

Putting the President into Presidency

The Turbulent Situation in Prague and its European Repercussions

Tomislav Maršić

With the successful vote of no confidence in the Prague lower house against the Civic Democratic (ODS) government, a difficult domestic political constellation has become even more complicated. Although the pro-European Social Democrats (ČSSD) have been able to set the tempo since then to a large degree, this has few positive implications for the ratification of the Lisbon Treaty: Not only has this move on the part of the Opposition made the Euroskeptic Czech President the dominant figure of domestic and foreign politics, the political situation in the Senate has also decisively shifted. Here, where the final vote on ratification remains to be taken, an important disciplining factor on the mostly Euroskeptic senators of the majority Civic Democratic Party has been lost since their pragmatic party head is no longer part of the ruling coalition. Independently of these factors, moreover, the upcoming national and European elections will further escalate the already tense and volatile political atmosphere within the country, raising questions about the functionality of the interim government. In sum, these developments mean a dual setback for the EU: first, the new “government of experts” will scarcely be capable of carrying out the key leadership tasks of the Council Presidency. Second, and more serious: in this situation, the prospects for ratification of the Lisbon Treaty are uncertain at best.

A no-confidence vote on March 24, 2009 saw the end of the ODS-led government. This ruling coalition was just five votes short of an absolute majority, but it had only been formed after long and difficult negotiations and had been plagued by instability since its inception. After summer 2006, elections in the Lower House resulted in a split down the middle between the ruling center-right camp on the one side and the center-left camp on the other. As a result, the government has been riven by

numerous changes of deputies, resignations from political groupings, and other unpredictable schisms. Although Prime Minister Topolánek had already withstood four no-confidence votes in the past, the coalition began to disintegrate when two Green members of parliament left their parliamentary groups. When two longtime dissenters from the ODS camp also defected to support the Opposition, this pushed the support for the government just below the needed majority.

Before these events, a series of domestic political reforms had led to an unprecedented failure of the ODS in the regional and senate elections in October 2008. The already debilitated authority of ODS leader Topolánek was further weakened as he met with harsh critique from within his own party following these electoral results. Nevertheless, on the eve of the EU Council Presidency, he was able to convince an ODS still reeling to retain the current party leadership. Thus, he survived another election debacle even stronger than before—not least of all because he had succeeded in defending his position as party head against Euroskeptic Prague Mayor Pavel Bém. The Prime Minister thus succeeded in limiting the influence that President Václav Klaus, as Bém's supporter, would have had on the party. Topolánek was able to improve his public image even more through the European Council Presidency.

Yet the Prime Minister's success at keeping the critics within his party at bay was short-lived: protracted political feuding ultimately spelled disaster for Topolánek. He blamed his fall on former ODS chairman Václav Klaus, whose influence in the party had been declining steadily since Topolánek took over party leadership in 2002. Topolánek also has a strong personal aversion to opponent and opposition leader Jiří Paroubek (ČSSD) due to the mudslinging of the past electoral campaign. It was just prior to the Social Democrats' party congress—which, incidentally, Klaus attended for the first time ever—that Paroubek announced his plans to call for a no-confidence vote, apparently with the primary aim of distinguishing himself within his party. The fact that he actually succeeded this time in toppling Topolánek apparently even surprised Paroubek himself.

What is new about the present domestic political situation is that Klaus and Paroubek merged their efforts to force Topolánek out of his top party post and out of office as Prime Minister. Contrary to previous constitutional practice, the President declined to assign Topolánek the task of forming an

interim government as head of the largest group in the lower house. Paroubek—in anticipation that his insistence on bringing down the government in the middle of the Czech Republic's EU Presidency could have serious negative repercussions for him—pushed for the formation of a government of non-partisan experts. And despite the timing of this proposal during the Czech Republic's current Council presidency, it succeeded, thanks to decisive support from Václav Klaus.

The Topolánek government will therefore clear the field in early May 2009 for the little-known head of the Czech Statistical Office, Jan Fischer. Fischer selects his cabinet members based on nominations from the parties supporting him, the ČSSD, ODS, and Green Party; the conservative KDU-ČSL had decided in the run-up to switch to the opposition. The distribution of posts in the interim cabinet clearly reflects the strong position of the Social Democrats, who are taking on not just the Foreign Ministry but also the portfolio for European integration. After the early elections in October, Fischer will return to his former position. Given the structure of the interim government, it is unlikely that he will remain impervious to the influence of the parties supporting him. Vested with only a limited mandate—his priorities being to fulfill the tasks stemming from the Council Presidency and to minimize the impact of the economic crisis on the Czech population—Fischer will enable the two popular parties to run an electoral campaign playing the role of a quasi-opposition.

