the oppositional Social Democrats, whose colour is orange, triumphed, whereas the parties in government – the Civic Democrats, the People's Party, and the Greens – came to grief. Thus, although regional elections are 'second-order elections', they can disrupt the cohesion of coalition governments. Furthermore, regional elections lead to competition between the parties in national government. It is true that other instances of second-order elections, namely those to the Senate, European Parliament, and local elections, have similar effects. Yet regional elections have proven particularly dangerous to governments.

The political make-up of the national government is often different from that of regional councils (executive branch of regional government), and this sometimes causes friction. Situations where the regional councils and their governors come into sharp conflict with the central government can ultimately lead to attempts to block national policies. For example, the centre-right government led by Mirek Topolánek introduced co-payments for medical care. After the victory of the Social Democrats in regional elections on a platform

of opposition to these payments, several regions decided to pay these fees for the patients, which created political and legal problems.

Another consequence of the establishment of regions is the regionalisation of party elites. The new regional platform offered alternative new options in terms of power and resources, which have encouraged not only inter-party but also intra-party competition. The importance of regional party officials has risen sharply, with some obtaining tremendous influence over their parties' decision making. Some parties suffered serious divisions. ODS, for instance, one could be better described as a confederation of regional organisations than a unified party. This had a significant impact on ODS's loss of favour among voters after 2009.

Regional government came into being as the result of a political compromise. As time passes and the regions establish themselves, citizens have become reconciled with their existence, yet the system is far from optimal.

6.5. The president's aura and constitutional inviolability

Although the constitution does not make the president the head of the executive, his or her position and powers are not negligible. The constitution builds on a specific historical and political tradition, which begins with the first Czechoslovak president, Tomáš G. Masaryk. Not only did he found the Czechoslovak state in 1918, he also made the presidential office one of the regime's principal pillars. It is only a slight hyperbole to say that Masaryk was a monarch on a republican throne. Like Austrian emperors, Masaryk was endowed with some powers that had a distinctly monarchist tinge: the power to grant pardons and declare amnesty. The present constitution still gives these powers to Czech presidents.

Václav Havel, the president of Czechoslovakia after November 1989, imbued the office with an ethos strongly reliant on morality and the tradition of anti-communist dissent. He transferred these characteristics to the new Czech state, which he headed for a full decade from 1993 onwards. By contrast, what disappeared was Havel's position as a key political actor. As new democratic institutions were being created, Havel not only 'ruled', but also 'governed' (Kysela 2006). This was no longer the case. Nonetheless, the long continuity of Havel's Czechoslovak and Czech presidencies has attached an informal charisma to the presidential office, or perhaps better, a semi-religious aura surrounding the head of state (Kopeček and Mlejnek 2013). Almost by default, the president is expected to ensure good governance and resolve social problems (Kysela 2008, Mlejnek 2011, Brunclík 2013). This aura has granted

much credibility to Havel and his successors, Václav Klaus (2003-2013) and Miloš Zeman (2013-). Further, it has provided them with opportunities to influence politics and informally strengthen their position. All three presidents have been activists at certain times and in certain domains.

The exceptional position of the president according to the constitution is apparent from the fact that he represents the state internationally, cannot be held responsible for official actions and cannot be removed. He is elected for a five-year term and can hold the office twice in succession.⁹⁹ The only exception to the irremovability of the president is a complicated impeachment process, presided over by the Constitutional Court.¹⁰⁰ The president is therefore considered to represent the identity and integrity of the Czech state, and to act as a guarantor of the constitutional order (Gerloch, Hřebejk and Zoubek 1999, Wintr 2008, Klíma 2008). The scope of his authority is not limited to the executive, but includes relations with the central bank and parliament which are described below. The president's practically inviolable position gives him an obvious advantage over the much more vulnerable prime minister. The president has almost always been more popular than the prime minister. This is due not only to the symbolic importance of the former's office, but also the fact that he is unencumbered with the problems of day-to-day governance and political infighting.

