

Working Paper

Research Unit EU Integration
Stiftung Wissenschaft und
Politik
German Institute for
International
and Security Affairs



Tomislav Maršić

The Ratification of the Lisbon Treaty in the Czech Republic

Between EU-skepticism and *raison d'état*

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

**Working Paper FG 1, 2008/ 03, February 2008
SWP Berlin**

After the comprehensive debate on the failed European Constitution Treaty (ECT), the discussion on the content of the reform treaty has become secondary to questions on the mode of its ratification. Pragmatism has prevailed within the generally Euroskeptic Civic Democratic Party (ODS) since an agreement on a reform treaty was reached. This originates not least in the presence in the ODS-dominated government of two pro-European coalition partners, the Greens (SZ) and the conservative Christian and Democratic Union (KDU-ČSL). However, it is also rooted in the persisting stalemate between the mid-left and the mid-right camp within the House of Representatives. This stalemate can only be overcome with the help of two renegade, former Social Democratic MPs. Despite the fact that the government won a vote of confidence in January, it faces difficult times because of continued coalition quarrels as well as ambivalent public opinion.

After the coalition between the ODS, the SZ and the KDU-ČSL was formed following six months of political wrangling in January 2007, the ODS moved away from its initial position to demand a new treaty text and agreed to the coalition's common position to negotiate modifications based on the existing ECT.¹ The party's main priorities included the removal of state symbols² (constitution title, flag and hymn) and the retrenchment of supranational competencies. The latter goal explicitly included the possibility of returning powers to the national level³ and granting the Council of Ministers the power to curtail the initiative function of the European Commission.⁴

Despite its sceptical attitude towards the ECT⁵ and its criticism of the Berlin Declaration⁶, the Czech delegation had an interest in a constructive solution not least because it will hold the EU presidency in the first half of 2009. After core demands had been met through the removal of state symbols and the introduction of the possibility of returning competencies to the national level (albeit not in the form of a binding clause)⁷, the way was free for the Czech government to sign the new reform treaty.

Europe minister Alexandr Vondra, called the final form of the reform treaty "acceptable" because now, besides a "gas pedal" it also contained

¹ „EU-Verfassung: bisherige Version ist Arbeitsgrundlage für Koalition“, in: Radio Prague vom 23.03.2007.

² „Czechs soften approach to EU treaty but insist on dropping the „C“ word“, in: Radio Prague, 27.04.2007.

³ „Czech government views EU reform treaty as compromise“, in: CTK Daily News, 10.10.2007.

⁴ „EU/TREATY: Czech Republic wants to limit right of Commission's initiative“, in: Agence Europe, 17.10.2007.

⁵ „Prag bremst Merkels EU-Ambitionen“, in: Financial Times Deutschland, 08.03.2007.

⁶ In a common statement to the address of the German federal government president Klaus and prime minister Mirek Topolánek criticized amongst others, that „no broader discussion on the text of the planned document was foreseen“, „Tschechien kritisiert Vorbereitung der „Berliner Erklärung“, Radio Prag, 21.03.2007.

⁷ „Czechs to preside EU in 2009 irrespective of new treaty – PM“, in: CTK Daily News, 19.10.2007

“fuses”.⁸ Such sentiments directly contradicted president Václav Klaus (ODS), who has in the past figured as a sharp but also popular critic of European integration. He conveyed that he regarded the new reform treaty as nothing more than a renamed version of the ECT, which he had earlier refused. Nonetheless he kept out of the debate on the reform treaty, so as not to complicate “the government’s life”.⁹ Another important reason for his reticence might be found in the upcoming presidential elections. Klaus depends on the votes of pro-European parliamentary factions within parliament. The prominence of Eurocritics within the ODS, first and foremost embodied by a group around the MEP and former Sherpa¹⁰ Jan Zahradil, however, sharply criticized the signing of the treaty by Topolánek. He invoked a party resolution from 2006, which avowed that the ODS would not acquiesce to the further transfer of competencies to the EU.¹¹ Topolánek in turn openly admitted that the Czech government was not “strong enough” to prevent an adoption of the reform treaty and that he could not find allies within the EU. He said, he did not have a mandate to veto the treaty and that he would have isolated the Czech Republic in doing so.¹²

However, shortly before the release of the treaty text, 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.¹³ This declaration is not binding for EU institutions or before the European Court of Justice. 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 to national law. Like Great Britain and Poland, Zahradil criticized the collective rights which would allegedly take effect with the implementation of the charter.¹⁴

A constitutional examination of the compatibility of the Lisbon treaty with the Czech constitution offered a means of satisfying potential critics

⁸ „Leaders of Czech ruling party advocate EU treaty“, in: BBC Monitoring European, 24.11.2007.

