

## Working Paper

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# The Ratification of the Lisbon Treaty in the Czech Republic

An EU-Sceptic under Pressure

Working papers are papers in the subject area of a Research Unit, which are not officially published by SWP. These papers are either preliminary studies that later become papers published by SWP or papers that are published elsewhere. Your comments are always welcome.

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Alongside discussions concerning the actual content, the debate on the Lisbon Treaty in the Czech Republic centres on aspects of the ratification process. Those discussions take place against the background of the upcoming Czech EU Presidency and domestically eventful months, which to a certain extent have led to a power shift in the Czech political landscape. Despite the persisting stalemate between the centre-right and centre-left camp in the House of Representatives, which is only overcome by two renegade former social democratic MPs, the balance of power in the Senate has been altered. This was caused by senate and regional elections in October 2008 which resulted in a loss of an absolute majority for the governing, generally eurosceptic *Civic Democratic Party* (ODS), benefiting the pro-European Social Democrats (ČSSD).

However, the politics of the ODS towards the ratification process have been characterised by pragmatism since an agreement on the reform treaty was reached in October 2007. This is not least due to the standoff in the House of Representatives and to the two pro-European coalition partners of the ODS: the *Green Party* (SZ) and the *Christian and Democratic Union* (KDU-ČSL).

## The Czech Republic on the Eve of its First EU Presidency

On the eve of its first EU Presidency in the first half of 2009, the Czech Republic has not yet ratified the Lisbon Treaty. For this reason, particular attention from other countries is being paid to the ongoing Czech ratification process. The main problem for the Czech Republic is that its own capacity for influence towards the ratification processes ongoing in other member states<sup>1</sup> is essentially weakened because of its own position. This is particularly the case for the potential Czech mediator role after the negative referendum in Ireland.<sup>2</sup>

The problems of the Czech Presidency can be divided into two categories: on the one hand, the current domestic situation (unstable coalition, no ratification of the Lisbon treaty yet, eurosceptic attitude and actions of President Václav Klaus) and, on the other hand, the reactions to the Czech position from other EU countries. Consequently, the Czech Republic is not only cumbered with coping with its own 'homemade' problems, but it also has to counter doubts that it could not represent the Union adequately in times of crisis. These doubts refer to the domestic problems of the Czech Republic as well as generally to the capabilities of a small, new EU member state.

<sup>1</sup> Currently the treaty has been ratified by 23 of the 27 member states after the Swedish parliament has given its approval on 20 November 2008. »Schweden ratifiziert den Lissabon-Vertrag«, in: *Standard.at*, 21 November 2008.

<sup>2</sup> During the visit of Chancellor Angela Merkel in Prague on 20 October 2008, Prime Minister Mirek Topolánek himself pointed out that it would be hard to convince the Irish of the advantages of the treaty if the Czechs have not ratified themselves yet. »Merkel wirbt in Prag für den Lissabon-Vertrag«, in: *Welt Online*, 21 October 2008.

## The Domestic Situation

The remarkable loss of the ODS in the regional and senate elections between 17 and 25 October seriously damaged the authority of the leader of the party, Mirek Topolánek.<sup>3</sup> The Social Democrats with their leader, the former prime minister Jiří Paroubek, won in all 13 regions and consequently brought the position of the ODS as the most powerful party on the regional level to an end. This loss is remarkable especially when comparing the results to 2004 when the ODS won 12 regions.<sup>4</sup> The senate elections resulted in a similar debacle for the Conservatives:<sup>5</sup> Topolánek's party won only three out of 26 seats, whereas the Social Democrats improved their result considerably.<sup>6</sup> The ODS still has 35 seats but the party lost its absolute majority in the Senate, which was used for the delay of the ratification of the Lisbon Treaty. The party lost some of its eurosceptic senators who initiated the review of the Lisbon Treaty by the Constitutional Court.

Following these elections, the opposition initiated a vote of no confidence on 23 October. The government won but it was a very marginal victory.<sup>7</sup> This was already the fourth vote of no confidence since Topolánek's cabinet took office in 2007. The vote revealed that the government coalition has become fragile as three ODS members abstained from voting and two representatives of the Greens left the parliament before the vote started. However, the government was able to get support from two representatives of the left camp, Miloš Melčák (independent) and Petr Wolf (ČSSD).

