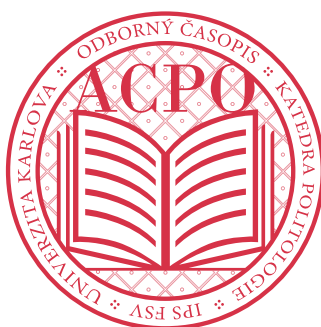


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The Czech Parliamentary Regime After 1989: Origins, Developments and Challenges¹

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Abstract:

The article discusses the major trajectories of the developments of the Czech democratic polity after 1989. It also discusses institutional traditions of the Czech parliamentary regimes dating back to the period of the First Czechoslovak Republic in the inter-war period. The article also analyses the major problems which the Czech parliamentary regime now faces. It is argued that the direct election of the president introduced in 2012–2013 was a serious blunder made by Czech political elites. Instead, the authors of the article argue, the desirable reform efforts should focus on rationalizing the regime in terms of strengthening of the prime ministers within the cabinet and the cabinet itself within the parliamentary system. The reform of the Czech democratic polity should also include putting in place an electoral system that would facilitate making stable and ideologically coherent government majorities.

Keywords:

Czech Republic; parliamentary regime; consensus democracy; majoritarian democracy; rationalized parliamentarism; electoral system

This article is a comprehensive analytical introduction to the monothematic issue of Acta Politologica dedicated to the political system of the Czech Republic and its problems. The objective of this article is twofold. First, its task is to provide an analytical overview of the development of the Czech democratic polity from 1989 to the present. Of course, it is not a historical essay mapping the past 25 years. Rather, we are concerned with main principles (including key systemic changes that occurred in the Czech Republic and which have modified its democratic regime) on which the Czech democratic polity is built. The article also focuses on certain critical moments which the Czech democratic polity has faced. This aim is related to the second objective of our article, which is to provide an international readership with a Czech expert discussion on the nature of the Czech democratic polity, on its crisis and also – and perhaps primarily – on perspectives of its reform.

¹ This article has been elaborated within research project no. 15-01907S (title: “Does Direct Election Matter? Analysing the Effect of Direct Election of President on the Working of the Political Regime in the Czech Republic”). The project is sponsored by the Grant Agency of the Czech Republic.

Our text is divided into three main parts. In the first part, entitled “Origins”, we identify main systemic traditions on which the contemporary Czech polity is built. It is above all the political system of the First Czechoslovak Republic (1918–1938), which became the main source of inspiration for the restoration of the Czech democracy after 1989. We also briefly discuss the era of the communist Czechoslovakia (1948–1989), which out of natural reasons did not become a source of inspiration for the later democratic polity, yet it left its marks on the developments of the Czechoslovak and Czech political system.

The second part is called “Developments”. Here we present an overview of the basic principles of the Czech democratic system with a particular focus on classifying the Czech polity among democratic regime types. This question is particularly relevant, especially in connection with the change of the method of electing the president, who was originally elected by the parliament, but following the 2012 constitutional change the Czech head of state is now elected by a direct popular vote. This institutional change sparked a debate about the nature of the Czech regime, not only in the Czech political science, but also in foreign literature.

The third part of the article, “Challenges”, is devoted to problems of the Czech polity that are systemic in nature. In our analysis we bring answers to three questions: What are the problems? What are their causes? What are the possibilities of eliminating or at least mitigating these problems? We also examine how these three questions are addressed by Czech political science and also (in part) by Czech constitutional law.

1. Origins

The Czech Republic was established as a new state on 1 January 1993 as a result of the so-called “Velvet Divorce”, as the peaceful division of Czechoslovakia is sometimes called (e.g. Agnew 2004: chapter 15). This dissolution of the former federal state was not a spontaneous event, but a process prepared and planned in advance (Kipke, Vodička et al. 1993; Musil et al. 1995). This process also included setting constitutional and institutional foundations of the new state. In fact, the two successor countries – the Czech Republic and the Slovak Republic – designed and approved their respective constitutions before 1993. Slovakia did so in September and the Czech Republic in December 1992. Hence, although the Czech Republic became a new state, its institutional foundations were laid down earlier. Moreover, the new institutional structure was not built from scratch. The founding fathers of the constitutional and political system of the Czech Republic had to deal with its historical heritage, be it of positive (continuation) or negative (rupture) significance.

1.1. The First Czechoslovak Republic (1918–1938)

The constitutional system of the Czech Republic largely carried on the tradition of the constitutional system of the so-called First Czechoslovak Republic (1918–1938). Indeed, the architects of the Czech constitution, adopted in 1992, were significantly inspired by the 1920 constitution of Czechoslovakia (Gerloch, Hřebejk, Zoubek 2002: 78; Mlsna 2011: 24-31). In order to understand peculiarities of the contemporary Czech democratic regime (and its constitutional system), it is necessary to briefly outline key principles of the Czechoslovak constitution as well as the political situation after 1920.

Although Czechoslovakia became one of the successor states of the Austro-Hungarian Empire, its constitutional and political settings were (with few exceptions²) created deliberately from scratch, i.e. with no connection to the previous Austro-Hungarian tradition. Both Czechoslovak constitutions – the interim one of 1918 and that of 1920 – drew from various sources. A major inspiration for the constitution of 1920 was played by the American and French models (Third Republic). While the U.S. constitution became an important model for the preamble, as well as for sections on the separation of powers and the judiciary, the French constitution influenced mainly the nature of the Czechoslovak parliament (Broklová 1992: 22-23).

