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Czech Parliament: The Legislative Grounding and a Colourful Political Reality



1.

Introduction

Legislative power in the Czech Republic is vested in a bicameral parliament. Its position, structure, powers and relations with other constitutional bodies are defined in the constitution and a number of other laws, including that on the seat of parliament, the electoral law, the law on the salaries and benefits of deputies and senators, etc. Beyond this legislative basis, the political practice of parliament over the quarter-century of its existence has been cardinal, adding a sometimes very colourful political reality to the legal documents. This paper examines both aspects.

We begin with a brief introduction to parliament's position in the Czech political system, and how it should be viewed with respect to various types of parliamentarism. We then focus on the key properties of the electoral systems used for its two chambers and the impact the systems have on the political make-up of the chambers. Subsequently we examine the structure of parliament, with special consideration of the public perception of its upper chamber (its purpose has long been questioned), the internal organisations of the two chambers, and how the mandates of deputies and senators are conceived. Our attention then turns to the powers of the Czech parliament and how it interacts with other constitutional bodies¹.

¹ This paper has been written as part of specific research project "Current issues in Political Science III" (code MUNI/A/1159/2016) at the Department of Political Science, Faculty of Social Studies, Masaryk University. We would like to thank Jan Petrov for this comments on the text and Štěpán Kaňa for this translation from Czech into English.

2. The fundamental constitutional and political position of parliament

In its 1992 constitution the Czech Republic adopted a parliamentary regime, the most important feature of which was the relationship between the lower chamber of parliament and the government, which must receive a positive vote of confidence. Thus, there is no negative parliamentarism as practised in, for example, most Scandinavian countries, where the government can rule as long as a parliamentary majority tolerates it². The lower chamber of parliament, the Chamber of Deputies, is supplemented by a constitutionally and politically much weaker upper chamber, the Senate. Another component of the constitutional system is the president, originally elected indirectly, but since 2012 by direct vote. This change made the country's regime less purely parliamentary. In constitutional terms, parliament's position was weakened, as it lost control over electing the head of state³. However, in formal terms at least, there was no substantial change in the relationships between constitutional bodies, because when the direct election of the president was introduced, the office was not given any new powers.

² T. Bergman, *Constitutional Design and Government Formation: The Expected Consequences of Negative Parliamentarism*, "Scandinavian Political Studies" 1993, vol. 16, no. 4, p. 285 *et seq.* Also: M. Brunclík, *Negativní parlamentarismus: cesta k efektivnějšímu fungování parlamentního režimu?*, "Acta Politologica" 2009, vol. 1, no. 2, p. 118 *et seq.*

³ M. Musilová, J. Šedo, *Diskuse o zavedení přímé volby prezidenta v České republice a její schválení*, [in:] *České prezidentské volby v roce 2013*, ed. J. Šedo, Brno 2013, pp. 33–34.

The wording of the constitution suggests that parliament, or more precisely the Chamber of Deputies, is the most important political institution in the country. Furthermore, its legislative power is defined in chapter two of the constitution, thus preceding the government, the president and the Constitutional Court. To facilitate understanding, it makes sense to classify the Czech case according to the now classic types of parliamentarism as devised by Giovanni Sartori⁴. Sartori distinguished a "premiership system", in which the decisive role is played by government, specifically by the prime minister; "assembly government", where the parliament is the strongest institution, yet sufficiently solid and strong parties are lacking, and hence decisions are made by *ad hoc* coalitions of factions and individual MPs⁵; and "party-controlled parliamentarism" where too the parliament prevails over government, but the functioning of parliament is subject to agreement between parties, which is enforced by parliamentary party discipline. In its main features, the Czech case corresponds to the last type, which has also been called rule by political parties. One cannot talk of parliamentary dominance over government in the Czech system precisely because key decisions are made subject to agreement between parties. The government's ability to influence the Chamber's⁶ functioning and agenda is primarily ensured by the political links between parliamentary parties and the government, and not by constitutional mechanisms.

However, the rule by parties in the Czech Republic is problematic, and governments often find themselves unable to push their agenda

⁴ G. Sartori, *Comparative Constitutional Engineering. An Inquiry into Structures, Incentives and Outcomes*, London 1994, p. 113 *et seq.*

⁵ For convenience's sake, the term "MP" (member of parliament) is used throughout as a generic term covering deputies and senators.

⁶ When used in lowercase, "chamber" refers either to the Chamber of Deputies or the Senate; when in uppercase, the Chamber of Deputies is meant.

through the Chamber. This is largely due to the fragility and, in many cases, lack of durability of cabinets. Over the two decades and a bit since the creation of the Czech Republic in 1993 to the present (2016), there have been 13 governments in the country, indicating a low measure of political stability. Two of these governments failed to win the Chamber's confidence, and many others either relied on a narrow majority of MPs or operated as minority, technocratic or semi-technocratic cabinets. Only two governments remained in power for the duration of the Chamber's four-year electoral term. Repeatedly, the survival of a government or passage of crucial bills hinged on dissenters voting against their party line, or on intra-party factions. The traditional political heterogeneity of government coalitions also contributes to government fragility. This is a substantial cause of social dissatisfaction with Czech politics⁷.

The political make-ups of the Chamber of Deputies and the Senate are not identical. The government in power, even when it commands a majority in the Chamber, is not necessarily in the same position in the Senate. This is because elections to the two chambers are not concurrent, the terms of deputies and senators are of unequal length and the electoral systems used to elect them are different. The Chamber of Deputies has 200 members elected by a proportional system for a four-year term. The electoral system has seen multiple changes since 1992, but its most important feature, the five-per-cent threshold, has been preserved. Though the threshold limits the number of parties in the Chamber, in some terms it has not been able to prevent significant parliamentary fragmentation. The most parties there have been were eight, in the 1992–1996 term; most often there are five.

⁷ M. Novák, *Typy vlád a jejich utváření v komparativní perspektivě*, [in:] *Volební a stranické systémy*, eds. M. Novák, T. Lebeda, Dobrá Voda u Pelhřimova 2004, p. 311 *et seq.* See more: P. Fiala, *Politika, jaká nemá být*, Brno 2010, *passim*.