Those losses further weakened the position of the head of government, especially within his own party. President Václav Klaus – cofounder and honorary chairman of the ODS – passed severe criticism on Topolánek and suggested the possibility of him being replaced.<sup>8</sup> Additionally, Klaus vehemently supports Topolánek's rival in the run-up to the elections of the post of party leader, the Lord Major of Prague, Pavel Bém.

However, Topolánek has a good chance of winning the duel against Bém at the ODS party conference on 5 December. Bém has lost an important ally in his campaign for becoming the next party leader with ODS politician Petr Bendl – head of Mittelböhmen until the ODS fiasco in the recent regional and senate elections – who has recently announced that support for Bém would be shrinking. Currently Topolánek is clearly ahead in the respective party divisions.<sup>9</sup> Even more, first polls demonstrate that he is even able to dominate in districts where Bém was expected to win.<sup>10</sup>

<sup>3</sup> »Sarkozy accused of hijacking Czech EU Presidency«, in: *EurActiv*, 27 October 2008.

<sup>4</sup> »Leftist Czech opposition wins landslide in regional elections«, in: *International Herald Tribune*, 19 October 2008.

<sup>5</sup> Regional elections take place every two years in which one third of the 81 seats are up for election.

<sup>6</sup> The ČSSD increased its share from six to 29 seats.

<sup>7</sup> 96 of a total of 200 parliamentarians voted against the government, 97 in favour. 101 votes are necessary to overturn the government.

<sup>8</sup> »Sarkozy accused of hijacking Czech EU Presidency«, in: *EurActiv*, 27 October 2008.

<sup>9</sup> »Prager Burgfrieden – Regierung will mit Hilfe der Opposition EU-Reformvertrag billigen«, in: *sueddeutsche.de*, 25 November 2008.

<sup>10</sup> »Topolánek beats Bém at ODS Prague district congress«, in: *České Noviny*, 25 November 2008.

Furthermore, despite the bad election results, the prime minister and party leader spoke in favour of a continuation of the government coalition, not the least because of the upcoming EU Presidency.<sup>11</sup> They rejected rumours and calls for a caretaker government to take over the EU helm until early elections, for instance in June 2009 together with the elections for the European Parliament, would have taken place.<sup>12</sup>

Despite the strengthening of the pro-European Social Democrats mirroring the loss in power of the ODS, for the time being the domestic events remain without significant repercussions on the government's capacity to act on the European level. Also, the scenario of a collapse of the government and early elections during the EU Presidency becomes less important since there is agreement between the main parties on a truce, which should guarantee a EU Presidency without disruption.<sup>13</sup> It remains to be seen, however, how the party would cope with a possible loss in the European elections.

## External Reactions

Other EU countries have recently raised doubts about the ability of the Czech government to lead the EU appropriately during its EU Presidency.

Nicolas Sarkozy's proposal of creating an economic government of the euro group aired particular displeasure among Czech officials. This new institution would outlast the French Presidency and would be led by the French until another euro country takes over the EU helm. The argument goes that a small and new EU country like the Czech Republic could not lead the Union adequately in times of crisis. The French proposal was understood by the Czech Republic as an attempt to erode and neutralise the Czech Presidency.<sup>14</sup>

The already strained relationship between France and the Czech Republic concerning the Czech Presidency has been worsened further by Sarkozy's recent plans for a financial summit after the French Presidency on 8 January 2009.<sup>15</sup>

Furthermore, the Czech Republic is confronted with a request by the Committee on Constitutional Affairs of the European Parliament to ratify the treaty by the end of 2008. German MEP Jo Leinen emphasised that without ratification, the Czech Republic would lack credibility and bargaining power during her Presidency.<sup>16</sup>

Alongside growing concerns in Brussels about the Czech Presidency, there are also voices that try to downplay those worries in defence of the Czech Republic's capabilities. It is repeatedly stated that the working plan of the EU is increasingly dependent on agendas, which have been drawn up by 'trio Presidencies'. Long-

<sup>11</sup> »ODS wants government to continue despite election debacle«, in: *České noviny*, 27 October 2008.

<sup>12</sup> »Caretaker cabinet could steer Czech EU Presidency«, in: *EurActiv*, 20 October 2008.

<sup>13</sup> »Prager Burgfrieden – Regierung will mit Hilfe der Opposition EU-Reformvertrag billigen«, in: *sueddeutsche.de*, 25 November 2008.