Although the American and French constitutions are significantly different, because they represent very different types of democratic regimes, the essential characteristic of the Czechoslovak constitution became a republican parliamentarism. A strictly parliamentary, not a presidential, form of government was enshrined in the constitution. It was a parliamentary system based on the principle of proportionality and consensus³. The Czechoslovak parliamentarism was, however, marked by a series of specifics, one of which became a special position of the president. Although the U.S. model of presidency was not transferred to the Czechoslovak constitution, it was considered. Even the founder of the First Republic and its first president, Tomáš G. Masaryk, was positively inclined towards the American model of presidency (Masaryk 1938: 258, 576-577), as he did not want to be just a passive and representative head of state (Broklová 2001: 34; Kopeček, Mlejnek 2013: 34)⁴. However, the final version

² E.g. the concept of civil rights was borrowed from the Austrian model (Broklová 1992: 23).

³ In particular, it is an extremely proportional electoral system which was for elections of both parliamentary chambers (Chytilík et al. 2009; Novotná 2004). The political system of the First Republic was in Lijphart's eyes so "proportional" that he hailed it as one of the typical examples of consociational democracy (Lijphart 1977: 33).

⁴ On the other hand, Masaryk had a certain scepticism of the presidency (i.e. a sort of monarchical rule of one man) (Bankowicz 2015: 139). He feared its presumed incompatibility with democracy, but finally acknowledged its inevitability: "*Any form of directorate would be in the letter compatible with democracy, but even if there were*

of the constitution did not provide for the existence of a strong or “ruling” president, although she/he received some significant powers in relation to the government and parliament. On the other hand, it was primarily a political practice that made him an important and influential figure of the Czechoslovak politics, society and culture. First of all Masaryk, but also the second Czechoslovak president, Edvard Beneš – through their political as well as moral significance – clearly moved beyond the formal constitutional powers (Bankowicz 2015; Klimek 1996; Kopeček, Mlejnek 2013). “The president liberator”, “Daddy Masaryk”, as the first president was commonly nicknamed, significantly contributed to the general image and perception of the president as a “monarchist” or perhaps even almost a sacred institution seated at the Prague Castle – the traditional seat of Czech kings (Pithart 2014)⁵. Constitutional and political traditions of the First Republic were therefore based on two essentially contradictory elements – parliamentarism on the one hand and influential presidency on the other.

1.2. Communist Czechoslovakia

The tradition of the presidency was so strong that even the communists after the February 1948 coup d'état did not dare to replace the institution of the president with a collective head of state on the Soviet model. Thus, communist Czechoslovakia was the only country of the Eastern Bloc which kept the individual head of state for the entire duration of the communist regime from 1948–1989⁶. On the face of it, the political system of communist Czechoslovakia maintained some “First Republic” elements (e.g. the institution of the president of the republic). However, the communist system brought about a major rupture in the developments of the Czechoslovak political systems, and nearly all ties with the previous period were cut. While the former communist constitution of May 1948 still contained the principles of separation of powers and parliamentary regime (e.g. a responsible government, president, etc. which were of course purely formal, and in practice these principles were not respected), the “socialist” constitution of July 1960 enshrined the principle of unity of state power, whose only formal bearers were representative bodies. None of these principles was affected by the constitutional law on the Czechoslovak

more presidents, one of them would inevitably have the greatest influence and authority” (Masaryk 1938: 576).

⁵ According to some authors, the roots of this perception can be found in the worship of the Austro-Hungarian Emperor and King Franz Joseph I. (Rak 2013).

⁶ In addition to the historical traditions, there were other reasons for maintaining the institution of the president. First, the regime sought to incarnate symbolically in one person the leading role of the Communist Party and the state. In other words, the aim of this move was to symbolize the links between the authority of the party and the state. Second, there was a pragmatic interest in appointing the Communist Party's chief, Klement Gottwald, as the president. This move was to symbolically accomplish the communist coup in 1948. Third, individual ambitions of communist leaders to become the head of state also played a role (Šimíček, Kysela 2009: 323-324).

Federation from October 1968, which formally transformed a unitary state in the two-member federation consisting of the Czech Socialist Republic and the Slovak Socialist Republic. The National Assembly was then transformed into the bicameral Federal Assembly, which was characterized as the highest body of the state power⁷. It was therefore a kind of government by the assembly which was, of course, purely formal, because the real holder of power in the state was the Communist Party, which was built on the principle of democratic centralism. Moreover, the party monopoly in the state was constitutionally enshrined (Šimíček, Kysela 2009; Balík et al. 2003).

Even though the institution of the president was retained in the constitution as a formal element of continuity with the democratic Czechoslovakia, it did not enjoy any constitutionally privileged status. His constitutional role was purely representational (Šimíček, Kysela 2009: 325). The political practice varied, though. Given the fact that the centre of power in the state resided in the hands of the Communist Party's leadership and not in formal state institutions, the presidents (Klement Gottwald, Antonín Novotný, Gustáv Husák), who were simultaneously the heads of the Communist Party, became de facto ruling presidents. Paradoxically enough, this peculiar and rather crooked means actually preserved the tradition of influential presidents.

2. Developments

The fall of communism in 1989 opened the door for the democratic transformation of the political system. The short period of the post-November Czechoslovakia (1989–1992) did not provide much inspiration for the constitutional system of the successor Czech Republic.⁸ Czechoslovakia – after the necessary amendments to the Socialist constitution (particularly the abolition of the leading role of the Communist Party) – did not accede to the adoption of a new democratic constitution⁹. The political system developed largely spontaneously¹⁰, as the main themes of the period were

⁷ The Federal Assembly was designed as a purely symmetrical bicameralism, where neither of the chambers could outvote the other. In addition, there was a ban on national outvoting, which meant that Members of Parliament elected in the Czech Republic could not override the MPs elected in the Slovak Republic and vice versa. In practice, however, this did not matter, because the Federal Assembly passed its laws unanimously (Šimíček, Kysela 2009: 318-319).