Seven, the number of parties currently sitting in the Chamber since the most recent election in 2013, is therefore a higher-than-average number. A consequence of this has been that the two largest parties, the Social Democrats (ČSSD) and ANO (meaning “yes” in Czech), had less than half the seats between them, which made the formation of a coalition government a very complicated process.

The electoral system for the Chamber includes a measure against electoral coalitions. Since 2000, the threshold for coalitions has been set at 10 per cent (two parties in a coalition), 15 per cent (three parties) and 20 per cent (four or more parties). This arrangement has significantly reduced parties' willingness to create electoral coalitions. Since the change, there has been only one instance of a coalition candidate list being voted into parliament, in 2002, when deputies were elected on a combined Christian Democrat (KDU-ČSL) and liberal Freedom Union-Democratic Union ticket.

Another important characteristic of the electoral system is the constituencies, of which there have been 14 since 2002, their boundaries corresponding to those of the self-governing regions. Also noteworthy is the electoral formula for converting votes into seats: the d'Hondt divisor applies, also since 2002⁸. The greater number of constituencies than previously (since 2002) and the choice of the divisor modestly favour the larger parties in terms of seat allocation. This was most noticeable in 2006, when the two largest parties each polled more than 30 per cent of the vote – about two-thirds of votes between them – but received more than three-quarters of the seats. The weakest parliamentary party, the Greens, received only six seats

⁸ Allocation of seats using this divisor is based on the principle that the numbers of votes for each party are gradually divided by a string of integers starting with 1 (i.e. 1, 2, 3, 4...). Seats are assigned one by one to whichever party has the greatest quotient at that point, until all seats have been allocated.

(three per cent) for 6.3 per cent of the popular vote⁹. However, as a rule, the disproportion in favour of larger parties at the expense of smaller ones tends not to be so large¹⁰. Furthermore, in the two most recent elections (2010 and 2013), the largest party polled only slightly more than one-fifth of the vote, which meant that the lead of larger parties was no longer substantial enough for the electoral system to significantly favour them at the expense of smaller parties¹¹.

A two-round majority system is used to elect the 81 members of the Senate. An absolute majority of valid votes cast is required to win a seat in the first round; failing that there is a run-off between the two strongest candidates of the first round. In the electoral history of the Senate so far (1996–2016) only nine senators (2.5 per cent) have been elected in the first round. Their term is six years, with one-third of the Senate, i.e. 27 senators, being elected every second year. Voting takes place in single-member constituencies, and a constituency's population size may differ by 15 per cent at most from the national average.

Until the early parliamentary election in autumn 2013, the point in the electoral cycle of the Chamber of Deputies at which elections to the Senate were held was regular. It was either about half a year, or two-and-a-half years, after elections to the Chamber of Deputies, i.e. in the latter case, close to the midpoint of the electoral cycle. Those elections that were held close to the midpoint were very favourable for opposition parties, as the popularity of government parties tends to be at its lowest ebb at this point and voters are inclined to “punish the government”. An extreme example of this

⁹ J. Šedo, *Volební systémy postkomunistických zemí*, Brno 2007, p. 125.

¹⁰ R. Chytilík *et al.*, *Volební systémy*, Praha 2009, pp. 310–313.

¹¹ More on this topic, see J. Šedo, *Možnosti volebního inženýrství v kontextu voleb do Poslanecké sněmovny 2013*, [in:] *Volby do Poslanecké sněmovny 2013*, ed. V. Havlík, Brno 2013, p. 283 *et seq.*

occurred in 2008, when the opposition Social Democrats took 23 out of 27 seats¹². Similarly, in 2004 the opposition Civic Democratic Party (ODS) triumphed, taking 18 seats. When the ČSSD was in opposition from 2006 to 2013, it even managed to gradually obtain an absolute majority in the Senate.

The different political make-up of the Senate as compared to the Chamber of Deputies is also influenced by the fact that the former is elected in single-member constituencies, giving a chance to independent candidates or those small parties that have no seats in the Chamber of Deputies. Low voter turnout tends to be the norm for Senate elections and this can boost independent and small-party candidates.

Some constitutional law experts and senators emphasise the role of the Senate as a stabilising element in the political system that ensures continuity¹³. This argument largely relies on the fact that, unlike the Chamber of Deputies, the Senate cannot be dissolved. However, it is evident that in terms of its powers the Senate is the much weaker of the two chambers; hence the Czech parliament is a clear instance of an asymmetric (unbalanced) bicameralism. We shall describe the powers, province and relationship of the two chambers below; here it suffices to mention that the government is responsible to the Chamber of Deputies only; that Chamber is the only one to pass the budget; and in adopting ordinary acts it can override the Senate's dissenting position with relative ease. The role of the Senate is stronger

¹² Until 2008 the ČSSD had scored no significant success in Senate elections. It was in government from 1998 until 2006 and the most it obtained during that time was seven seats in 2002. In 2004 it did not win a single seat.

¹³ See more: P. Pithart, *Senát jako stabilizující prvek politického systému*, [in:] *Senát v České republice – proč a jaký?*, ed. J. Kysela, Praha 1999, pp. 10–14; L. Bahýřlová, *Parlament*, [in:] *Ústava České republiky. Komentář*, ed. L. Bahýřlová, Praha 2010, p. 278 *et seq.*

only when adopting constitutional acts, international treaties and in a few other types of act, where the Chamber cannot outvote the Senate (Articles 39–42 and 45–49 of the constitution). It is also the lower chamber that is decisive in appointing most of the offices that are elected by parliament or in whose appointment the parliament plays a role. The options of the Senate are much more limited, and the only important exception is that it endorses candidates for constitutional court justices¹⁴.