<sup>14</sup> »Czech Republic rejects EU villain role«, in: *EUobserver*, 27 October 2008; also »Sarkozy accused of hijacking Czech EU Presidency«, in: *EurActiv*, 27 October 2008.

<sup>15</sup> The French proposal is to be understood as a reaction to the results of the G20 financial summit in Washington on 15/16 November 2008, which are insufficient according to some Europeans. »France wants post-EU presidency financial summit«, in: *EUobserver*, 19 November 2008.

<sup>16</sup> »Ireland not serving citizens on Lisbon, says Ganley«, in: *EUobserver*, 19 November 2008.

standing member states are always involved in the elaboration of those plans. Accordingly, the Czech agenda should rather be understood as a part of the 18-month programme, which includes the previous French and the following Swedish presidencies. Czech officials are expected to await the results of the negotiations of the EU climate package as well as the proposals of the Irish head of government on how to solve the ratification crisis before they publish the Czech Presidency programme.<sup>17</sup>

## Contentious Issues in the Ratification Process

The ratification mode of the Lisbon Treaty has been a controversial issue in the Czech Republic. ODS leader and Prime Minister Mirek Topolánek as well as his deputy head of government, Alexandr Vondra, representing government and party leadership, preferred a parliamentary ratification as the Lisbon Treaty, in contrast to the Constitutional Treaty, would not require any amendments of the Czech constitution.<sup>18</sup> Some ODS delegates in the EP, however, spoke in favour of a referendum as the reform treaty would result in the transfer of more sovereignty rights to the EU. Some national ODS representatives, especially from the Senate, endorsed this procedure, because allegedly no significant changes have been made in the reform treaty compared to the Constitutional Treaty. As a referendum had been announced for the latter, there was no reason it should be abandoned for the former.<sup>19</sup> In light of a solid majority for the Lisbon Treaty in the population, this demand is not tantamount to the wish of seeing ratification fail.<sup>20</sup> Only a small number of ODS delegates pleaded for such a move, one example being Jaroslav Kubera who generally opposes the ratification of the reform treaty as, with the fundamental rights charter, some privileges would become binding claims.

The question of the ratification mode was finally concluded on 30 October 2007 after parliament rejected a proposal of the Bohemian Communist Party (KSČM) to hold a referendum on the Lisbon Treaty. In that, a parliamentary ratification was effectively instigated. Surprisingly however, three ODS delegates voted in favour of the proposal, among those the former minister of finance, Vlastimil Tlustý, a free market proponent and Topolánek's main challenger within the party.<sup>21</sup>

Prime Minister Mirek Topolánek consistently argued in favour of the treaty and its rapid ratification. His minister for European Affairs, Alexandr Vondra, called the final version of the treaty »acceptable« because now, besides a »gas pedal« it also contained safeguards.<sup>22</sup> Such sentiments directly contradicted President Václav Klaus who, in the past, has figured as a sharp but also popular critic of further European integration. He conveyed that he regarded the new treaty as nothing more than a renamed version of the Constitutional Treaty, which he had earlier

<sup>17</sup> »EU trio' concept gains weight amid Czech Presidency doubts«, in: *EurActiv*, 20 November 2008.

<sup>18</sup> »New EU reform treaty has gaps – Czech politicians«, in: *CTK Daily News*, 6 September 2007.

<sup>19</sup> »Some Czech Civic Democrats against party line on EU reform treaty«, in: *BBC Monitoring European*, 25 October 2007.

<sup>20</sup> This is at least suggested by the most recent Eurobarometer polls in connection to the popularity of the Constitutional treaty, which since fall 2005 project a narrow but stable majority in favour of the treaty. (55% in spring 2007, *Eurobarometer 67*).

<sup>21</sup> »Czech lawmakers reject referendum over EU treaty«, in: *EUbusiness*, 30 October 2007.