⁹ „EU reform treaty is only new name of constitution“, in: CTK Daily News, 04.12.2007.

¹⁰ The term “sherpa” refers to the two appointed representatives for each country – a practise of the German EU Presidency to simplify the multilateral negotiations on the reform treaty.

¹¹ „Czech ODS to debate EU treaty, unlikely to scrap resolution on it“, in: CTK Daily News, 23.11.2007.

¹² „Leaders of Czech ruling party advocate EU treaty“, in: BBC Monitoring European, 24.11.2007.

¹³ 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, 06.12.2007.

¹⁴ „EU partners surprised by Czech challenging of treaty“, in: CTK Daily News, 30.11.2007.

within the ODS.¹⁵ 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”.¹⁶ This, however, does not apply to the charter of fundamental rights, which will be brought to the Court because of explicit doubts on its conformity with the national constitution.¹⁷ An examination can formally be initiated when the ratification process starts, so long as it occurs between parliamentary approval of the treaty and the signing of the ratification instrument ratification bill by the president.¹⁸ The treaty was referred to parliament at the end of January. It remains unclear, however, how long the examination by the Constitutional Court could take. In this context it has been speculated that the ODS is hoping for the prior rejection of the treaty by another member state.

The wish to carry out ratification after all the other EU members also lies in the fact that “we do not want to improvise during our presidency”—a fear articulated by Alexandr Vondra.¹⁹ The Presidency of the European Council and the existing system of rotation could theoretically lapse, should the Lisbon treaty be ratified by the end of 2009 by all member countries. The Czech Republic in this case would take over the chair of the Council of Ministers alone. In order to counter this impression, Vondra admitted that the Czech Republic had no interest in artificially delaying ratification and announced that the treaty’s transformation into national legislation could still be accomplished in autumn 2008 – assuming it received the green light from the Constitutional Court.²⁰ A late ratification in the Czech Republic would lead to a loss of prestige and high political costs and is thus improbable indeed. Furthermore practical obstacles draw this scenario into doubt: the inauguration of the High Representative is likely to be delayed and some countries want to wait for the results of the EP-elections in 2009. Furthermore Topolánek said that the conversations with his colleagues on the occasion of the contract conclusion on the Lisbon summit ensured him that the Czech presidency will take place as planned.²¹

With respect to the question of ratification mode, Topolánek and Vondra, representing government and party leadership, preferred a parliamentary ratification as the treaty did not have a “constitutional

¹⁵ „Civic Democrats: EU reform treaty should be examined by Constitutional Court”, in: radio.cz, 22.10.2007, unter: <http://www.radio.cz/en/article/96708>.

¹⁶ „Czech govt prefers EU treaty ratification to referendum”, in: CTK Daily News, 19.10.2007.

¹⁷ Vgl. “CzechRep may ratify EU treaty this year - deputy PM”, in: Ceske Noviny, 12.02.2008.

¹⁸ „Court can assess EU treaty only during Czech ratification process“, in: CTK daily News, 22.10.2007.

¹⁹ „Czech minister opposes ambitious target for EU treaty ratification”, in: EU-Business, 13.09.2007, unter: http://www.eubusiness.com/news_live/1189709222.03

²⁰ “Prague to ratify treaty in autumn”, EuroPolitics, 14 Februar 2008

²¹ „Czechs to preside EU in 2009 irrespective of new treaty“, in: CTK Daily News, 19.10.2007

changing character“.²² Some of the ODS representatives in the EP however supported a referendum because, with the Lisbon treaty, sovereignty rights would be transferred to the EU. Some national ODS representatives, especially from the Senate endorsed this procedure, because allegedly there have not been significant changes compared to the ECT, for which a referendum was foreseen.²³ In light of a solid majority for the Lisbon treaty in the population, this demand is not tantamount to the wish to see the ratification fail.²⁴ This was explicitly articulated only by a few ODS senators (like Jaroslav Kubera) who generally reject the ratification of the reform treaty because 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 from the Communist Party (KSČM) to hold a referendum on the Lisbon treaty. In that, a parliamentary ratification was effectively instigated. Surprisingly however, three ODS representatives, including Vlastimil Tlustý, an economic liberal and Topolánek’s main challenger within the party voted in favour of a referendum.²⁵

Against this background, the positions and majorities in the two parliamentary chambers grow in significance. As the discussion on the ratification mode exhibits, the ODS has largely but not completely closed ranks in its position on the Lisbon treaty. While the party’s and government’s top executives, Topolánek and Vondra, enjoy broad loyalty within the House of Representatives, especially within the Senate faction of the ODS, there are opponents to the treaty who played a pivotal role in promoting the examination of the treaty in the Constitutional Court. Topolánek repeatedly stated that ratification would not be an easy task, especially in light of the problems accruing from the fundamental rights charter.²⁶ However, as the Lisbon treaty is supported by all parliamentary factions except KSČM, the achievement of the necessary majority seems to be secure from today’s point of view.²⁷ In order to bring about a failure of the ratification even within the most difficult constellation, two-thirds of both ODS factions would need to vote against the treaty which in light of

²² „New EU reform treaty has gaps – Czech politicians“, in: CTK Daily News, 06.09.2007

²³ „Some Czech Civic Democrats against party line on EU reform treaty“, in: BBC Monitoring European, 25.10.2007.