In order to understand the reasons for all this, it is important to note the discussion about the upper chamber that took place at the time when the constitution was prepared and adopted in the second half of 1992. This discussion concerned the purpose of the Senate and how it would be established. There was no controversy concerning the lower chamber, as the Chamber of Deputies was created naturally from the Czech National Council, elected in the 1992 parliamentary elections; the Council had been the unicameral parliament of the Czech Republic within the then-federal Czechoslovakia. The arguments of those proposing the Senate for the independent Czech Republic were twofold. First, they pointed to the First Czechoslovak

¹⁴ The data-rich publication by Petr Kolář *et al.* (P. Kolář *et al.*, *Parlament České republiky*, Praha 2013, pp. 351–352) lists a total of 23 institutions in the appointment of which the parliament is or was involved. The Chamber of Deputies or its committees plays or played a decisive role in 12 of them. In another five cases the Chamber or a committee make a decision on the basis of a proposal by the government, a ministry or the president of the Supreme Audit Office. The election of the public defender of rights (ombudsperson) is a specific case; the ombudsperson is elected by the Chamber of Deputies, which chooses from candidates nominated by the president of the republic and the Senate (who each propose two candidates). The government or prime minister must negotiate with the Chamber the appointment of the director of the National Security Authority and members of the Council for Radio and Television Broadcasting. The supervisory board of the State Agricultural Intervention Fund is elected by the Chamber and the Senate. There are only two institutions listed in the appointment of which the Chamber does not play a role.

Republic (1918–1938), which had a bicameral parliament and was seen as a democratic ideal the Czech Republic ought to emulate. Connected with this argument were further expectations, some of which now seem a bit naïve, such as that the work of parliament would be made easier if the tasks were split between two chambers, or that the Senate would provide better scrutiny of the Chamber's legislative activities. According to some proponents of the idea, the Senate was even meant to serve as a "house of sages". Many also argued that an upper chamber was found in a number of other European countries¹⁵.

Second, the introduction of the Senate into the constitution was due to a practical and pragmatic consideration, in that it was envisaged that some of the Czech deputies to the federal parliament would get seats in the new chamber. This was to facilitate the splitting of Czechoslovakia, which was subject to the federal parliament's approval. There were fears that some federal deputies might reject the dissolution of Czechoslovakia, not least because they would lose their seats. Thus, seats in the Senate were to compensate at least some of them. Hence a clause appeared in Article 106 of the constitution that until the first Senate elections were held, an Interim Senate would serve in its stead. The details were to be specified in a special constitutional act, which, however, was never adopted. The Senate was ultimately established via elections in autumn 1996, i.e. almost four years after Czechoslovakia was disbanded. The several years when the Czech Republic only had a unicameral parliament strengthened doubts concerning the Senate's purpose.

The Senate has become the constitutional body least trusted by the public. Voter turnout expresses the popular attitude towards the Senate even better than opinion polls: it tends to be substantially lower than in elections to the Chamber of Deputies, in which about

¹⁵ Cf. J. Filip, *Vybrané kapitoly ke studiu ústavního práva*, Brno 1997, *passim*.

three-fifths of the electorate usually vote. What really matters is whether Senate elections are held concurrently with another type of election. The first round of Senate elections is held on the same day as local or regional elections, both of which use a proportional system. In practice, this overlap means there is relatively high voter participation in the first round of Senate elections: about two-fifths when run in parallel with local, and about one-third when run in parallel with regional elections. The turnout for the second round tends to be only about half that of the first round. The historical low, with an average turnout of only around 15 per cent of voters, was recorded in the second round in 2016¹⁶. That voters identify little with the Senate and its elections, which is also due to the fact that the Senate constituencies are disconnected from the self-governing regions (established subsequently), and often are not homogeneous wholes.

The effect of this has been that the debate about the Senate serving no purpose is revived after every election. However, the political will is lacking to implement the radical and constitutionally complicated step of abolishing it. This is understandable, not least in consideration of how many attractive political offices the Senate offers. Unfortunately, the alternatives are not much discussed. For example, the decision could be taken to elect the Senate indirectly, by assemblies of the self-governing regions.

Each chamber of parliament has its presidium, consisting of a president and several vice-presidents. Parliamentary committees of both chambers play an important role in the legislative process. The deputies and senators form parliamentary political groups, largely on the basis of their party affiliation¹⁷.

¹⁶ Cf. T. Lebeda, K. Malcová, T. Lacina, *Volby do Senátu 1996 až 2008*, Praha 2009, *passim*.

¹⁷ P. Kolář *et al.*, *op. cit.*, p. 183 *et seq.*; A. Gerloch, J. Hřebejk, V. Zoubek, *Ústavní systém České republiky*, Plzeň 2013, pp. 152–155.

There is no obvious rule, written or unwritten, determining who becomes the president of the Chamber of Deputies. Most often it is a politician from the party which won the elections and is forming the government. However, in 1996–2002 for instance, the president was the chair of the strongest party of the opposition, who was given the post in exchange for his party's tolerance of a minority government. The greatest dispute to date concerning the appointment of the Chamber's president was recorded after the 2006 election. This was because the president of the Chamber has the power to nominate the prime minister, should the Chamber twice deny confidence to a prime minister candidate appointed by the president of the republic. Such a situation has not yet arisen; yet in 2006 it looked probable, given that the election had ended in a stalemate¹⁸. In the end the prime minister candidate appointed by the president of the republic won the Chamber's confidence at the second try¹⁹. Together with the vice-presidents and an organisational committee, the president of the Chamber directs its work. The position of the president is weaker than, for example, that of the speaker in the UK's House of Commons, as unlike the latter the former does not have the right to choose who shall speak, nor the motions to be discussed. The president merely gives the floor to deputies in the order they have asked for it. By vote the Chamber decides the agenda and the motions to be discussed. As a result the actual authority of the person chairing the parliamentary sitting is weak, whether the president or any of the vice-presidents chairs

¹⁸ There were two camps in the Chamber of Deputies, each consisting of 100 members, each willing either to create a government coalition, or at least to tolerate a minority government. All other combinations that would command the support of more than 100 deputies faced insurmountable problems, ideological or otherwise.