⁸ Needless to say, this conclusion does not apply to the political system as a whole. For example, foundations of the Czech political parties and party system were laid at that time.

⁹ According to the memoirs of President Václav Havel, no one was willing to accept the task of writing a new constitution, so Havel himself took on the challenge. His proposal for a democratic federal constitution reached the parliament, but it was never passed (Havel 2006: 93-94).

¹⁰ The first non-communist Prime Minister of the Czech Republic, Petr Pithart, recalled in his memoirs that he could not obey the federal constitution, which was for the new democratic system completely unsuitable. On the other hand, there was no Czech

the development of political pluralism, free elections, economic transformation (especially privatization of state property) and also, or perhaps above all, discussions on relations between the Czech and Slovak parts of the federation which then resulted in debates on the division of Czechoslovakia. Instead of debates on the Czechoslovak constitution, the debates on future constitutions of the Czech Republic and the Slovak Republic became eventually much more relevant.

2.1. Major principles of the Czech political system

As mentioned above, the Czech constitution was approved by a large majority of the Czech National Council on 16 December 1992¹¹. The only historical heritage, which was suitable to follow, were the constitutional and political traditions of the First Republic¹². This is precisely what Czech politicians largely did. As Czech political scientist Josef Mlejnek put it (2015: 50): “(...) *the Czech constitution was essentially a creative copy of the first Czechoslovak constitution (...)*”, although of course with many changes. Above all, two main principles of the Czechoslovak political system were incorporated into the new constitution: a consensus model of democracy and a parliamentary form of government. The consensual nature of the Czech political system can be well demonstrated through the well known theory of majoritarian and consensus democracy by Arend Lijphart.

Table no.1: Lijphart’s models of democracy and the Czech Republic

Majoritarian model		Consensus model
Concentration of executive power in single-party majority cabinets	versus	executive power-sharing in broad multiparty coalitions rather yes
Executive dominance over legislature	versus	executive-legislative balance of power rather yes
Two-party system	versus	Multiparty system Yes
Majoritarian and disproportional electoral systems	versus	Proportional representation Rather yes
Pluralist interest group systems	versus	Coordinated and “corporatist”

constitution to define the scope of his competence. Although he backed the policies of his cabinet, Pithart could hardly influence its composition. This was in line with the still valid constitutional principle of unity of state power. The prime ministers still depended entirely on the Czech National Council, respectively its presidium (Pithart 2015: 283-286).

¹¹ The constitution was approved by the 200-member Czech parliament, not by a referendum. All but two MPs were present for the vote. In total 172 deputies voted in favour, 16 voted against and 10 abstained (Gerloch, Hřebejk, Zoubek 2002: 77).

¹² Similar to the cases of the communist Czechoslovakia, the semi-democratic tradition of the so-called Second Republic (1938–1939), the Protectorate of Bohemia and Moravia (1939–1945) and the so-called Third Republic (1945–1948) were completely unacceptable (Balík et al. 2003).

with free-for-all competition among groups		interest group systems aimed at compromise and concertation Rather yes
Unitary and centralized government Rather yes	versus	Federal and decentralized government
Concentration of legislative power in a unicameral legislature	versus	Division of legislative power between two equally strong but differently constituted houses Rather yes
Flexible constitutions that can be amended by simple majorities	versus	Rigid constitutions that can be changed only by extraordinary majorities Rather yes
Systems in which legislatures have the final word on the constitutionality of their own legislation	versus	Systems in which laws are subject to a judicial review of their constitutionality by supreme or constitutional courts Yes
Central banks that are dependent on the executive	versus	Independent central banks Rather yes

Source: own elaboration based on (Lijphart 1999: 3-4).

The Czech political system does not fully meet all the features of Lijphart's consensual model of democracy, but the consensual features clearly predominate. Czech cabinets are usually coalition governments, but they are rarely "broad" ones. There is a general balance between the executive and legislative power, but looking at this feature closer, the parliament has an upper hand at the expense of the government. The electoral system is proportional, but with slight majority effects¹³. The parliament is bicameral, but it is not a symmetrical bicameralism, because the Chamber of Deputies (the lower house) is significantly stronger than the Senate. And so on. Nevertheless, it is clear that the Czech political system is much closer to the consensual democracy than to the majoritarian democracy.¹⁴

The features of the parliamentary form of government are also clearly identifiable in the Czech political system. The Czech democratic regime is based on the principle of separation of powers, which, however, is not strict, because the legislative and executive powers in fact are closely connected. The functions of the head of state (president) and the chief executive (prime minister) are separated. Although the president is formally (i.e. in line with the structure of the constitution) a part of the executive of power (Chapter 3 of the Constitution), he/she has no real executive power, which is clearly attributed to the government headed by the prime minister. The key

¹³ This holds true only for the elections to the lower house of parliament (the Chamber of Deputies) (for details see Tomáš Lebeda's article in this issue); the upper house (the Senate) is elected by a double ballot majority system.