By refusing to entrust Topolánek with the formation of an interim government, President Václav Klaus apparently wanted to provoke the ODS to unseat its party head. The question remains open whether Klaus merely intends to bring down Topolánek, or also harbors serious hopes of reinstalling his own supporters in the ODS party leadership.

This depends to a significant degree on how successful the new "Party of Free Citizens" (Strana svobodných občanů, SSO)

will be. It was launched by Petr Mach, a close confidante of Václav Klaus, with support from the Czech President's two sons. The party's main goal is to prevent ratification of the Treaty of Lisbon. The founding of this party could shift the balance of power within the ODS: if some Euroskeptic "fundamentalists" should resign, the party could become more homogeneous in the long term. The SSO is ideologically aligned with the anti-European Libertas party of Irish businessman Declan Ganley, and has registered to run both in the European elections in June and in the early parliamentary elections. Although Klaus—who resigned as honorary ODS chairman in December 2008—may yet come over to support the SSO, the chances of voters migrating to the party in significant numbers remain small. First of all, this is because of the zero-sum character of the competition for votes between the SSO and Libertas. Second, the dissatisfied voters from the liberal-conservative camp, who are the SSO's main target group, tend largely to support the EU reform treaty.

With the realization of his call for a cabinet of experts, Klaus, has achieved one of his central goals: he has deprived Topolánek of the advantage of incumbency, which could have gained the latter another term of office as Prime Minister in the upcoming elections. Furthermore, he has weakened Topolánek's position within the party. Finally, due to the weak interim cabinet, Klaus will remain in the pivotal position of power in Czech politics up to the early parliamentary elections. Due to vague constitutional provisions, he could exercise his authority quite broadly, and it is still unclear to what extent he actually intends to test the limits of this authority. Furthermore, there exist legitimate expectations that Klaus could use this opportunity to exercise a stronger influence on the EU-level.

The government's capacity to engage in European politics

Regardless of the unclear situation in the ODS and in Czech politics in general, the international conditions for the Czech Council Presidency in the first half of 2009 could scarcely be more difficult. International crises such as Israel's intervention in the Gaza Strip and the Russia-Ukraine gas conflict put Prague to a severe test at the very beginning of the Czech Republic's Council Presidency. Since the outset of the Presidency, the weakness of the country's political leadership has been clearly reflected in its lack of inter-party consensus over European policy issues. With the successful vote of no confidence, the leadership vacuum within the Czech government has expanded into the EU, which would have benefited from strong leadership—especially now, with the current international crises.

The government has been plagued since the start of the Presidency by accusations to the effect that the Czech Republic is unable to adequately represent the EU in difficult times. These can be seen as a self-fulfilling prophesy. Even before the domestic political problems had become so virulent, many observers called into question whether the Czech Republic, as a new, relatively small EU member, would be capable of leading the Council of the European Union on strategic questions. This applied particularly to its potential mediator role after the failed Treaty referendum in Ireland. One of the most prominent critics of the Czech Council Presidency has been French President Sarkozy, who is now straining the already tense relations between France and the Czech Republic with his attempts to keep leading the European response to the economic and financial crisis.

As expected, the Czech Republic—like other smaller member states—has relied to a large extent on assistance from the Council Secretariat, and has attempted above all to make its influence felt in the specialist councils. In this respect, the Czech Presidency has focused on a limited

number of key issues that did not necessarily originate in Prague but that have been embraced there in the meantime as well. As a result, the Presidency has undoubtedly succeeded in distinguishing itself with initiatives such as Eastern Partnership and energy security—both topics that already enjoyed broad acceptance within the EU. The same is true for the successful defeat of protectionist measures at the European level, true to the motto of the Czech Presidency, “Europe without barriers.” These more positive aspects have faded into the background, however, with the disastrous situation that has emerged within the Czech government.

The fragile state of its parliamentary support led the government to focus most of its attention on finding a solution to the national conflict—at the expense of carrying out the standard tasks of the Council Presidency. One outcome of this could be seen, for example, in the relatively uncoordinated efforts by the French President on the one hand and the Trio Presidency (including France and Sweden) on the other hand, to help end the Gaza Crisis at the beginning of the year. Furthermore, the Prague government not only lacked the capacity to push its own agenda within the Council; it also had difficulties even pushing for compromises on European questions at the national level. There is no little irony in the fact that President Klaus has now significantly reduced the Czech Republic’s influence in the EU through the formation of his interim cabinet of experts. After all, it was he who always criticized the relative impotence of smaller nations within the EU.