¹⁹ V. Havlík, *Česká republika*, [in:] S. Balík *et al.*, *Koaliční vládnutí ve střední Evropě (1990–2010)*, Brno 2011, p. 66.

it, and this understandably has a negative impact on the dignity of parliamentary conduct²⁰.

The number of the Chamber's vice-presidents varies between three and six. Until 1996, all these posts (including that of the president) were occupied by government parties, and in 1998–2002 all were divided between the two largest parties at the time, the ODS and the ČSSD, on the basis of the so-called Opposition Agreement. Until 2002 no politician from the Communist Party of Bohemia and Moravia (KSCM) had held a vice-president post, which was because of the party's isolation due to its past. However, since 2002, there has been only one term (2010) when there was not a communist in the presidium. Thus, a model has gradually become established in which the posts of presidents and vice-presidents are either allocated between all parties, or one or two smaller parties are deprived of a vice-presidency.

From 2004 to 2010, the president of the Senate was continuously an ODS politician, and since 2010 a ČSSD one. These parties had or have the largest parliamentary group in the corresponding period. In the early days of the Senate there was a specific situation in that the Christian Democrats (KDU-ČSL), a part of the government coalition, came to an agreement with the opposition ČSSD and pushed through their candidate as Senate president, even though the KDU-ČSL party group was only the third largest. In addition to the president, the Senate has three to five vice-presidents, these posts being occupied by representatives of the largest political groups. The atmosphere in the Senate tends to be much quieter, matter-of-factly and less politically tense than in the Chamber of Deputies, though there are exceptions, of course, when more explosive issues are discussed²¹.

²⁰ Cf. J. Wintr, *Česká parlamentní kultura*, Praha 2010, pp. 233, 400–401.

²¹ Cf. P. Kolář *et al.*, *op. cit.*, p. 479 *et seq.*; J. Wintr, *op. cit.*, p. 34 *et seq.*

Parliamentary committees and subcommittees play an important role in the day-to-day work of the parliament. The number of committees in the Chamber of Deputies has gradually increased over time, from an original 11 to the present 18. The Senate has had nine standing committees since 1998. Committees can create subcommittees to address specific tasks. They are more often created in the Chamber of Deputies, and the highest ever number of them was 56, during the 2002–2006 electoral term.

Beyond that, both chambers of parliament can also establish commissions, the membership of which is not limited to parliamentarians. Some of them are permanent, such as that controlling the armed forces; others are set up temporarily. Noteworthy among these are commissions of inquiry, which can only be set up by the Chamber of Deputies, as follows from its role in controlling the government. Up to 2016 there have been almost 20 such commissions²². During the 1990s, inquiries into the circumstances of large-enterprise privatisations and bank failures were the dominant type; more lately they have mostly focused on cases of suspected overpricing in government procurement. Generally speaking, the commissions often inquire into cases that attract media attention; this is naturally linked with MPs' seeking to achieve public exposure. The functioning of the inquiry commissions and the results of their work can sometimes be rather embarrassing. For example, in 2016 a commission of inquiry was established to look into problems with the construction of a motorway; after four months the commission was suspended, a third of its members having resigned over issues including who would chair the commission (PS PČR 2016).

²² Cf. P. Kolář *et al.*, *op. cit.*, pp. 193–194; A. Gerloch, J. Hřebejk, V. Zoubek, *op. cit.*, pp. 154–155.

Deputies and senators associate in groups according to their party affiliation. To create a group after election, three deputies are needed (since 2006); during the electoral term, if, for instance, a party splits up, no fewer than ten deputies can form a new group. Until 2006 the minimum was ten in both cases; the electoral result of the Green Party, which won only six seats, was the reason for lowering the limit. In the Senate, five or more can form a group. Whereas the groups in the Chamber of Deputies usually coincide with elected parties, in the Senate one often encounters alliances of multiple parties or the involvement of independent senators in a party group. Parliamentary groups bring some rewards and material support to their members: for example, their chairs have a priority right to speak during a parliamentary debate, the groups are given offices and subsidies, etc. Hence even small groups of legislators who share at least some opinions are motivated to create a group²³. This has been the reason why, in some terms, there have even been groups of independent senators.

Deputies and senators obtain their mandate from direct election. There is no other way, and this also applies if a seat becomes vacant. The vacant seat of a deputy is occupied by the first unelected person on the candidate list of the party that had won the seat in the constituency in the most recent election. If a senator's seat becomes vacant a by-election is held. In legal terms the mandate is created by election. It lapses if the deputy or senator refuses to take the oath of office or takes the oath with reservation; at the end of the electoral term; upon resignation; upon loss of eligibility to hold office; if the Chamber of Deputies is dissolved early (naturally this only applies to deputies) or if the deputy/senator obtains an office incompatible with that of a parliamentarian (for example, the president of the republic or a judge). Concurrent office holding in government and in

²³ Cf. J. Wintr, *op. cit.*, pp. 320–323.

parliament is not just possible but, for deputies in particular, typical. In some cases, however, deputies who became ministers have resigned their parliamentary seat due to their workload. If they subsequently lose their job in government, they cannot automatically get their parliamentary seat back.