¹⁴ The issue of majoritarian/consensual character of the Czech political system and Czech scholars' opinions about it are discussed below.

principle is that the real holder of executive power – the government headed by the prime minister – is derived from the parliament, respectively from the Chamber of Deputies (not the Senate). The government is politically responsible to the Chamber of Deputies and can work only with the latter's consent. The president is not politically responsible to the parliament (the Chamber of Deputies), as it is the government which bears responsibility for presidential acts and which countersigns the vast majority of the president's decisions¹⁵. The president can dissolve the Chamber of Deputies (the Senate may not be dissolved), but under very specific and well-defined circumstances. In other words, the president may not dissolve the Chamber of Deputies at will, but it is a rather "safety valve" measure to unblock a deadlocked parliamentary situation (Bureš et al. 2012; Wintr 2013).

All in all, the basic principles of the Czech democratic regime simply match all the main characters of the definition of parliamentarism (see Strøm, Müller, Bergman 2003; Verney 1959). In addition, the parliamentary form of government is anchored by Czech constitutional law and by the jurisprudence of the Constitutional Court (Wintr 2013: 57). This does not mean that the Czech Republic is an example of a pure parliamentary regime (if it is possible to define a pure parliamentary regime). The regime is faced with various modifications or perhaps deformations. Probably the most visible among them is the position of the president and the mode of his/her election.

2.2. Direct election of the president¹⁶

The Czech democratic regime developed and underwent several changes from 1993 to the present, but we can say that there were only few substantial changes that significantly affected the regime. The 1992 constitution has been amended eight times so far¹⁷. Most of these

¹⁵ The president is constitutionally accountable, but this is a completely different matter. The president can be impeached for treason or a gross violation of the constitution or any other segment of the constitutional order. Such a decision must be taken by the Constitutional Court on the basis of a resolution by the Senate with the consent of the Chamber of Deputies (art. 65; Wintr 2013: 35).

¹⁶ The direct election of the president and its impacts on the constitutional system of the Czech Republic are discussed in more detail in the article by Jan Wintr, Marek Antoš and Jan Kysela in this issue.

¹⁷ The first change came in 1997, when the regional tier of government was established. The self-government at the regional level was enshrined in the constitution. The second change was related to the Czech Republic's NATO membership in 1999 and dealt with the question of sending Czech troops abroad, the presence of foreign troops on the Czech territory, Czech participation in the defence systems of NATO and the like. The third amendment to the Constitution, of 2001, was of a merely legislative and technical nature with the aim of harmonizing the constitution and the law on the Czech National Bank with European law. The fourth amendment to the constitution – the so-called "Euroamendment" (2001) – was related to the issue of compliance of the constitution with obligations arising from international law. The fifth amendment (2002) was very

amendments did not have a major impact on the design or operation of the Czech democratic system, with only one exception: the introduction of the direct election of the president in 2012 (and its implementation a year later). While previously the president was elected at a joint session of both chambers of the parliament in up to three rounds, now the president is elected popularly in a two-round system. Why and how did this change come about?

The idea to introduce the direct election of the president is nothing new in Czech politics. For the first time, such a proposal appeared as early as in December 1989, when the communists proposed that presidents be directly elected. At that time, the communist party sought to take advantage of the relatively high popularity of the last communist federal Prime Minister, Ladislav Adamec, with the aim of getting a communist elected instead of Václav Havel, who was still a relatively less known person at the end of 1989. Later, various proposals to introduce the direct election of the president emerged more or less regularly, and always in connection with other similar political demands or interests. After nearly 25 years the direct popular election of the president was finally approved. This major change was accompanied by two waves of controversies and discussions that rolled through the Czech public space. The first discussion was polemics of proponents and opponents of such reforms. The second discussion has been concerned with the implications of this constitutional change. Both discussions are very interesting.

In the first debate, supporters of the introduction of direct universal elections of the president clashed with their opponents. This debate was notable for one thing: it created two opposing and substantially uniform camps. On the one hand, there were almost all politicians and the vast majority of the media. On the other hand, there was the almost united professional community of political scientists and constitutional lawyers. While the first group passionately advocated for a direct election, the second group strongly opposed this idea and warned against negative impacts of such reforms. This is not a simplified generalization. Indeed, both groups can be (with few negligible exceptions) this clearly defined. While supporters of the direct election relied primarily on public opinion, which according to

specific as it was to enact the referendum on joining the European Union (which it did in May 2004). Once the referendum concluded, the constitutional amendment became obsolete and was eventually dropped from the constitution. The Czech Republic lacks a constitutional article that would allow holding a referendum on the national level. The sixth amendment (2009) introduced the possibility of “self-dissolution” of the Chamber of Deputies. Thus, the president is obliged to dissolve the Chamber at its own request, if such a motion is supported by a three-fifths majority of all the deputies. The seventh amendment introduced direct universal presidential election (see the main body of the article) and finally the eighth amendment (2013) limited the immunity of deputies, senators and constitutional judges (only for the duration of their mandate). For details on all the constitutional changes, see the website of the Chamber of Deputies [<http://www.psp.cz/sqw/hp.sqw?k=321>; online; cit. 2016-01-09].

various surveys wished to introduce the direct and general presidential elections that were presented as more “democratic” than the indirect elections, opponents argued that such a method of electing the president is detrimental (given the fact that the direct election is an alien feature vis-à-vis the parliamentary nature of the Czech political regime) and that it may significantly distort the Czech democratic regime (Hloušek 2008; Kubát 2003; Charvát et al. 2014).

However, regardless of the warnings against the direct and universal election of the president, political elites approved this constitutional change. Peculiarly, they did so irrespective of political and ideological differences among them. The finale vote took place in the Chamber of Deputies in December 2011, and all parliamentary parties backed the motion except for the communists, who abstained¹⁸. The Senate approved the direct and general election of the president in February 2012. In the Senate the motion was passed by a relatively narrow margin. The important fact is that senators from all the parties (except for the Christian and Democratic Union – Czechoslovak People’s Party (Křesťanská a demokratická unie – Československá strana lidová – KDU-ČSL), whose Senators were unanimously against the amendment) voted yes¹⁹.