In the remaining months of the Council Presidency, it is unlikely that the interim government will be able to develop the strength and assertiveness required to perform the important tasks its role entails. On the one hand, European policy has not significantly been affected at an operative level by the recent events. By maintaining continuity among high government officials and political representatives, the

hope is that this will remain the case. For example, the former head of the Czech EU Mission, recently ousted by the ODS, Jan Kohout becomes the new foreign minister. Thus, as the Council Presidency continues under the new government of experts, there will be no apparent changes.

At the same time, the interim government will have to limit its activities, both in European policy and in internal politics, to the management of existing problems: in the current situation, it cannot be expected to pursue autonomously defined programmatic aims. The main reason, along with the explicitly apolitical character of the cabinet of experts, is the abiding fault line between the popular parties that support the new government. Here, personal tensions between the two party heads will carry over into fundamental questions of political direction. These disputes will probably intensify in the run-up to the elections to European Parliament (EP) in June and to the lower house of Czech Parliament in October.

In attaining the strong parliamentary support that it will crucially require, the interim government could face similar problems to its predecessor. While ČSSD Head Paroubek still has to justify calling a vote of no confidence in the middle of the Council Presidency, Topolánek at the helm of the ODS has been weakened considerably, making his behavior difficult to predict. If the latter is able to maintain leadership of the ODS up to the parliamentary elections, there is reason to fear that he will attempt to compensate for his weakness within his party with antagonistic behavior. Further, the fact that the ODS-cohort in the European Parliament will soon leave the conservative European People’s Party-European Democrats (EPP-ED) to join a more Euroskeptic group will bolster ODS opponents of the Lisbon Treaty at the national level and could induce Topolánek to burnish his Euroskeptic image. Against this backdrop, his willingness to compromise in the national interest will be limited.

Moreover, the interim government's limited mandate has exponentially increased the political clout of President Klaus in both foreign and domestic affairs. With a view to the Czech representation in the European Council, Topolánek and Klaus had agreed on a division of responsibilities, whereby the President was to confine himself to his more symbolic function in foreign affairs. But as the acting president of the European Council, President Klaus will attempt to reach a larger audience for his own agenda. He has already announced that when the Fischer administration takes over, he will expand his role on the EU stage. And in the run-up to the European election, he has all the opportunities he needs to get his political message out. This raises concerns, particularly regarding the possibility that Klaus might disturb EU talks on measures to combat climate change.

For the strategic leadership of the EU, this means that France and Sweden, as partners in the Trio Presidency, will have to be more actively involved in the standard tasks of the Council Presidency. Moreover, the Commission—which is up for reelection—will be very interested projecting a good image, and has shown a great deal of initiative in this regard.

Thanks to its Council Presidency, the Czech Republic is in the limelight of international attention. But here in open public view, it becomes glaringly obvious that the country is the last member of the EU not to have completed parliamentary ratification of the Lisbon Treaty. The fact that the embarrassing ratification question has become so central at a time like this is due partly to bad timing, but mainly to successful procrastination tactics by the Treaty's opponents. In contrast to the more or less personal animosities that led to Topolánek's fall, conflicts between the two wings of the ODS—the pragmatic supporters of EU membership and the proponents of national sovereignty—will play an important role in the case of ratification.

The discussion around the Lisbon Treaty

On February 18, 2009 the Lower House passed the Lisbon Treaty with 125 votes (with a quorum of 120)—but just barely. When almost half of the ODS deputies voted “no”—36 of the 79 present—support for the party and government leadership proved weaker than generally assumed. The rejection would have been even stronger if the government had not announced just prior to the vote that it would put the new parliamentary standing orders on the agenda of the lower house in March. The orders stipulate that all transfers of sovereignty from the government to the EU must be approved by parliament. Meanwhile, the ODS group in the Senate has made the introduction of the new parliamentary standing orders a condition for even considering ratification of the Treaty. Now that the first step toward ratification has been completed with the approval from the lower house, the treaty still awaits a green light from the senate, and will then go to President Václav Klaus for his signature.

The political discussion around the Lisbon Treaty is marked by a paradox: although the treaty's supporters are among the most pro-European on the Czech party spectrum, the ODS is the only Euroskeptic party among the moderate political forces at the center. Although the influence of the most prominent Euroskeptic, Václav Klaus, has been waning in the ODS for some time, voices can still be heard in the party that favor continued European integration as agreed upon in the Lisbon Treaty for pragmatic reasons only, that is, for *raisons d'état*.