<sup>22</sup> »Leaders of Czech ruling party advocate EU treaty«, in: *BBC Monitoring European*, 24 November 2007.

refused. Furthermore, he has claimed that the treaty is »dead« anyway, due to the negative result of the Irish referendum. Klaus rejects the Constitutional Treaty as well as the reform treaty because, according to him, they would result in an extensive disempowerment of national governments. In his campaign against the reform treaty, he seems to be determined to use all available means of opposition and obstruction.<sup>23</sup> According to him, every further step concerning the ratification of the treaty in the Czech Republic must be dependent on a positive result of another referendum in Ireland.<sup>24</sup> Consequently he supports the strategy of Polish President Lech Kaczynski who is only willing to sign the reform treaty if Ireland finds a solution to the current ratification crisis.<sup>25</sup>

In the strict legal sense, Klaus has the authority to block ratification of the treaty by withholding his signature for the reason that the Lisbon Treaty is to be classified as an international treaty.<sup>26</sup> According to the constitution, in the case of an international agreement, the parliament *approves* the document with a three-fifths majority<sup>27</sup>, whereas the President subsequently *ratifies* with signing the treaty.<sup>28</sup> It is, however, controversial if Klaus could justify politically to withhold his signature after parliament has given its consent. Such a scenario could be possible against the background of his repeated agitation against the reform treaty. A recent example is Klaus' state visit in Ireland when he met the leading figure of the Irish 'No to Lisbon' campaign, Declan Ganley.<sup>29</sup> His visit came at a very critical point in the ratification process as the Irish government plans to present its roadmap for the solution of the ratification crisis at the December summit of the European Council. Irish government officials expressed their anger and disappointment about Klaus' behaviour during his visit, as he would strengthen Ganley's anti-European *Libertas* movement<sup>30</sup> and signal support for those who contradict the policy of the Irish government.<sup>31</sup> Even more, Klaus' actions have been characterised as improper interference with the internal Irish debate on the Lisbon Treaty.<sup>32</sup>

Alongside President Klaus, a group around the MEP and former Sherpa, Jan Zahradil, first and foremost embodies the prominence of Eurocritics within the ODS. Zahradil already sharply criticised the signing of the treaty by Topolànek. He invoked a party resolution from 2006, which avowed that the ODS would not

<sup>23</sup> »Prager Burgfrieden – Regierung will mit Hilfe der Opposition EU-Reformvertrag billigen«, in: *sueddeutsche.de*, 25 November 2008.

<sup>24</sup> »Czech president might sign Lisbon treaty only after Irish "yes"«, in: *České Noviny*, 24 November 2008.

<sup>25</sup> »Sarkozy fordert Kaczynskis Unterschrift«, in: *sueddeutsche.de*, 1 July 2008.

<sup>26</sup> Some voices also pleaded for a different interpretation of the constitution according to which the Lisbon treaty is to be classified as »normal« draft law. In this case the President is entitled to veto the draft within 15 days after it has been submitted to him (this does not apply for constitutional acts). Absolute majority by the House of Representatives overrules this veto (Art. 50 of the Czech constitution). The law is passed in this case. This also applies if the President refuses to give his signature without vetoing.

<sup>27</sup> Art. 39 (4) of the Czech constitution.

<sup>28</sup> Art. 63 (1b) of the Czech constitution.

<sup>29</sup> »Treaty controversy as Czech president visits Ireland«, in: *EurActiv*, 11 November 2008.

<sup>30</sup> Additionally, there are dubious proceedings of *Libertas* during its campaign against the reform treaty. Dublin and Brussels accuse the movement of inconsistencies concerning the funding of their campaign. »EU President demands probe into source of *Libertas* funding«, in: *Independent.ie*, 23 September 2008. What is more, already in July last year Klaus welcomed Ganley in Prague and assured him his support for the implementation of his project to transform his *Libertas* movement into a eurosceptic party. »Klaus' Anti-Lissabon-Offensive«, *derStandard.at*, 6 November 2008.

<sup>31</sup> »Czech president backs *Libertas* line at meeting with Ganley«, in: *Irishtimes.com*, 12 November 2008.

<sup>32</sup> »Diplomatic storm rages in Ireland after Czech leader's visit«, in: *EurActiv*, 13 November 2008.

acquiesce to the further transfer of competencies to the EU.<sup>33</sup> Topolánek in turn openly admitted that the Czech government was not »strong enough« to prevent an adoption of the reform treaty. Most decisively was that he could not find allies within the EU for such a move.<sup>34</sup> He said he did not have a mandate to veto the treaty and, additionally, he would have isolated the Czech Republic internationally by doing so.