With the introduction of a direct election in 2012, the president now has a mandate directly from the voters. Yet his powers have remained practically unchanged. He still cannot be held responsible for his official actions, though in this respect, at the very least, a change would have been patently desirable (Kysela 2008). The first president so elected, Miloš Zeman, has used the argument of his having a direct mandate from voters to defend a number of steps he has taken, steps that have increased his political importance.

In the public perception of the Czech president, the illusion or myth of non-partisanship plays a role and is linked with his semi-religious aura. According to this perception, the president represents the entire nation and is not linked with a particular party or parties. The ideal of the head of state's 'above-parties' was even mentioned in some older legal commentaries on the

⁹⁹ When compared to other presidents' terms of office, the formulation in the Czech constitution is atypical: no one may be elected president more than twice 'in succession'. This has opened discussion on whether someone might become a president for a third non-consecutive term. Though theoretically possible, this scenario is unlikely.

¹⁰⁰ This procedure has only been used once, against President Klaus in 2013, and was unsuccessful. Since the direct election of the president was introduced, the procedure has been changed: in addition to high treason, the president can now be impeached for gross violation of the constitution. In order to begin the proceedings, the motion now has to be supported not only by a three-fifths majority of senators present, but also by a three-fifths majority of all deputies, making the procedure extraordinarily difficult.

constitution (e.g. Pavlíček and Hřebejk 1998). The roots of the myth can be traced back to Masaryk, yet even then it did not correspond to Masaryk's actions. The myth doggedly persisted in the public consciousness and in the 1990s was revived by the moralising style of the Havel presidency and his scepticism towards political parties. Again, the myth did not reflect political reality. Havel was closer to some parties (or its factions) and distant from others. His relationship with ODS, for instance, was openly hostile from the late 1990s onwards, and these feelings were mutual.¹⁰¹

The idea of president 'above-parties' might have been compatible with a person who would accept a largely ceremonial role. Such a role, however, was incompatible with the strong personalities of Havel and his successor Klaus. The chances that a truly non-partisan president might take office were further diminished with the introduction of direct presidential elections. The struggle to win the electorate's votes naturally pushes candidates to offer politically distinctive programmes. Ahead of the first presidential election in 2013, Miloš Zeman, the candidate who ultimately won, presented himself as an indignant tribune of the people, fighting against the unpopular cabinet led by Petr Nečas (ODS) under the banner of 'Stop this government'. The idea that by a wave of a magic wand all of this would disappear after the election and the head of state would become a sagacious and unbiased figure beloved by all, was unrealistic.

6.6. Presidents, prime ministers and the dangers of political dualism

This section presents an overview of some of the president's powers and the influence they may exert over politics. Starting with parliament, the president may dissolve the Chamber of Deputies, but only under circumstances strictly prescribed by the constitution; his space for manoeuvre is limited. He can also veto legislation without a countersignature by the government. An absolute majority of all deputies may override the president's veto, hence these vetoes are rarely successful. Even governments lacking a parliamentary majority usually find enough votes in the Chamber to overturn the veto. An exception is vetoes at the end of the parliamentary term when deputies are no longer in session and can no longer overturn the veto. This is similar to a pocket veto in the USA.

¹⁰¹ Havel plumbed the depths of their mutual antagonism in his famous speech at the Rudolfinum in 1997. It included a harsh critique of the transformation era and especially of the 'father' of the economic reform, Václav Klaus.

The president can initiate a judicial review of legislation, which can function like a veto. Thus, he can employ the same weapon that is available to deputies and senators. Havel did so frequently and successfully, whereas Klaus was reticent due to his antipathy towards the Constitutional Court and higher courts generally. He even spoke pejoratively of 'juristocracy' (*soudcokracie*), or the domination of the courts over politics (Klaus and Loužek 2006, Smekal and Pospíšil 2013). Although Zeman made some use of judicial reviews, all in all, the head of state, like the Senate, has proved to be a rather weak veto player.