This applies particularly to Mirek Topolánek, who has frequently described the Treaty as unnecessary, but who has always spoken in favor of its speedy ratification. The reason for this ostensibly contradictory position is probably mainly that the Reform Treaty, in contrast to the Constitutional Treaty, was negotiated with the participation of the previous ODS government. Presi-

dent Klaus, who has attracted attention in the past as a harsh yet extremely popular critic of further European integration, rejects the Reform Treaty for substantive reasons, just as he did the European Constitution, because he sees in both a wide-ranging disempowerment of national governments. Each additional step toward ratification of the Treaty should, according to Klaus, be made contingent on a positive vote in a new referendum in Ireland. Klaus thus follows the lead of Polish President Lech Kaczyński, who has said he will only sign the Polish ratification law when Ireland has found a solution to the current ratification crisis. The Czech President appears determined to use every opportunity at his disposal to obstruct ratification.

It remains a contested question among Czech constitutional scholars whether President Klaus actually can legally refuse to sign a parliamentary ratification. If the Treaty of Lisbon should indeed be classified as an “international accord” as defined under the Czech constitution, Klaus could block conclusion of the process by refusing to sign the treaty. The constitution mentions in article 39 para. 4 only that the agreement of both chambers of parliament with a three-fifths majority is required for ratification. But this stands in opposition to article 63 para. 1b, which states that the President agrees upon and ratifies international accords.

Along with the President, the Euroskeptic celebrities in the ODS include a group around European Parliament member Jan Zahradil, who already sharply criticized Topolánek’s signing of the Treaty, invoking a party resolution from the year 2006 that forbids the ceding of any further competencies to the EU. In his defense, Topolánek said that the Czech government was not “strong enough” to prevent ratification of the Reform Treaty. The decisive factor, he claimed, was that he had not been able to find any allies within the EU, and the Czech Republic would have isolated itself internationally by taking such an approach.

The fact that the opponents of the Treaty would like to use every opportunity at their disposal is evident in the case brought before the Czech Constitutional Court in October 2007 by the ODS-dominated Senate majority. The plenary assembly of the Upper House recommended specifically that the Court determine whether six sections of the Treaty are compatible with the Czech Constitution, among them the transfer of competencies, the implementation of majority decisions in specific policy areas, and the highly controversial recognition of the Fundamental Rights Charter. On November 26, 2008, however, the Constitutional Court ruled that the Lisbon Treaty did not stand in contradiction to the Czech Constitution.

The fact that the constitutional judges did not examine the Treaty in its entirety, only ruling on the clauses called into question by the Senate, could be a decisive factor for the further ratification process. The possibility exists that some of the Senators or the President himself could call for the examination other parts of the Treaty and thus further delay the ratification process.

What chances does the Lisbon Treaty have?

Like the Lower House, the Senate has to ratify the Lisbon Treaty with a three-fifths majority (article 39 para. 4 of the Czech constitution). If the approximately 43 pro-European Senators in the Upper House vote in favor of the Treaty, as expected, at least another seven votes will still be needed from the ODS, which is equivalent to about one-fifth of the 33-member ODS senate caucus.

In order to further delay a vote on the treaty, some senators have announced that they plan to file an additional constitutional complaint, with the President’s support. It is not certain, however, whether the necessary quorum of 17 senators will be reached. Senate President Přemysl Sobotka (ODS) currently views this option as offering relatively limited prospects of success.

President Klaus, however, could certainly make use of a similar tactic of obstruction. His vague reactions to the Court's judgment suggest that he is keeping his options open—although he has repeatedly indicated that he would sign the ratification instrument under the condition of a successful referendum in Ireland. Alexandr Vondra, the outgoing Deputy Prime Minister for European Affairs, who has turned from an opponent of the Lisbon Treaty into a pragmatic supporter since taking office, pursued a dual strategy here: he supported examining the treaty in constitutional court but at the same time said that if the court deemed that it lacked conformity, he would seek to have the constitution changed. He will probably make good on his statement if, as mentioned, further aspects of the Treaty are subjected to scrutiny in constitutional court. Such a scenario would, however, probably lead to indeterminable delays in the ratification process and thus to a postponement of EU treaty reform overall.

How the ODS senators will ultimately vote is hard to predict from a present-day perspective. Their decision will, however, very likely depend on the following three issues:

First, the senators are more independent of the party line than the deputies to the Lower House and are accountable first and foremost to their constituencies. The senate caucus is autonomous, and can decide without “interference” from the party leadership. This was determined at the party convention in December 2008 as a concession to the Euroskeptics.