## Criticism on the Charter of Fundamental Rights

Shortly before the release of the treaty text through the Portuguese Presidency, the Czech government added a declaration in which it articulated four concerns with respect to the charter of fundamental rights, which comes into effect together with the Lisbon Treaty.<sup>35</sup> This declaration is not legally binding for EU institutions or before the European Court of Justice. Beforehand, ODS representatives in the EP voted against the relevant draft of the correspondent responsible for the Lisbon Treaty because he formulated a preamble which criticised the restricted application of the charter in several countries. Vondra said that Prague was not against the charter itself but that it wanted to make clear that it should only refer to EU and not national law. Like Great Britain and Poland, Zahradil criticised the collective social rights, which would allegedly take effect with the implementation of the charter.<sup>36</sup>

<sup>33</sup> »Czech ODS to debate EU treaty, unlikely to scrap resolution on it«, in: *CTK Daily News*, 23 November 2007.

<sup>34</sup> »Leaders of Czech ruling party advocate EU treaty«, in: *BBC Monitoring European*, 24 November 2007.

<sup>35</sup> The Czech Republic declares that the clauses of the charter are only directed towards the member states when they implement EU law and not if they adopt and implement national law independently of EU law. Furthermore, the »rights and principles« have to be interpreted in accordance with the national constitutional traditions. The charter does not delimit the field of the application of national legislation and does not constrain present competencies of national authorities. It must not be interpreted in a way that human and fundamental rights are restricted or adversely affected in its application by EU law or international agreements (Declaration 53). »Treaty of Lisbon: four small additions, including a Czech declaration on the charter«, in: *Europolitics*, 6 December 2007.

<sup>36</sup> »EU partners surprised by Czech challenging of treaty«, in: *CTK Daily News*, 30 November 2007.



## Constitutional Review of the Reform Treaty

In October 2007, the Senate assigned the Constitutional Court to review the reform treaty according to its conformity with the Czech constitution.<sup>37</sup> According to the official position of the Czech government, the Lisbon Treaty is in conformity with the constitution; with the invocation of the Constitutional Court, it »just wanted to be sure«.<sup>38</sup> This, however, does not apply to the charter of fundamental rights, which was also brought to the Court because of explicit doubts on its conformity with the national constitution.<sup>39</sup> Previously, the Social Democrats and the Open Democratic Club tried in vain to initiate ratification in the Senate. The Senate plenum especially advised the review of six parts of the treaty<sup>40</sup>, among those the transfer of competencies and the adoption of majority decisions in certain policy areas as well as the controversial approval of the charter of fundamental rights.<sup>41</sup>

On 26 November 2008, the Constitutional Court ruled that the treaty is not in conflict with the Czech constitution.<sup>42</sup> Whereas many government officials, among those especially Prime Minister Topolánek and Foreign Minister Karel Schwarzenberg, were pleased with the decision of the Court<sup>43</sup>, President Klaus called the judgement politically motivated and »completely subjective«<sup>44</sup>.

It could be decisive for the further progress of the ratification process that the Constitutional Court Judges have not reviewed the whole treaty. They only referred to those parts to which they had received concrete arguments from the Senate. For this reason, there is the theoretical possibility that several representatives or senators as well as the President demand a review of the remaining parts of the treaty.<sup>45</sup>

The political question of whether the treaty is consistent with the Czech constitution (or should be consistent) has been referred to the Constitutional Court and, with it, the responsibility for the progress of the ratification process. In connection with the review of the treaty, it has been presumed that the government hopes to ratify the treaty as one of the last EU countries in order to avoid the uncertainties

<sup>37</sup> »Civic Democrats: EU reform treaty should be examined by Constitutional Court«, in: *radio.cz*, 22 October 2007.

<sup>38</sup> »Czech government prefers EU treaty ratification to referendum«, in: *CTK Daily News*, 19 October 2007.

<sup>39</sup> »CzechRep may ratify EU treaty this year – deputy PM«, in: *České Noviny* 12 February 2008.

<sup>40</sup> The Senate expects clarification of the following points from the Constitutional Court: 1. According to the Senate the imprecise separation of EU competencies contradicts Art. 10a Para. 1; 2. The flexibility clause threatens to undermine the legislative competence of the Czech parliament; 3. The Passerelle clause in favour of majority decisions equals a transfer of competencies, which is subject only to a treaty requiring ratification; 4. The conclusion of a treaty only on the basis of a majority vote in the Council erodes the influence of the parliament including its right of an ex ante submission; 5. The unclear state of the charter of fundamental rights could undermine the respective Czech constitutional charter; 6. The Lisbon treaty could have formative effects on the constitution inasmuch as pressure would be imposed upon the Czech legal system, which would contradict the basic principle of self-determination of the people.