Appointment powers are more important than vetoes to the presidential office. Particularly noteworthy is the president's relationship with the Czech National Bank, which, while independent of government, is an important influence on monetary policy. The appointment of the Bank's board, governor, and vice-governors is entirely in the hands of the president, and no other authority may challenge his choice. By contrast, the president is much more limited when appointing justices to the Constitutional Court. The president therefore holds a strong, albeit indirect, instrument with which to influence the country's economy.

Havel was fully aware of this. Characteristically, his second term (from 1998) was marked by disputes, especially with Zeman and Klaus, the leaders of the two main parliamentary parties. Both pressured the president to consult with other constitutional bodies before making his nominations. There was even an unsuccessful attempt to limit the president's influence over the central bank.

Paradoxically, having later become presidents themselves, both of Havel's critics made full use of the power of appointment. In choosing their particular appointees, they followed their particular preferences: Klaus, monetarist and Zeman, Keynesian. The gusto with which they each staffed the bank board according to their own vision was strengthened by their experience as prime ministers in dealing with the central bank.

The constitution offers the president significant foreign policy powers, particularly in representing the state internationally (Article 63 of the constitution). The president's important decisions in this area are subject to countersignature by the government. Constitutional theorists emphasise that the president is not authorised to create his own foreign policy and that the main role should be played by government in cooperation with the president (Vyhnánek 2010). Despite that, the president's political visions have often been at variance with those of governments, irrespective of the requirement for a countersignature.

For Havel, support for human rights and a strong Euro-Atlantic orientation were essential. In 1999, he harshly criticised Miloš Zeman's government when it vacillated over supporting NATO's aerial bombing of Serbia. According to the president, it was necessary to support the Czech Republic's allies. He described the military action as a humanitarian act whose purpose was to

prevent the expulsion of Albanians from Kosovo. The common thread running through Klaus's presidency was his opposition to deepening EU integration. This sometimes seemed like an anti-EU campaign and included his attempts to block the Euro-constitution and the Lisbon Treaty. Prime ministers responded by criticising the president for overstepping his powers. Prime Minister Jiří Paroubek even threatened to limit the president's foreign travel and put forward the idea that the president would have to follow the government's instructions (Kysela 2006, Brunclík 2008a, Kopeček 2012a). During the crisis in the Ukraine in 2014, President Miloš Zeman opposed sanctions imposed by the EU against Russia and by doing so came into conflict with the position taken by Bohuslav Sobotka's government.

To date the conflicts between presidents and governments over foreign and European policies have never led to an outright clash. The presidents' ability to take an independent line in foreign policy has been much limited by their lack of organisational capacity. Still, because of these conflicts, the country occasionally speaks in different voices internationally, which has undesirable consequences in foreign affairs.

Though manifest in the representation of the country abroad, the dualist tendency in the executive is even more pronounced in the process of government formation and the resolution of government crises. The constitution is based on a principle that the president should play a moderating and facilitating role in negotiations between political actors. In reality this has mostly been the case, but the boundary between moderating and undue activism on the part of the head of state is unclear. In appointing and removing prime ministers and government members, presidents have exploited the fact that the relevant clauses in the constitution are brief and abstract. This has given them significant space to manoeuvre. The constitution says that 'the Prime Minister shall be appointed by the President of the Republic' and that the president 'shall appoint and recall on the proposal of the Prime Minister the other members of the Government' (Article 68). It does not stipulate within what period of time the prime minister should be appointed or other ministers recalled. Havel and later Klaus took advantage of this clause to entrust individuals with forming a government without concurrently appointing them prime minister. Given how regularly this mechanism is used, it has become a constitutional convention (Šimíček 2003).