Second, a “package deal,” in which the ODS only wants to support the Lisbon Treaty if the ČSSD supports the construction of a radar station on Czech soil as part of the missile shield planned by the former Bush administration, could play an important role. After the Reform Treaty was accepted in the Lower House, Topolánek underscored that the radar station agreement would have to be signed before the ratification process could continue. This

decision was forced through at the last ODS party convention in Fall 2008 by the Euroskeptic supporters of transatlantic cooperation. However, there are increasingly strong doubts surrounding the project of a missile defense shield, particularly given the intense pressure on the new US Administration to cut spending and its general reorientation towards disarmament. ČSSD head Paroubek came out in clear opposition to the ratification of the related treaties at the Social Democrats' party convention. As a result, Topolánek took the vote off the agenda of the Lower House because he was afraid it might fail. This decision, which was sharply criticized by the Euroskeptic politicians within the ODS, will probably dissuade many ODS senators from ratifying the Lisbon Treaty in return.

Third, the prospects for successful conclusion of the parliamentary ratification procedure have gotten worse, if anything, since the collapse of the coalition also means that the pragmatic government leadership of the ODS has been lost as a disciplining factor. The Euroskeptic ODS senators will thus probably be even less willing to follow the party's leadership than they were before. Furthermore, they enjoy the complete backing of the key political figure in Czech politics at present: President Václav Klaus.

In this situation, the ardent and persuasive lobbying of Mirek Topolánek for the ratification of the Reform Treaty will be decisive. Topolánek is obligated, not only to the EU partners but also to the Czech people, to ensure that his signature on the Treaty is followed by its ratification, and is therefore “adamant” that the Treaty be ratified. Topolánek argues that the Czech Republic must decide “between Lisbon and Moscow,” and he has repeatedly invoked the threat of the potential consequences of failure, which, in his view, could lead to exclusion from the EU. It is also conceivable that he will distance himself from the Reform Treaty once the interim government takes power in order to fortify his

position within the party. This is the general thrust of Topolánek's statements that he wants to bolster his claim to leadership by seeking the votes of voters from the right in the upcoming election.

It is therefore crucial for ratification that Topolánek remains at the head of the party and the government, at least until the Treaty has been signed: only the authority of his offices will allow him to influence key decision makers to vote in favor of Lisbon.

Although the Euroskeptics were strengthened by the no-confidence vote, it is not altogether improbable that the Lisbon Treaty will receive the necessary three-fifths majority given that only seven of the 33 ODS senators have to vote in favor of it. At the same time, the current domestic political situation in Prague seems to be characterized more by surprising reversals than by continuity.

In view of the complicated domestic political situation, the main focus now should be on not giving the ODS Euroskeptics any more fuel for their arguments. Here, the conflict between the smaller and larger EU states plays an important role, since—according to the treaty opponents in the ODS—mainly the latter will profit from the Treaty of Lisbon. President Václav Klaus is a particularly vocal proponent of the view that the EU is controlled by the “big four”—Germany, France, Great Britain, and Italy—and that countries like the Czech Republic will automatically be at a disadvantage. Considering the upcoming campaign for the European elections in June, which will be an important test-run for early voting in mid-October and will take place in a still tense and volatile atmosphere, political signals from the large neighboring states could easily be instrumentalized for domestic policy purposes.

Since it is unlikely that the Euroskeptic senators will be swayed by arguments from German or European actors, the most realistic means for promoting the Treaty's successful ratification will be through support for Mirek Topolánek and the prag-

matic politicians in the ODS. President Klaus should also be brought into the process in a constructive manner—especially if he expands his activities on the European stage—in order to prevent confrontations and to avoid effects of domestic groups fraternizing with the President. At the same time, the ČSSD should be cautiously supported in their attempt to force a referendum if the Treaty does fail. After all, this would mark a means of keeping the Treaty alive even after a failed ratification, and the Czech public is not necessarily as Euroskeptic as the parliamentarians that represent it. Since the positions of the various actors involved in the Lisbon Treaty are defined largely with reference to domestic political issues, the chances of influencing these positions from the outside are small. Thus, it appears necessary to prepare damage-control measures in case the ratification process fails.

© Stiftung Wissenschaft und Politik, 2009
All rights reserved

These Comments reflect solely the author's view.

SWP
Stiftung Wissenschaft und Politik
German Institute for International and Security Affairs

Ludwigkirchplatz 3–4
10719 Berlin
Telephone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

ISSN 1861-1761

Translation by Deborah Bowen

(Short english version of SWP-Studie 13/2009)