²⁴ This is suggested at least by the Eurobarometer polls in connection to the popularity of the ECT which project a narrow but stable majority (55% in fall 2007, [Eurobarometer 67](#))

²⁵ „Czech lawmakers reject referendum over EU treaty“, in: EUBusiness, 30.10.2007.

²⁶ „Lisbon treaty ratification will not be easy“, in: BBC Monitoring European, 14.12.2007.

²⁷ The question, which majority rule applies is still open and depends on the extent of sovereignty transfer, which the Constitutional Court will clarify with its forthcoming ruling. According to the Czech Constitution there are three scenarios: ratification of an *international treaty without transfer of sovereignty* is decided with a simple majority (Art. 49, 39 II Czech Constitution). A *treaty with transfer of sovereignty but without a constitution changing effect* is enacted with a three-fifths majority (Art. 10a I-II, 39 IV). A *treaty with transfer of sovereignty including a constitution changing effect* requires a precedent constitution change should the Constitutional Court decide, that the treaty is not in line with the Constitution (Art. 89 III, 87 II).

its support by the party leadership seems very unlikely.²⁸

It remains to be seen how long prime minister Topolánek will succeed in the balancing act between the potentially divergent demands of the fragile coalition on one side and the two tolerating representatives on the other.²⁹ Greens and Conservatives are at loggerheads because of a possible return of the KDU-ČSL chair, Jiří Čunek, who was forced to retire from government office because of corruption allegations. The Green deputy prime minister Martin Bursík warned the KDU repeatedly against this scenario; foreign minister Schwarzenberg even announced his demission in this case. The presidential elections complicated this situation because of persistent speculation that ODS candidate Klaus had received support from the KDU by silently acquiescing to Čunek's return.³⁰ After Klaus was sworn in for a second term³¹ he will now most probably support Tlustý, who in many cases adopted positions diametrically opposed to Topolánek. Although this would not necessarily have direct consequences for the party chair, it could become relevant if the ODS' popularity continues to wane and dissatisfaction within the party rises.

If early parliamentary elections were held, the ČSSD would have an advantage because of its strong standing in the polls. Should a Social Democratic led government be the result of an early election, the rejection of the Lisbon treaty by the (now opposition) ODS cannot be ruled out. This would endanger the three-fifths majority necessary for the ratification of the treaty. A demission? on the part of the government does not seem probable however, considering the disciplining effect of the approaching EU presidency. Furthermore it can be assumed that among sceptical ODS representatives a parliamentary endorsement of the Lisbon treaty is seen as a national obligation. They are sensible of the responsibility of preventing the isolation of the country.

²⁸ The most difficult constellation includes a three-fifth majority: departing from the scenario that the pro-European parties in the House of Representatives KDU-ČSL, SZ und ČSSD vote in favour of the treaty 27 votes from the ODS would additionally be needed which accounts for approximately a third of all 81 faction seats. A similar setting can be expected for the Senate: Here, at least 32 of 81 representatives can be assigned to the treaty supporters. This means that at least 17 of the 41 ODS senators would need to vote in favour of the treaty.

²⁹ „Czech PM struggling to keep coalition together”, Reuters News, 10.04.2007.

³⁰ „Gezerre um die Wiederwahl von Václav Klaus; Politische Absprachen und Gerüchte um eine Rückkehr Cunek's“, in: NZZ, 05.01.2008.

³¹ Klaus, whose reelection was for a long time beyond doubt, had to be worried since the new rival candidate, liberal Jan Švejnar was supported officially by the Greens and the opposition Social Democrats, as well as by some Christian Democrats and Liberal senators. In the first voting procedure on 9 February Klaus reached a relative majority comparing to his opponent but he missed the *necessary* majority by one vote. Facing a close call, allegations circled that single parliamentary representatives were massively pressured to change sides („Czech senators supporting Klaus receive bullets by post”, in: Ceske Noviny, 12.02.2008). One week later, on 15 February 2008 Klaus managed to win the necessary votes of the assembly of both parliament chambers; his term in office ends in 2013.