Neither does the constitution specify the manner of, or criteria for, choosing the prime minister. There is only the constitutional corrective that, should the president twice appoint a government that fails to win the Chamber's confidence, it is the speaker of the Chamber who nominates the third candidate for prime minister (Article 68 of the constitution). This provision ought to force the president to carefully consider the chances of his designated prime minister winning the confidence of the Chamber (Kysela

2008, Molek 2010). However, the president loses the option of nominating the prime minister only on his third attempt, and historically this has not yet occurred. Generally it is true that if party leaders have a clear plan for a majority government, there is little space for the president to play a role. But, in a politically complex situation, the president's space for manoeuvre is much greater, and so is his ability to push through a solution that suits him or block one that does not.

President Havel pushed through his own vision most conspicuously in late 1997. When the existing centre-right government disintegrated, the president entrusted Josef Lux, the chair of a smaller coalition party, with holding talks to form a new government. Lux's informal mission duly helped to form a government led by Josef Tošovský, previously head of the central bank. The prime minister and several other ministers were non-partisans, which suited Havel's reticence towards parties. It is worth recalling here Havel's original vision of the constitution, alluded to above. It afforded the president the option of creating a technocratic, non-partisan government, one that would not need to win a vote of confidence, should the parliament find itself unable to agree on a 'political' government (Havel 1992b: 381). The idea of technocratic governments was not included in the Czech constitution; yet its influence on the Tošovský government was evident. However, this government was not purely technocratic; rather, it was semi-political, with several politicians from parties hitherto in government (ODS was represented in the new government by one of its factions, which later created a new party, the Freedom Union – see Table 6.1). The Tošovský government had to win the Chamber's confidence, which it did by promising to limit its term and agenda.

President Klaus increased his space for manoeuvre by introducing specific conditions not stipulated in the constitution. This can be demonstrated by the situation that arose in 2004, when the Social Democratic Prime Minister Vladimír Špidla resigned, and the president tasked his successor in the party leadership, Stanislav Gross, with forming a new government. Klaus stipulated that Gross form a majority government that would not rely on the communists during the vote of confidence. This reflected Klaus's efforts to limit the influence of the communists, a view that was strongly supported by the public. Gross managed to fulfil these conditions – proof of which included signatures of a majority of non-communist MPs – and the president duly appointed his government.

Gross's government quickly fell apart over the murky financing of his apartment purchase and the business activities of his wife. The ministers of one of the minor parties in the coalition, KDU-ČSL, resigned, re-opening the possibility of a minority government relying on communist support. Klaus responded by not accepting their resignation and chose to delay, while exerting informal pressure on the prime minister. In doing so Klaus was aided by the fact that the constitution did not stipulate a deadline for recalling the resigning

ministers. Gross's intra-party support foundered and he ultimately resigned as prime minister. Formally, the existing coalition was preserved and a new government formed, led by a different social democratic prime minister (Brunclík 2008b, Kopeček 2012a).

Miloš Zeman went the furthest in imposing his conception of the cabinet. When the centre-right Petr Nečas government fell in mid-2013, the president responded by appointing a non-partisan prime minister, Jiří Rusnok, who put together a caretaker government. Zeman's approach was novel in that the appointment of Rusnok and the formation of his government were undertaken with no prior agreement with any of the parliamentary parties. The president presented party politicians with a *fait accompli*. For the first time in the history of the Czech Republic, a government was created that could unreservedly be described as presidential. Yet, Rusnok's government failed to win the confidence of the Chamber of Deputies, who subsequently agreed to dissolve itself and call early elections. This limited not only its mandate but also that of the Rusnok government. Rusnok's government, however, ruled for the next six months without a parliamentary mandate, a problematic situation, given that the Czech Republic is ostensibly a parliamentary regime.