2.3. Parliamentary or semi-presidential regime?

The introduction of direct universal presidential elections in the Czech Republic unleashed a second discussion on this matter which has to some extent an international outreach. The basic question is as follows: Did the Czech Republic experience a shift from a parliamentary to a semi-presidential regime?

In the past, there was almost a uniform consensus within the Czech political science and constitutional law community that the Czech Republic was a parliamentary regime characterized by, as we mentioned above, the specific (influential) position of the president (Filip 2003; Kysela 2008b: 235; Vodička, Cabada 2003: 154; Wintr 2006: 51-52). If at all addressing it, some political scientists and constitutional lawyers contemplated the presence of “presidential elements” within the regime (given the president’s special position), they still came to the conclusion that the Czech regime was after all a parliamentary regime (Gerloch, Hřebejk, Zoubek 2002: 191; Klíma 2004: 44; Kysela, Kühn 2007: 113).

After the introduction of direct universal presidential elections in 2012 and the 2013 presidential election, few voices appeared suggesting that the Czech Republic could move towards semi-presidentialism (Kysela 2013) or

¹⁸ Out of 192 deputies who were present, 159 voted for the motion, three MPs were against and 30 abstained (the total number of deputies is 200) (Musilová, Šedo 2013: 32).

¹⁹ In the Senate, 75 out of 81 Senators participated in the vote. The motion was passed by 49 senators; 22 voted against and four abstained (Musilová, Šedo 2013: 34).

that it might happen in the future. However, these conclusions were very cautious: *“in the long term there exists the possibility of converting the parliamentary regime into a semi-presidential one”* (Kopeček, Mlejnek 2013: 75). One scholar even argued that the Czech Republic became a semi-presidential regime (Kudrna 2013). Such statements, however, have been rare. The prevailing scholarly opinion is that the Czech Republic after 2012 has remained a parliamentary regime (Bureš et al. 2012: 153; Kubát 2013b: 62-63; Wintr 2013: 66), or that the Czech regime is at most a parliamentary regime *“with a strengthened role of the president”* (Mlejnek 2015: 60), or a parliamentary regime which has *“shifted from the ideal form of parliamentarism”* by the direct election of the president (Brunclík 2014: 77), or a parliamentary regime which has become *“deformed and inefficient”* (Kubát 2014: 55).

The Czech constitutional change is somewhat differently addressed by foreign scholars (publishing in English). Before 2012 the Czech Republic used to be almost always classified as a parliamentary regime (Baylis 1996: 299; Colton, Skach 2004: 18; Easter 1997; Elgie 1998; Goetz, Wollmann 2001; Krouwel 2000; Schleiter, Morgan-Jones 2009a: 673; Sedelius, Ekman 2008: 15; Stepan, Skach 1993: 4; Wolchik 1997: 171). However, after 2012 the Czech regime began to be generally classified as a semi-presidential regime (Elgie 2012; Elgie 2014; Elgie, Fauvelle-Aymar 2012: 1614).

This sharp difference is caused by a different methodological and theoretical approach of both groups of authors. “English-language” authors often come from the definition of semi-presidentialism outlined by Robert Elgie. Some scholars even consider his definition as *“standard”* (Schleiter, Morgan-Jones 2009b: 874; Schleiter, Morgan-Jones 2010: 1418). This minimalist definition is largely based on the direct election of the president²⁰. In this case, it is clear that Elgie himself and his followers define the Czech Republic after 2012 as a semi-presidential regime. The majority of Czech authors proceed differently. Their findings are not derived from a single predetermined definition of semi-presidentialism, but they first provide a detailed analysis of the case. They primarily focus on the issue of the president’s power, or more broadly, on the executive power as such, i.e. a president and a government led by a prime minister. Given the fact that in general they are inclined to accept Duverger’s (1980) and Sartori’s (1997) understanding of semi-presidentialism, they do not classify the Czech regime as semi-presidential, because the president has no real executive power, although he is not a purely ceremonial president. This conclusion is typical not only for the Czech authors, but also more generally for Central European scholars (Polish, Slovak and others) (cf. Brunclík, Kubát 2014a).

The Czech authors therefore admit that the position of the Czech president is exceptional. According to constitutional lawyer Jan Kysela: *“In*

²⁰ A system, where *“a popularly elected fixed term president exists alongside a prime-minister and cabinet, who are responsible to parliament”* (Elgie 1999: 13).

the Czech Republic, we can perhaps speak about a particular type of presidency as a charismatic ability to inspire loyalty, a charismatic authority (...). The President is seated at the royal castle, he/she has its own standard and military guards, on ceremonial occasions his/her arrival is heralded by a fanfare of 'Libuše'²¹ (...) the head of state's portraits adorn school classrooms and various state's offices, disgruntled citizens have traditionally sought rectifications of injustices of all sorts at the presidential office (...) etc." (Kysela 2006: 14). *"The president's uniqueness is rather of a cultural-political nature given historical circumstances, including monarchical traditions"* (Pithart 2014). The direct election of the president paradoxically altered the tradition of the Czech presidency. On the one hand, it violated the tradition of indirectly elected presidents²²; on the other hand, through the greater legitimacy enhanced by the popular election, it has created preconditions for strengthening the tradition of the influential president. However, in terms of the structure and functioning of the Czech democratic regime, the new way of electing the president is rather harmful. The president has a certain political (and in some cases even moral) influence, now reinforced by the strong legitimacy derived from the direct election, but he/she has no real executive power (neither in terms of the constitutional order, nor in terms of political practice). The result is a strong deformation of the parliamentary regime, which has been beset by a number of problems and faced with several challenges.