<sup>41</sup> »Czech Senate asks Constitutional Court to examine Lisbon treaty«, in: *České Noviny*, 24 April 2008.

<sup>42</sup> »Czechs can go ahead with Lisbon treaty ratification process-court«, in: *České noviny*, 26 November 2008.

<sup>43</sup> »Most Czech officials welcome court's pro-Lisbon verdict«, in: *České noviny*, 25 November 2008.

<sup>44</sup> »Czech President's statement on court verdict on Lisbon treaty«, in: *České noviny*, 26 November 2008.

<sup>45</sup> »Lisbon treaty may be partly contestable at Czech court again«, in: *České noviny*, 26 November 2008.

in connection with the implementation practicalities of the Lisbon Treaty.<sup>46</sup> In this regard, possible tactical considerations also play a role as in the case of the coming into effect of the reform treaty on 1 January 2009, the Czech Republic in the position of the EU President would »only« have chaired the respective formations of the Council of Ministers.<sup>47</sup> In order to counter this impression, Vondra admitted that the Czech Republic had no interest in artificially delaying ratification.<sup>48</sup> Nonetheless, it appears that Topolánek will not be able to keep the promise he gave German Chancellor Angela Merkel during her visit to Prague on 20 October 2008, that the Czech Republic will have ratified the treaty by the beginning of 2009.<sup>49</sup> However, there is still the possibility that, due to the positive judgement of the Constitutional Court, a political dynamic in favour of the rapid ratification of the Lisbon Treaty will develop.

## Outlook

Although the Constitutional Court approved the conformity of the controversial issues in the reform treaty with the constitution, the theoretical possibility persists that further proceedings are initiated which would lead to a further delay of the ratification process.<sup>50</sup> Alongside the President, it is not only the two parliament chambers that are entitled to call for such proceedings, but also groups of representatives or senators.<sup>51</sup> At present, calls for further legal review on the part of the lower house deputies are rather unlikely. In contrast, the senators<sup>52</sup> and especially President Klaus remain more unpredictable. Against the background of his current obstruction policy, it is definitely possible that Klaus intends to delay the ratification process further with another claim before the Court. Furthermore, he also expects a group of representatives or senators to initiate further proceedings.<sup>53</sup> Apart from that, he only makes rather vague statements in reaction to the decision of the Court, which is a clear indication that he will consider all possible options.

Alexandr Vondra, who as senator had supported the submission of the treaty to the Constitutional Court, admitted that »we would probably change the constitution« if the Constitutional Court decides on the non-conformity of particular parts

<sup>46</sup> The Czech Republic would have been the first country to deal with the new dual Presidency in the EU: The new President of the European Council who is appointed for two years with the possibility of being re-elected, as well as the head of state or government of the respective country that holds the six-month rotating Presidency in the Council of Ministers. The precise allocation of tasks and responsibilities still remains unclear and untried. The Czech Republic would have had to strike a balance between the roles of the member states as well as between new and old institutions.

<sup>47</sup> After the coming into effect of the treaty the chair of the General Affairs and External Relations Council will be transferred to the High Representative of the Union for Foreign Affairs and Security Policy. The European Council will be presided by a permanent President.

<sup>48</sup> »Prague to ratify treaty in autumn«, in: *Europolitics*, 14 February 2008.

<sup>49</sup> »Topolánek: ČR may ratify Lisbon Treaty this year«, in: The official website of the Czech Republic, *Czech.cz*, 20 October 2008.

<sup>50</sup> »Lisbon treaty may be partly contestable at Czech court again«, in: *České noviny*, 26 November 2008.

<sup>51</sup> A group of at least 41 representatives or at least 17 senators can initiate proceedings after approval of the parliament and before ratification through the President. The President can demand proceedings after the treaty has been submitted to him for ratification. (§71a The Act on the Czech Constitutional Court).

<sup>52</sup> But there are also calls from ODS senators who speak in favour of the treaty in reaction to the judgement, for example from Senate chairman Přemysl Sobotka. »Czech senators unlikely to challenge Lisbon treaty again«, in: *České noviny*, 26 November 2008.