The early election took place in autumn 2013. The pro-presidential party, bearing Zeman's name and including some of the ministers in the Rusnok government, failed. Soon after the election, the president's faction within the Social Democrat Party lost their intra-party struggle. Hence the structural preconditions for any future government connected with the president disappeared. Zeman, it is true, delayed the formation of the new government and sought to veto some of its ministers, but ultimately a classic coalition government accountable to the Chamber of Deputies took power. The shift from parliamentarianism to a semi-presidential regime was, therefore, only temporary. It confirmed that the president's influence can be substantial, even decisive at times; yet the president lacks an institutional basis that would allow him to govern and wield real executive power.

6.7. The constitutional court and the political consequences of judicial decisions

While parliament and government institutions have deep roots in Czech history, the constitutional judiciary developed fully only after 1989. The Constitutional Court was part of the institutional design of the First Republic, but its influence was limited. Under the communist regime the court did not function, even though a constitutional amendment adopted in the late 1960s

provided for a court. Only in 1991, after the birth of the democratic regime, was a court instituted, but its life was cut short when Czechoslovakia ceased to exist. However, the Czech Constitutional Court started working by 1993 (Schwartz 2000, Přibáň 2002, Balík et al. 2003).

The Czech Republic adopted the European model of constitutional judiciary with a special constitutional court, which is not part of the ordinary judicial system. As in other emerging democracies of Central Europe, the aim was to create an instrument that would help to consolidate constitutional democracy and to protect the country from a return to authoritarianism. Also influential was the growing importance of constitutional courts globally, since the mid-twentieth century. The Czechs and their neighbours in Central Europe were particularly inspired by the German constitutional judiciary (Vallinder 1995, Sadurski 2010, Stone Sweet 2012).

The purpose of the constitutional judiciary - that is, to facilitate the consolidation of democracy - is reflected in Article 83 of the Czech constitution, where the Constitutional Court is described as 'a judicial body charged with the protection of constitutional rule'. Its tasks include both the abstract review of constitutionality, determining whether legal norms are compatible with the constitutional system, and the concrete review of constitutionality, deciding upon constitutional petitions filled by individuals.¹⁰² The Court consists of 15 justices appointed by the president for a ten-year term. Justices can be reappointed for one additional term, a practice which is not exceptional. Reappointments do, however, lead to discussion as to whether this is good for justices' independence, as they might be influenced by the opinions of those authorities that appoint and confirm them, i.e., the president and the Senate respectively.

In politically important affairs, such as impeachment proceedings against the president, the review of the constitutionality of acts, or the compatibility with the constitution of an international treaty, the Constitutional Court decides as a plenum. However, even decisions that might at first sight seem banal and are decided by panels of only three judges can have enormous political consequences. For example, in 2000 the Constitutional Court ruled that ČSSD was the owner of the People's House (*Lidový dům*) in Prague, a large and profitable piece of real estate in the centre of the city. In doing so it overturned the decisions made by other courts, and helped to put the party on a secure financial footing (Šimíček 2013).

In addition to the constitutional judiciary, an administrative judiciary, headed by the Supreme Administrative Court, is also well developed. The administrative courts often make decisions affecting politics, as their jurisdiction includes parties, elections, and local referendums. For example,

¹⁰² Naturally, even in these cases, what matters is whether or not the constitutional system has been contravened.

the Supreme Administrative Court's dissolution of the far-right Workers' Party in 2010 set a precedent for bans on political parties and established the boundaries of acceptable behaviour. Criminal justice affects politics in a similarly important way, for example, in ruling on offences committed by deputies. To illustrate, in 2012 the leader of the Public Affairs party Vít Bárta was convicted of bribing another deputy. This contributed to a rift within the party, which was subsequently ejected from the government.

Nonetheless, the most important judicial body for politics is, without a doubt, the Constitutional Court. This is not only because it is the court of last instance, but especially because it is precisely the Constitutional Court who decides on what has been termed 'mega-politics', that is, the key disputes that define the political system (Hirschl 2008). An example of such a dispute was the court's review of the Lisbon Treaty, initiated in 2008 by Eurosceptic senators and president Klaus, who sought to block the Treaty. However, the Constitutional Court ruled that the Treaty did not contravene the constitutional system. Another example of mega-politics were the impeachment proceedings launched by senators against president Klaus for high treason, filed only a few days before Klaus's term expired in 2013. The main charge against Klaus was his controversial use of the presidential amnesty. However, the Constitutional Court refused to hear the case, pointing out that the president's term had expired in the meantime.