The end of a mandate by dissolution of the Chamber of Deputies has been a subject of dispute and a controversial ruling by the Constitutional Court. When the constitution was enacted, it offered several politically uncomfortable paths to dissolve the Chamber of Deputies, but it was not possible to do so by a simple decision made by the Chamber itself²⁴. At the occasion of the first substantial political crisis in 1998, political leaders opted rather for a specially adopted *ad hoc* constitutional act, which shortened the term of the Chamber at the time. When an attempt was made to repeat the procedure in 2009, one deputy filed a petition with the Constitutional Court, arguing that by shortening the term via an *ad hoc* constitutional act his constitutionally guaranteed right to exercise the office of a deputy was contravened. The Constitutional Court subsequently annulled the constitutional act and cancelled the early election that had been called. The court's decision was based on the argument that due to its one-off nature and retroactivity, the constitutional act passed by parliament interfered with the essential characteristics of a democratic state that respects the rule of law (ÚS 2009). The court's decision has been criticised, largely for the fact that it annulled a constitution-

²⁴ The lower chamber of parliament would be dissolved automatically in pre-defined instances of the political system becoming blocked (if the Chamber failed to give confidence to a prime minister chosen by the president of the Chamber of Deputies, this being the third attempt to find a prime minister following two failed attempts made by the president of the republic), or if the Chamber were substantially inactive (if it were not quorate for a long period of time, if it repeatedly failed to meet, or to reach a decision on a bill with which the government joined the issue of confidence).

nal (!) act. Numerous critics argued that the court was not authorised to do so, or that it would be authorised in other cases only, such as when, for instance, the Chamber of Deputies would seek to extend its term. The court's decision led to a constitution amendment in 2009, which allowed for the Chamber to dissolve itself if three-fifths of all of its deputies adopt a resolution to this effect. This option was first exercised in 2013.

In recent years, the circumstances of a mandate elapsing have been discussed in connection with cases of MPs being prosecuted. In 2012, ČSSD deputy David Rath was taken in charge, and in 2013, ODS deputy Roman Pekárek started to serve a five-year custodial sentence for corruption. Both decided to stay on as MPs. This led to suggestions that a clause should be added to Article 25 of the constitution to the effect that an MP's mandate would lapse if he or she were given a custodial sentence. However, this proposal has not yet been adopted. Furthermore, some constitutional law experts point to potential complications, should the Supreme Court or the Constitutional Court annul the sentence for any reason, as the question would then arise whether stripping the MP of their mandate was constitutional²⁵. In any case, MPs who have been detained or given custodial sentences pose a problem for their party, because unless they resign their seats, the party loses the corresponding number of votes.

Mandates in both chambers are free, and in their decision-making deputies and senators are not dependent on their parties. Voting at variance with the interests of the party, leaving the party or switching parties do not constitute grounds for stripping MPs of their mandate. Nor can MPs be recalled by voters. Upon election, MPs are

²⁵ Cf. V. Šimíček, *Zánik mandátu poslance – ústavní minimalismus nebo adhocismus?* *Jiné právo*, 28.03.2013, <http://jinepravo.blogspot.cz>, accessed 20 November 2016.

given immunity from prosecution, the extent of which is the same for both chambers. Prosecution for speeches or voting in parliament is impossible; MPs can only be disciplined by their respective chamber. Prosecution for acts committed outside parliament is subject to the consent of their chamber. Until 2013 it was the case that if the chamber refused to hand over its member, further prosecution of the case was impossible forever. In practice this gave legislators immunity for life – an unusually broad protection in the European context. Following a number of failed bills, Article 27 of the Constitution was finally amended in 2013 and since then immunity is given only for the duration of the mandate. Thus, when their mandate lapses, former deputies and senators can be criminally prosecuted even if their chamber had refused to hand them over while they held office. Up to 2013, the Chamber of Deputies dealt with 29 requests for prosecution, and consented in 18 cases; the Senate granted five requests out of ten²⁶.

3. Role and functions of the Parliament

The Czech parliament exerts its authority over many areas. Let us first focus on its legislative and constituent powers, where it is indispensable. No other institution can issue laws. Regulations issued by the executive and self-governing bodies must comply with applicable law. According to the constitution, the government, deputies, the

²⁶ Cf. P. Kolář *et al.*, *op. cit.*, p. 133 *et seq.*

Senate (since 2004 the prevailing interpretation is that even a single senator may introduce a bill, as long as the Senate approves of such a proposal) and regional assemblies may initiate legislation. In practice, the government introduces more than half of the bills, followed by deputies with about 30 to 40 per cent of bills. The deputies therefore certainly do not play the role of merely approving government proposals. The Senate and regional assemblies, by contrast, traditionally introduce few bills²⁷.

Bills normally go through three readings in the Chamber of Deputies. They can be rejected at any reading. In the first reading the bill is assigned to parliamentary committees, which have 60 days to discuss it. In the second reading the bill is debated in detail and amendments may be proposed. During the third reading, which normally takes place no sooner than 24 hours after the second, the amendments are voted upon and then there is a final vote²⁸.

The procedure can be shortened if the government proposes that a legislative emergency be declared and the president of the Chamber of Deputies does so. Such state may be declared “under exceptional circumstances, when fundamental human rights and liberties or the state’s security are in jeopardy, or if the state were to suffer considerable economic losses” (Article 99 of the Rules of Procedure of the Chamber of Deputies). The Chamber has the right to evaluate whether this state of emergency continues, or to abolish it. In a legislative emergency, there is no first reading and committees have an exactly specified period of time to discuss the bill. During the second reading the time allocated for discussion is limited, and the third reading may follow immediately upon the second. The declaration of

²⁷ Cf. J. Kysela, *Poslanecká sněmovna v ústavním systému České republiky*, [in:] L. Linek *et al.*, *Volby do Poslanecké sněmovny 2002*, Praha 2003, pp. 4–5.

²⁸ Cf. J. Filip, *op. cit.*, pp. 219–222. See also A. Gerloch, J. Hřebejk, V. Zoubek, *op. cit.*, pp. 161–162.

a state of legislative emergency is an extraordinary measure and entails risks. For instance, in 2010 the centre-right government sought to pass a set of austerity measures that affected health and social insurance, using the device of a legislative emergency. The government expected significant obstruction from the opposition; hence they had the legislative emergency declared, arguing that a delay in the legislation would entail “considerable economic losses” for the state. This was subsequently challenged at the Constitutional Court, which abolished the act because of the procedure used in its adoption, ruling that the “exceptional circumstances” needed to declare legislative emergency had not arisen (ÚS 2011).