3. Challenges

To be sure, the problems of the Czech parliamentary regime are related not only to the president. They are complex in nature. In the past five years or so an increasing number of books by Czech political scientists dealing with the crisis in Czech politics began to appear in bookstores. One might even build a decent home library from these books alone.

The themes of these texts address two main challenges facing the Czech politics. Firstly, it is a crisis of politics as such accompanied by the decline of political culture, the rise of political corruption and the rise of distrust in politics and democracy (Drulák 2012; Dvořáková 2012; Fiala 2010; Pehe 2010; 2015; Pithart 2015; Klíma 2015). Secondly, it is a crisis of the Czech parliamentary regime, especially in terms of its instability, dysfunctionality and inefficiency (Hloušek, Kopeček 2012; Kubát 2013b; Kubát, Lebeda et al. 2014; Mlejnek 2015). Both streams of thought are, of course, related. Our

²¹ Libuše is an opera composed in 1871-1872 in three acts with music by one of the most famous Czech composers, Bedřich Smetana. Libuše is a legendary ancestor of the Přemyslid dynasty (who established the first Czech state) and the Czech people as a whole. According to the legend she prophesied and founded the city of Prague in the 8th century. The opera was originally intended for the coronation of Franz Josef I as the Czech king. This did not happen and Smetana saved Libuše for the opening of the National Theatre in Prague in 1881.

²² All the Czechoslovak and Czech presidents were elected by the parliament until 2013.

task is to discuss the second level of the crisis, i.e. the problems of the Czech parliamentary regime.²³

3.1. The inefficiency of the parliamentary regime²⁴

The Czech parliamentary regime functioned well in the first half of the 1990s. The party system appeared stable and effective. It was embodied by the ruling Civic Democratic Party (Občanská demokratická strana – ODS), the largest Czech party, led by Václav Klaus, who was at that time the Prime Minister and a major architect of the economic transformation. Still, the seeming stability of the party system was soon to come to an end.

Between 1992 and 1996, Klaus led a majority right-wing coalition that carried out a number of reforms. He chaired the cabinet even after the 1996 parliamentary elections, but only due to the “tolerance” of the Czech Social Democratic Party (Česká strana sociálně demokratická – ČSSD), whose MPs left the Chamber of Deputies in order to decrease the quorum required for a vote of confidence. Hence, they helped Klaus’s minority coalition to win the vote of confidence in July 1996. For the first time a minority cabinet was created. It could rely on the support of only 99 members of 200 MPs. The cabinet remained in power until January 1998 (Bureš et al. 2012: 395-396). After that, a period of unstable cabinets started.

This phenomenon has persisted in the Czech Republic until the present day and has become the most visible feature of the Czech parliamentary regime. Why? Czech cabinets are not based on a clear and consistent parliamentary majorities: cabinets are often minority governments (1996–2002, 2006–2009), politically inconsistent, i.e. connecting right-wing and left-wing political parties (2002–2006), based on controversial grounds (the Opposition Agreement 1998–2000²⁵, which was superseded by the more explicit “Patent of Tolerance” in January 2000), based on shaky coalitions or they are even dependent on a single MP (e.g. in 2002, 2004 and 2005, but also later). Besides that, there were already three technocratic cabinets (1998, 2009–2010, 2013–2014) (Brunclík, Kubát 2014b: 173).

The result of all of this is the chronic inefficiency and instability of cabinets. Between 1996 and 2014 the Czech Republic had 11 cabinets and 10 prime ministers. The average durability of cabinets is about one and a half

²³ Some of the issues related to the crisis in Czech politics, political culture and democracy, etc. are examined in other articles in this issue.

²⁴ This chapter is a revised and amended version of a part of our previous article (Brunclík, Kubát 2014b: 172-173).

²⁵ The opposition agreement was concluded by the two largest parties: the right-wing (ODS) and the left-wing social democrats (ČSSD) after the 1998 elections. Although the ČSSD won the elections, it failed to form a majority government. Thus, both parties agreed that the ODS would tolerate a ČSSD government. At the key vote of confidence in the new ČSSD cabinet, the ODS MPs left the Chamber and thus lowered the required quorum and allowed the rise of the ČSSD cabinet (Kopeček 2015).

year (Lebeda 2014: 12).²⁶ Two cabinets failed to win confidence of the Chamber of Deputies (2006 and 2013). Between 2006 and 2009, the Chamber of Deputies attempted five times (sic!) to pass a vote of no-confidence in the coalition cabinet led by Mirek Topolánek (ODS) (Kubát 2013b: 69). The left-wing opposition supported by several defections from the government camp eventually brought the cabinet down in March 2009. Unfortunately, this happened during the Czech Presidency of the European Union, and the opposition (above all the ČSSD) was unable to put together an alternative cabinet. The Czech EU presidency was rescued by a technocratic government sustained by the ODS, ČSSD and the Green Party (Strana zelených – SZ) (Hloušek, Kopeček 2012: 67-86).