'Mega-politics' disputes most often arise in connection with the judicial review of legal regulations and especially of acts. These cases are decided by the plenum of the Constitutional Court. In these instances the Court undertakes an abstract review of constitutionality. This is *ex post* review, i.e., the court examines legislation passed by parliament. The court cannot engage in a *a priori* review of bills. Judicial review can be initiated by the president, groups of deputies or senators, and under certain circumstances other actors, including ordinary courts and citizens. During the first decade of the Czech Republic's existence, the most famous case of mega-politics involved the annulment in 2001 of several key clauses in the electoral law. These clauses might have seriously changed the structure of the party system (see Chapter 7). It is telling that petitions to have these clauses abolished were submitted by both President Havel and a group of senators.

Another case of a 'mega-politics' dispute *par excellence* occurred in 2009, and has been the Constitutional Court's most controversial entry into politics in the history of the Czech Republic. This case was not initiated by a proposal to have a law annulled. Rather, a deputy initiated a constitutional petition. His grievances were two-fold: he opposed a one-off constitutional act, passed by parliament, which shortened the term of the Chamber of Deputies, and, at the same time, criticised the president's decision to call an early election. These, the deputy alleged, contravened his right to exercise his mandate as a deputy.

The Constitutional Court annulled the constitutional act and the planned early election, arguing that, due to its one-off nature and retroactivity, the constitutional act in question interfered with the essential characteristics of a democratic state that respects the rule of law (Article 9 of the constitution) (Nález Ústavního soudu ze dne 10.9. 2009).

In making this decision, the plenum of the Constitutional Court was not unanimous. Two judges dissented. Criticism of the decision was fierce. Some critics argued that the Constitutional Court was not authorised to evaluate the constitutionality of a constitutional act (Fiala 2010, Balík 2010). Other critics admitted that, under extraordinary circumstances, the Constitutional Court may annul a constitutional act, but questioned whether the decision to end an electoral term early – a decision passed by a constitutional majority – truly was unconstitutional. The situation would have been different, one critic argued, had the parliament extended its term (Šimíček 2009). It has also been pointed out that one-off constitutional acts are commonly used in the Czech legal system (Kühn 2009). The strongest argument, expressed in various ways by most of those who opposed the Court's decision, was that the Court had both overstepped its authority and failed to consider the consequences of its annulment of the election, which was political chaos.

Although this intervention by the Constitutional Court was problematic, it had one positive effect in that a general (as opposed to one-off) change was made to the constitution. In addition to the existing options for the dissolution of the Chamber of Deputies, which are very difficult to enact in practice, the Chamber can now also dissolve itself if at least three-fifths of all deputies adopt a resolution to this effect. Given frequent government instability, this is a reasonable option, and one that was used to dissolve the Chamber in 2013.

The Constitutional Court's entries into the political arena are sometimes problematic. Yet in comparison with other Central European and Western European states, the Czech Constitutional Court is not an extreme case of judicial activism (Stone Sweet 1992, Stone Sweet 2000, Sadurski 2009). The Czech Republic is simply part of a more general trend of the judicialisation of politics in contemporary democracies. As a rule, constitutional justices, and judges generally, do not enter the political space on their own initiative, but are drawn into it by politicians. It is worth quoting here an insight of Wojciech Sadurski (2010: 105), which fits the Czech situation well: 'the greater the tensions between political forces, the greater the possibility that [...] adversaries will turn to the constitutional court to contest the policy choices of political opponents'. The position of judges is different from that of politicians, or more precisely, politics looks different from the courtroom than from the parliamentary arena. Yet it is worth remembering that judges have opinions and values as well and these influence their interpretation of legal norms, as well as their willingness to push for what they consider to be right. Therefore,

courts are among the actors who have an important influence on politics, even though they are not elected themselves.