<sup>53</sup> »Czech President's statement on court verdict on Lisbon treaty«, in: *České noviny*, 26 November 2008.

of the treaty. The determining factor would be, after all, that the government had signed the treaty.<sup>54</sup> This statement is likely to be valid also in the case of a potential review of other parts of the treaty.

After the positive court decision, the treaty is going to be debated in the parliament plenum to continue on its path through the institutions. In this connection, Prime Minister Topolánek reemphasises his firm conviction that his country will ratify the Lisbon Treaty. At the same time, his arguments against the treaty's opponents have become harsher. He emphasises increasingly that the opponents of the treaty also have to consider the next step, which would follow a non-ratification of the treaty: this would be the withdrawal from the EU.<sup>55</sup>

In view of a possible voting result, the ODS is widely but not entirely united. Topolánek and Vondra have the majority of representatives behind them. As a result of the senate elections, the opponents of the treaty in the upper house are in the minority. In order to bring about a failure of the treaty, approximately two-thirds of the ODS delegates in both chambers would have to vote against it. Due to the support for the treaty by the party leadership, this is a highly unlikely scenario.<sup>56</sup> In addition, Topolánek has recently emphasised that 80% of ODS voters do not strictly oppose the Lisbon Treaty.<sup>57</sup>

According to Art. 39 (4) of the Czech constitution, both chambers have to approve the ratification of the treaty with a three-fifths majority. If it is assumed that the pro-European parties in the **House of Representatives** - ČSSD, KDU-ČSL and SZ - vote uniformly in favour of the treaty, then another 27 votes from the ODS are necessary to pass it. This is approximately a third of the whole faction of 81.

ODS	ČSSD	KSČM	KDU-ČSL	SZ	Independent
81	74	26	13	4	2*
a total of 200 representatives					

<b>three-fifths majority</b>	<b>120</b>
pro reform treaty	93
remaining	27

On 22 November 2008 two delegates left the SZ faction. It is assumed here that they vote in favour of the treaty.

A similar situation applies to the **Senate**: At least 38 of the 81 senators can be expected to support the treaty. Accordingly, at least 11 of the 35 ODS senators have to vote for the treaty to approve it.

ODS	ČSSD	KDU-ČSL	KSČM	SNK Ed	SZ	Other
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<sup>54</sup> »Czech Senate likely to ask court to assess Lisbon treaty«, in: *České Noviny*, 9 April 2008.

<sup>55</sup> »Czechs must choose between Lisbon, Moscow – PM in Press«, in: *České noviny*, 20 November 2008.

<sup>56</sup> In July 2008 Topolánek suggested to assure the approval of the ODS to the reform treaty through the ČSSD voting in favour of the Czech-US treaty to install a radar base on Czech soil. However, recently social democrat representative Miroslav Vlcek objected that the ČSSD is willing to agree to such a »deal«. Furthermore, this package deal is de facto no longer an issue, as the ratification of the treaty seems relatively safe due to a sufficient number of ODS votes in favour. Another factor supporting this is the weakening of the ODS in comparison to the ČSSD after the recent election results.

<sup>57</sup> »Czechs must choose between Lisbon, Moscow – PM in Press«, in: *České noviny*, 20 November 2008.

35	29	7	3	1	1	5
a total of 81 Senators						

<b>three-fifths majority</b>	<b>49</b>
pro reform treaty	38
remaining	11

If the completion of the ratification process is delayed much longer, it is very possible that the current stable, but actually weak position of the ODS will deteriorate further. It remains to be seen for how long the party and its coalition partners would be willing to support the Prime Minister after the EU Presidency. In the event of early parliamentary elections, the ČSSD is currently in a better position due to the healthy margin it currently enjoys in opinion polls. If a social democratic government is the ultimate result of early elections, it cannot be ruled out that an oppositional ODS would reject the Lisbon Treaty. However, a dissolution of the government is rather unlikely, especially because of the recent truce between the ODS and the ČSSD, and the disciplinary effect of the upcoming EU Presidency. Furthermore, it can be expected that parliamentary approval of the already signed Lisbon Treaty will be perceived, also among sceptical ODS deputies, as a national political necessity in order not to isolate the country on the EU level.