To pass an ordinary bill in the Chamber, a majority of deputies present have to vote in its favour. The bill is then referred to the Senate, which has several options: it can pass the bill, resolve not to consider it, defeat it or amend it. In the first two cases the bill is approved. If the Senate defeats the bill, the Chamber of Deputies can override this decision by an absolute majority of all its deputies (101 or more). By a majority of deputies present, the Chamber may accept the amendments made by the Senate. In order to reject amendments made by the Senate, an absolute majority of all deputies is needed²⁹.

The changes the Senate makes to the bills coming from the Chamber of Deputies are often minor; this reflects its role as a scrutiniser of legislation, and there is a relatively high chance that the Chamber will accept such amendments (up to 2013, the Chamber accepted on average almost 60 per cent of amendments made by the Senate). Yet sometimes the Senate shows a much 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,

²⁹ Cf. P. Kolář *et al.*, *op. cit.*, p. 282 *et seq.*

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 the ODS was in power. 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 a relative willingness (and passivity) to noticeable activity³⁰.

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 player, i.e. as a brake on governmental proposals. The opposition stands a greater chance of success if governmental parties do not enjoy a strong backing in the Chamber and thus there is a greater risk of them not being able to override the Senate. Between 1998 and 2010, the Chamber overrode Senate disapproval in about two-thirds of cases; in the 2010–2013 term, the Chamber was even more successful, overriding the Senate in 76 per cent of cases³¹.

When a bill is adopted it is passed to be signed to the president of the republic, who may veto it. The Chamber of Deputies may override presidential veto by the same majority that applies when overriding a Senate veto, i.e. an absolute majority of all deputies³².

The Constitutional Court may affect legislation by annulling all or part of an act if it contravenes the constitutional system. Such judicial review can be initiated by no less than a fifth of deputies or senators (the president of the republic, a panel of the Constitutional Court, an ordinary court or a citizen via constitutional petition may likewise

³⁰ *Ibid.*, pp. 467–468.

³¹ *Ibid.*, p. 467.

³² Cf. A. Gerloch, J. Hřebek, V. Zoubek, *op. cit.*, p. 165.

initiate the procedure). During the first two decades of the Czech Republic's existence, more than 110 such motions were tabled by deputies and senators, and fewer than a third were partially or fully successful. Opposition members of parliament initiated three-fifths of these motions, and senators have been very active in some electoral terms³³.

When the Chamber is dissolved, the Senate may adopt legal measures proposed by the government. However, such measures must be approved by the newly-elected Chamber. In practice this power was first employed as late as 2013, i.e. more than 20 years after the adoption of the constitution.

The Senate has a stronger position when constitutional and electoral acts and international treaties are passed. In these cases the approval of the upper chamber is necessary. A three-fifths majority of all deputies, and of senators present, is required to pass constitutional acts. For electoral laws, a simple majority in both chambers is sufficient. For international treaties it depends on the type of treaty. This greater importance of the Senate is manifested rarely, yet is not negligible. It was most conspicuous during the era of the Opposition Agreement (1998–2002), when those objecting to the Agreement were able to block attempts made by the ODS and ČSSD to change the constitution. Broadly speaking, it necessitates at least the partial involvement of opposition parties in adopting constitutional amendments³⁴.

³³ Cf. L. Kopeček, J. Petrov, *From Parliament to Courtroom: Judicial Review of Legislation as a Political Tool in the Czech Republic*, "East European Politics and Societies" 2016, vol. 30, no. 1, p. 120 *et seq.*

³⁴ Leaving aside the Opposition Agreement of 1998–2002, which was not a coalition government of the two large parties at the time, the ODS and ČSSD, no post-1992 government has commanded a constitutional (three-fifths) majority in the Chamber of Deputies. The closest any came to this was Petr Nečas's government at the beginning of its term in 2010, when the parties involved had 118 deputies between them.

Beyond its law-making authority, the Czech parliament also has substantial powers with respect to the government, which it approves and scrutinises. Of key importance are votes of confidence and no confidence. The constitution lists four procedures. 1. The Chamber of Deputies gives a vote of confidence to the newly appointed government. 2. An existing government can ask the Chamber for a new vote of confidence at any time. 3. The government may link a vote of confidence with a bill. 4. The Chamber may vote no confidence in a government that is in office (Articles 68, 72 and 73 of the constitution).

Let us now examine each of these procedures in more detail. The Chamber votes on confidence in government upon its appointment by the president of the republic. The government needs to win the votes of an absolute majority of deputies present. There have been repeated problems when government majorities in the Chamber were too narrow or lacking. The first minority government was created in 1996, when the coalition of three centre-right parties led by Václav Klaus's ODS was supported by only 99 deputies out of 200. It only won confidence because an agreement was reached with the opposition ČSSD, whose deputies left the Chamber before the vote, thus lowering the number of votes needed to win confidence. Similarly, in early 1998 Josef Tošovský's semi-technocratic cabinet could only be formed because it was supported by the ČSSD in exchange for an agreement to call an early election. A few months later, the single-party minority ČSSD cabinet could only be created thanks to the ODS's support. This last government survived the whole four-year electoral term on the basis of the Opposition Agreement mentioned above, in which the two parties bound themselves to cooperate on the resolution of certain questions and divided key political posts between them. In 2002–2006, there were three successive coalition

governments led by the ČSSD which had the fragile majority of one deputy whereas, after the 2006 election, the situation arose where two camps faced each other in the Chamber, each having exactly half (100) of the deputies. In the end, Mirek Topolánek's centre-right government was able to win confidence thanks to the fact that it convinced two deputies elected on the ČSSD ticket to jump ship. Although the duo supported the government in subsequent votes as well, thus allowing it to function until 2009, the arrangement fueled speculations about corruption. A further unsuccessful attempt to win confidence for a new government occurred in 2013, when Jiří Rusnok's cabinet, pushed by President Miloš Zeman, failed³⁵.