3.2. Why it is so?²⁷

There are political and constitutional reasons for this instability (Brunclík 2014; Kubát 2013b). From a political point of view, the problems are as follows. Firstly, there has been an institutional weakness of the political parties, which have – in addition to the vulnerability (e.g. succumbing to corruption) – an extremely small membership base, a poor organization and a lack of discipline (Brunclík, Kubát 2014b: 170-172; Mlejnek 2015: 78-114). The second problem is a high ideological polarization of the party system, mainly due to the still Marxist-Leninist Communist Party of Bohemia and Moravia (Komunistická strana Čech a Moravy – KSČM) having so far zero coalition potential at the national level. The consequence of this is that about 15% of parliamentary seats are blocked by the communists²⁸, who are a priori excluded from any coalition. Hence, the ČSSD, which was not established as a moderate successor to the former communist party but as a renewed party (the ČSSD traces its origins back to the late 19th century and ceased to exist as an independent party in 1948), does not have a natural left-wing coalition partner. Consequently, the ČSSD has had to form minority (including, the Opposition Agreement with the ODS) or ideologically inconsistent cabinets.

The third – and most recent – problem is that of a crisis of “traditional” political parties and the emergence of new parties in 2010–2013, representing an anti-corruption and anti-political populism in the sense of “anti-party sentiment” (Pasquino 2008: 21). The most successful party of that kind is ANO 2011, which gained 19% of the vote in the 2013 elections

²⁶ The Czech Republic belongs to countries with the least stable cabinets across Europe, including the post-communist countries (cf. Courtenay, Golder 2010).

²⁷ This chapter is a revised and amended version of a part of our previous article (Brunclík, Kubát 2014b: 172-173).

²⁸ The Communist Party of Bohemia and Moravia (KSČM) is a direct successor to the Communist Party of Czechoslovakia (Komunistická strana Československa – KSČ), which ruled the country between 1948 and 1989. It is an unreformed Marxist-Leninist party that meets Sartori’s criteria of an anti-system party (see Sartori 1976: 132-134). At the national level, the party has no chance of forming a coalition.

and entered the coalition government with the ČSSD and the Christian Democrats (KDU-ČSL) (Havlík et al. 2014). ANO's anti-political populism and anti-party rhetoric makes a distinction between politicians (incompetent, selfish and often corrupt) and experts/professionals (with the opposite characteristics) who can manage the government like a private enterprise²⁹. Attitudes of that kind deepen the polarization of the party system, which in turn can lead to further instability and therefore also to the instability of the entire parliamentary regime.

As far as the Czech constitution is concerned, it can generally be said that there are shortcomings. As mentioned above, the constitution is to a large extent based on the constitutional traditions of the interwar Czechoslovakia. The inspiration from the interwar constitutional setting resulted in a strong asymmetry between the legislature and the weak executive. The Czech constitution provides for a parliamentary regime, but not for a prime ministerial type of the parliamentary regime (with a prime minister as "first above unequals") (cf. Sartori 1997: 109-110). This type of parliamentary regime is completed with a relatively strong president (the heritage of the interwar period). The constitutional authority of the executive – the government led by the prime minister – is comparatively weak and heavily dependent on the Chamber of Deputies. Likewise, the prime minister is rather weak because he/she is not the true boss of his/her ministers. Furthermore, the Chamber of Deputies operates under very loose regulations of giving flexibility to individual MPs. In addition, the proportional electoral system works in favour of the large parties, but very moderately, so it does not facilitate the formation of parliamentary majorities. All this leads to a dual fragmentation of the Chamber of Deputies (political and personal). This fragmentation is not conducive to the stability of the government. The second factor acting to the detriment of the government's political position is the president, whose influence was in 2012 enhanced by the introduction of direct presidential elections. The president does not hold an executive power and cannot govern because the Czech Republic is not a semi-presidential regime, as we explained in the second chapter of this article. However, the strong legitimacy of the president and the legacy of activist presidents, who occasionally get into conflicts or disputes with the cabinet, in turn weakens the chief executive – the cabinet. It seems as if the Czech Republic experienced a backlash, coming back to the earlier era of transition of democracy in a number of post-communist countries, which were characterized by weak nascent political parties and

²⁹ ANO means "yes" in Czech. It is a party (sometimes described as a civic movement) which closely approximates the model of the business-firm party (see Hopkin, Paolucci 1999). Andrej Babiš, the founder and chairman of the ANO, a Czech businessman and billionaire of Slovak origin, embodies this ideal as a wealthy businessman who manages large companies. He became a deputy prime minister and the Minister of Finance.

citizens' high expectations of having responsible national leaders (mostly presidents).³⁰

Furthermore, the non-concurrent electoral cycles of the president and the parliament increase the risk of conflict between the two branches (Shugart 1995). The government branch, which went through the electoral test more recently, is tempted to claim its political superiority and even to demand extra constitutional powers on the grounds that its legitimacy has more recent origins (Protsyk 2005). And this is what exactly occurred in 2013, when the first directly elected president, Miloš Zeman, came to office; he immediately got into a conflict with the right-wing coalition government. In sum, the government is thus situated between two mill wheels – the Chamber of Deputies and the president.

Therefore, the Czech crisis of the parliamentary regime resides not only in the inherent instability of the government, but also – and perhaps above all – in the political and constitutional weakness of the cabinet and the prime minister. The consequence of all this is a permanent crisis of the executive and ineffectiveness of the whole parliamentary regime.

3.3. How to solve the problem?

In the scholarly Czech literature, a number of proposals to solve or at least to mitigate the existing problems of the country's parliamentary regime have appeared (Hloušek, Kopeček 2012; Klíma 2015; Kubát 2013b; Novák 2001; 2008)³¹. Most of these proposals basically aim to abandon the interwar tradition of consensus democracy and instead to embrace (at least some of) the principles of the majoritarian democracy. It must be pointed out that the interwar Czechoslovak Republic was a completely different state than the Czech Republic after 1993. At most, one could consider some similarities between the First Republic and post-November Czechoslovakia (until 1992–1993), but the Czech Republic is really quite a different polity, at least in two intertwined aspects: the nature of society and the nature of political partisanship.