6.8. Conclusion: malfunctioning institutions and the need for reforms

Giovanni Sartori considers government stability to be a necessary, though not sufficient, condition of effective governance (Sartori 1994). The Czech Republic does not fulfil this condition. Its coalition governments are politically heterogeneous and their backing in the Chamber of Deputies tends to be weak. Both of these facts have an impact on government durability, which is mostly short. The government expends much of its energy on conflict resolution within the coalition and on finding tricky political compromises concerning the government agenda. The situation is made worse by the fragile position the government has vis-à-vis the Chamber of Deputies, as demonstrated by frequent votes of no confidence. Though the opposition rarely deploys this weapon with any success, these attempts still constantly vex and occupy the government, which lacks serious instruments to influence the working of the Chamber. The prime minister is usually not a strong government leader, and his position, even within his own party, is often precarious. He has competitors within the government coalition – the leaders of other governmental parties – as well as outside the cabinet, in the person of the president. Thus, the Czech Republic is close to the model of assembly government with excessive domination of the Chamber of Deputies over the cabinet.

Several veto players also influence Czech governance: the Senate, the president, and the Constitutional Court. Their ability to block the government agenda is conditional. For the Senate to be effective, the opposition needs a majority in the upper chamber and the government needs to lack strong backing in the Chamber of Deputies. The president needs to be unhelpful, if not openly hostile, to the government. Still, these veto players can occasionally have a serious impact on the political process.

The constitution does not make the president the leader of the executive, but he has several significant powers and his position is almost inviolable. The brevity of some articles of the constitution and their ambiguity provide the head of state with the ability to influence politics at key moments such as government formation and crises. The weight of the president is further increased by the informal aura attached to his office.

The introduction of direct presidential elections in 2012 increased the dualism between the prime minister and the head of state, providing a stronger

foundation for the president's activism. Although the Czech Republic remains a parliamentary regime, the direct election has introduced another potentially destabilising element. Government parties may hinder the president's activism as long as they are capable of basic cohesion and enjoy the backing of the Chamber of Deputies. Important for presidential activism is the temperament of the office holder, and whether or not he has allies among the relevant parties.

The political heterogeneity of governments combined with their short durability and frequent changes of ministers do not allow for effective governance. One consequence of this is the public mistrust of politics and politicians. Politicians are held in low esteem. According to surveys, the profession of politician is among the least respected (CVVM 2013). This sends a clear signal.

Czech political institutions need reforms. It is hard to disagree with those authors who consider it desirable to rationalise the parliamentary regime, which means strengthening the position of the cabinet and weakening the power of the Chamber of Deputies (Novák 2008, Kysela 2013, Kubát 2009 and 2013). The Chamber should support the government rather than vie with it for power. The means to achieve this rationalisation include, first of all, a change in the government formation procedure, such as the introduction of time limits, strengthening the powers of the prime minister, and the introduction of a constructive vote of no confidence (Kubát 2013).¹⁰³ This should be accompanied by a reduction in and clarification of the president's powers, limiting his options of actively influencing politics and acting as a serious power player. Also desirable would be a reform of the proportional electoral system used for the lower chamber of parliament. This would lead to a consolidation of the party system and reduce the number of parties in government, thus easing government formation and governance.

Some less important political institutions such as the Senate also need reform. The present manner by which senators are elected is evidently unattractive to voters and fails to establish clear links between Senators and their constituencies. It would make more sense to transition to an indirect election, involving regional or perhaps even local assemblies. The abandonment of the direct election of a political institution does not signify that democracy has been defeated; on the contrary, it might well do it a service.

¹⁰³ A constructive vote of no confidence means that the opposition must approve a new government at the same moment that it votes no confidence in the old government.