The government may also ask for confidence during an electoral term, either by requesting a new vote of confidence, or by linking the vote on a bill with confidence in government. In either case an absolute majority of deputies present is needed. The first time a government successfully did so was in summer 1997. The country had suffered a monetary crisis and the ODS government led by Václav Klaus was forced to adopt large-scale austerity measures; there had been a personnel re-shuffle as well. Another similar and equally successful example comes from spring 2012, when the centre-right government led by Petr Nečas (also ODS) asked for confidence after the smallest government party Public Affairs was pushed out of the coalition. In both cases there was a clear need to confirm the government's mandate. Petr Nečas's was also the first government to link a government bill with a vote of confidence. The bill in question introduced large scale economic (especially tax) reform, which had previously failed during the last reading, not least due to dissent on

³⁵ Cf. L. Cabada, *Koaliční vládnutí v České republice teoretická východiska v porovnání s praktickým naplněním*, [in:] *Koalice a koaliční vztahy*, ed. L. Cabada, Praha 2006, pp. 21–25; V. Havlík, *op. cit.*, p. 50 *et seq.*; J. Bureš *et al.*, *Česká demokracie po roce 1989*, České Budějovice 2012, p. 390 *et seq.*

the part of some deputies of government parties. Some of the rebels resigned their seats before the vote of confidence, thus allowing the government to succeed.

The Chamber may vote no confidence in government at any point of its term. Such a motion must be initiated by no fewer than 50 deputies and must be supported by an absolute majority of all deputies to be successful. Since the beginning of the twenty-first century's first decade, votes of no confidence have been regularly used by the opposition, and arguably overused in some electoral terms. However, only one such motion was successful, bringing about the fall of Mirek Topolánek's cabinet in 2009. It was the fifth attempt on the part of the opposition to overthrow that government. Thus, votes of no confidence primarily serve as an instrument to disrupt the government, break the unity of government parties and attract media attention to the opposition. Between elections, prime ministers tend to resign (and hence to bring down their government) either because their intraparty standing has collapsed, or because the government coalition has fallen apart (or is at risk of imminent collapse). Of course, there can be a combination of both factors.

Given how restrictive the options are for dissolving the Chamber, the government cannot effectively defend itself against sanctions imposed by the Chamber. The weak position of the government vis-à-vis the Chamber is in part due to the fact that the constitution has not endowed it with instruments that would allow it to influence the agenda of the Chamber, the rate at which individual points are discussed or the manner in which the Chamber deals with government bills. There is no need to seek government's approval of amendments made to bills, and the government has no power to close a parliamentary debate. In short, the constitutional mechanisms that govern the functioning of the Chamber are not interlinked

with those of the government. When coalition governments are fragile and heterogeneous (which is the case more often than not), the Chamber can act as a dangerous and unrestricted sovereign.

The only substantial limitation on the Chamber's influence over the government stems from a presidential practice when appointing the new prime minister. Presidents tend to exercise the option of giving someone the task of leading the negotiations on government formation, without immediately appointing them prime minister. It has also occurred that, when a government has failed to win confidence, the president left it in office, arguing that the constitution does not stipulate a timeframe within which the president must appoint a new government. Using this device, Mirek Topolánek's government appointed by Václav Klaus operated from October 2006 to January 2007 and similarly, from August 2013 to January 2014, Jiří Rusnok's technocratic government appointed by president Miloš Zeman³⁶.

Deputies (but not senators) may scrutinise the government by posing questions to its members. Understandably this option is most often exercised by the opposition. Deputies may pose the questions orally or in writing and members of the government must reply within 30 days. Oral questions are usually answered immediately. Despite initial expectations, these questions attract much less media attention than, for instance, certain commissions of inquiry. This is in part due to negative experience from the 1990s, when deputies for the far-right Republican party much overused their privilege to ask questions. Thus posing questions became seen as a measure used by individual MPs to increase their visibility on sometimes-marginal

³⁶ Cf. M. Brunclík, *Role prezidenta při vládních krizích v České republice*, [in:] *Postavení hlavy státu v parlamentních a poloprezidentských režimech – Česká republika v komparativní perspektivě*, eds. M. Novák, M. Brunclík, Praha 2008, p. 286 *et seq.*

topics. The Chamber occasionally criticises the government for having insufficient members present for oral questioning. If deputies are dissatisfied with the answers given by ministers, they may have them debated in the Chamber. If the Chamber agrees with the deputy, the minister questioned must prepare a new answer³⁷.

Until 2012 the president was elected indirectly by both chambers of parliament. The election, which could have up to three rounds, started with a rather substantial majority requirement, which progressively decreased by small increments in subsequent rounds. In the first two rounds the votes of deputies and senators were counted separately; a successful candidate in the third round needed to win the support of an absolute majority of all MPs present. If no-one was elected in the third round, the election was repeated.

As more such experiences were acquired, the possibility that a president would not be elected, even in repeated elections, over time became a strong argument against the indirect method. Its legitimacy was even more jeopardised by various scandals. Indeed, from the four indirect elections there have been, it was only the first, in 1993, that was without issues. Václav Havel, the former Czechoslovak president, enjoyed the support of a majority of government and opposition deputies and won the required majority in the first round (the Senate was not yet established, so only the Chamber of Deputies voted). Havel's re-election in 1998 was nowhere near as smooth, which was linked with the political crisis of the time. Havel's relations with the ODS chair, Václav Klaus, were particularly tense. The ODS did not propose its own candidate, but many of its deputies probably had not voted for Havel. The far-right Republican party attacked the election, first in speeches in the Chamber and subsequently also at the Constitutional Court. This was because their leader and deputy, Miroslav Sládek, had been under arrest

³⁷ Cf. J. Wintr, *op. cit.*, pp. 63–64.

during the election. Had he been allowed to take part, Havel probably would not have been elected in the second round, because his success in the Chamber was decided by a single vote. However, it must be noted that Havel had a comfortable majority in the Senate, and his election in the third round would probably have been smooth³⁸.

In 2003 the new president Václav Klaus was only elected in the third round of the third election (!). The victory of this candidate of the right, which was in opposition, was significantly facilitated by a dispute in the governing ČSSD and the lack of unity in the government camp³⁹. Like Havel, Klaus was re-elected five years later, when he succeeded in the third round of the second election. The election was, however, marred by shrill procedural disputes as to whether the vote should be public or secret, and there were also accusations of intimidation, manipulation and corruption. The undignified election stirred up public feeling to an extraordinary degree and increased the pressure for the introduction of a direct method of election, to which political leaders acquiesced. However, it should be noted that electoral campaigning in the first direct presidential election was also unfair. The substantial political polarisation which the election created in society proved even more dangerous⁴⁰.

Parliament lost the power to elect the president, but that does not mean it is wholly excluded from the process. Even under the new mode of election, MPs have the power to nominate candidates for direct election. A nomination must be supported by at least 20 deputies or ten senators (a nomination by no fewer than 50,000

³⁸ Cf. E. Tabery, *Hledá se prezident*, Praha 2008, p. 97 *et seq.* See also L. Kopeček, *Éra nevinnosti. Česká politika 1989–1997*, Brno 2010, pp. 312–315.

³⁹ Cf. B. Pečinka, *Cesta na Hrad*, Praha 2003, p. 135 *et seq.*

⁴⁰ Cf. M. Musilová, J. Šedo, *Diskuse o zavedení přímé volby prezidenta v České republice a její schválení*, [in:] J. Šedo *et al.*, *České prezidentské volby v roce 2013*, Brno 2013, p. 9 *et seq.*

voters is also possible). Parliament still has a controlling function in that it may decide that there are serious factors that prevent the president from exercising office, and to hand over the powers of that office to other bodies. Furthermore, parliament may impeach the president before the Constitutional Court for high treason, or gross violation of the constitution or of the constitutional system (Article 65 of the constitution). The charge is brought by the Senate, and must be supported by three fifths of senators present and three fifths of all deputies. This power is not merely virtual; it was exercised when Václav Klaus was the president, albeit at a time when the text of the constitution was different, requiring the consent of the Senate alone and the only possible charge was treason. The Senators charged Klaus for multiple reasons, including his delayed ratification of the Lisbon Treaty and certain controversial provision of an amnesty that Klaus had declared. However, the Constitutional Court refused to hear the case, brought two days before the end of Klaus's term, with reference to the fact that by the time the Court could look into the case, the defendant was president no longer – the only sentence possible was loss of office (ÚS 2013).

Controversies such as those accompanying past presidential elections occasionally also appear in other areas. For instance, the need to change the way in which members of media councils are elected has long been discussed. At present the Chamber of Deputies plays a key role in appointing members of the Czech Television Council, Czech Radio Council, and the Council for Radio and Television Broadcasting. According to critics, there is a risk of public service broadcasters being subordinate to the interests of the parties currently in power. The disputes surrounding the parliamentary election of the management of various institutions usually do not go beyond ordinary political conflicts, and may serve as a cohesion test for government or for individual parliamentary parties.

The Senate's power to approve candidates for constitutional justices, proposed by the president, deserves a special note with respect to how the political system functions. In practice this collaborative type of functioning has been much dependent on who the president is, and how the Senate is made up. There was substantial discord early in Václav Klaus's presidency, in 2003–2004, when a Senate largely hostile to the president repeatedly voted down the candidates he proposed. In response, the president refused to nominate further candidates. This partially paralysed the Constitutional Court, as some of the justices' posts remained vacant. A similar problem occurred at the end of Klaus's presidency, and it was ultimately his successor, Miloš Zeman, who nominated justices acceptable to the Senate. This scenario, alongside the charge of treason brought against Klaus, shows how important it is to achieve at least basic communications and cooperation between constitutional bodies.

A short note on parliament's role in foreign and security policy, one of the few areas where the position of the Senate is of equal importance to that of the Chamber of Deputies. In foreign policy, parliament passes international treaties and scrutinises the European agenda – for instance, it may request information from the government about EU-related issues. The parliament also declares a state of war, consents to the sending of Czech armed forces abroad, and allows the stationing of foreign armed forces on Czech territory. This authority has been curtailed since 2000, as the government can approve a shorter (up to 60 days) expedition of armed forces abroad, or a stay of foreign military if that is pursuant to the country's international commitments. A chamber of parliament may annul such decisions by the absolute majority of all its members. Furthermore, parliament may declare a "state of threat to the state".

4. Conclusion

The Czech Republic is a country with asymmetric bicameralism, where the lower chamber of parliament dominates the upper. However, this arrangement is not fundamentally different from that prevailing in many other European countries, including Poland. The party-political make-up of the two chambers is often dissimilar, which is importantly influenced by the fact that their electoral terms are different; this helps to strengthen opposition parties in the Senate, as compared with their position in the Chamber of Deputies. The dissimilar electoral systems of the two chambers, meanwhile, help secure some seats for parties that would stand no chance of success had the same system been used for both chambers.

Beyond its role as the nation's legislature, parliament wields substantial influence over a range of institutions, of which the most important is the government. The fragility of most governments, which often have weak parliamentary backing and are heterogeneous, emphasises the role of the Chamber of Deputies as a place where the opposition frequently threatens to overthrow the government, though it is rarely successful in doing so. Rather than the constitutionally secured government's option to enforce its will, agreements between political parties are of key importance, both in rallying support for government and in passing bills. Thus, although the Czech Republic does not have a political arrangement in which parliament would dominate the government, parties' sometimes limited and uncertain willingness to uphold an existing government coalition certainly does not provide a good guarantee of stable and effective governance.

Parliament has lost the power to elect the president. Among other factors this was due to the problematic course of some elections. Not only were they protracted and had to be repeated; they were also accompanied by undignified scenes. Parliament has failed to win much public trust; in particular, its upper chamber, the Senate, suffers from an image of an institution without purpose. However, it should be noted that popular trust in constitutional bodies is not great overall in the Czech Republic, and that includes the presidential office, the popularity of which is very volatile, depending on who is holding it at the time and how they are able to respond to public moods. In essence, parliament does fulfil its fundamental tasks in the Czech political system, but one can have greater or lesser reservations about many of the specific results of its activities.

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