While the interwar Czechoslovakia was a typical segmented society which was split in ethnical, linguistic, religious and other terms which was clearly reflected by a multipolar character of the Czechoslovak party system, the

³⁰ As Klaus von Beyme (2000: 13) argued: *“The greater the number of floating voters and the less consolidated the parties, the more likely it was that a semi-presidential system was chosen. This was even more the case when a charismatic leader was at the head of movement, such as Walesa, Landsbergis and Yeltsin. The semi-presidential system ex post facto has been justified in a ‘Gaullist’ way: when an interest representation is diverse the popularly elected president has to serve as a representative of the ‘common good’”*.

³¹ Now we leave aside considerations about remedial politics and society as a whole (see e.g. Fiala 2010). Our considerations relate only to the institutional level of problems, although we are aware that the functioning of a democratic system cannot be completely separated from the question of the functionality of society, politics and democracy.

Czech Republic enjoys a predominantly homogeneous society which is reflected by a bipolar party system. It means that the Czech party system is based primarily on one – socioeconomic – cleavage (Hloušek, Kopeček 2004: 71-101). This feature did not change even after the formation of new parties in 2010–2013. Thus, if the consensus democracy was a must for interwar Czechoslovakia, this model of democracy is unnecessary in the Czech Republic: *“From the perspective of the structure of society, there is no continuity with the pre-war era of a segmented society. From this point of view, the implementation of the majoritarian model of democracy would be possible”* (Hloušek, Kopeček 2002: 19). All in all, in empirical terms there are no major obstacles for the use of the majoritarian model of democracy (and thus simultaneously prioritizing principle of efficiency over the principle of representativeness) in the contemporary Czech Republic. Hence, it is possible to design reforms of the existing parliamentary system towards strengthening of the majoritarian elements of the Czech democracy (Kubát 2013b: 69-75; Novák 2006).³²

When considering the possibilities of the Czech democratic regime change along the lines of the majoritarian elements, two options have been outlined. Firstly, the transition to semi-presidentialism; secondly, the reform of the existing parliamentary regime. The first option was mentioned mainly as a theoretical possibility (Kubát 2013b: 75-79; Novák 2008: 9-15). Otherwise, all considerations centred on the question of reforming the existing parliamentary system in terms of its rationalization³³. The parliamentary regime can be rationalized by two interrelated ways: institutionally and politically. The institutional way resides in reforming the constitutional institutions. In particular, it has been argued in favour of an increased protection of government against parliament, mainly through the constructive vote of no-confidence.

Furthermore, it is a new procedure of government formation that would clearly: a) determine the tasks of respective institutional actors (president and parliament); b) provide alternation of the roles in the initiation of the government formation process; and c) last but not least, provide a real threat to dissolve the parliament in case of a failure of the government formation process. These features should be supplemented by setting clear and short deadlines by which institutional actors are supposed to take their steps so that the process may not be artificially and “indefinitely” dragged out. The rationalization also includes strengthening the institutional

³² For the sake of objectivity, it should be noted that some scholars (e.g. Klíma 2001), albeit in minority, argued in favour of strengthening of consensual features of the Czech democracy.

³³ The difference between semi-presidentialism and rationalized parliamentarism lies in the fact that in the former case presidents have an important role in the executive (i.e. the president is the chief executive, like in France), whereas in the latter case it is the prime minister who dominates the executive (e.g. Germany), while the role of the president is more or less ceremonial (Kysela 2008a; Matthews 2002; Tanchev 1993).

competence of a prime minister in the government and of the government in the regime. Conversely, there should be no further strengthening of the president. Instead, the president should be weakened (ideally, the Czech Republic would return to indirectly electing presidents, but this is a politically unrealistic suggestion). Finally, it is appropriate to consider adjustments to the Rules of Procedure of the Chamber of Deputies in order to achieve greater discipline of MPs, reduce obstruction, and hinder the possibility of internal political fragmentation of party clubs within the Chamber of Deputies during its term of office (Kubát 2013b).

The rationalization of the parliamentary regime, which has been discussed at large in the Czech Republic, should also include the concentration of the party system, the concentration of individual political parties and elimination anti-system parties (mainly the KSČM). The most effective way to alleviate the difficulties of the Czech party system is – as mentioned above – electoral reform. The need for electoral reform in the Czech Republic has been discussed at least since the mid-1990s (Balík et al. 2013; Charvát 2013; Klíma et al. 1999; Novák, Lebeda et al. 2004; Novák 1996). Basically, there are three major options: 1) to modify the existing proportional representation; 2) to introduce some form of majority electoral system; and 3) to implement some form of a mixed electoral system. While the third option was always the least recommended one and mainly considered only as a theoretical possibility, the first two options have been discussed extensively. Some authors recommend modifying the existing proportional electoral system in order to strengthen its majority effects, and consequently to help larger parties at the expense of smaller ones, which in turn could lead to easier formations of (government) majorities in parliament. This approach was pioneered by Czech political scientist Miroslav Novák, who proposed such a reform as early as in 1996 and who has been championing this argument up to the present day (Novák 1996; 2013). Other authors have proposed introducing a majority voting system, notably a double ballot system (rather than a plurality electoral system) (Kubát 2013a). Thus, in the case of electoral reform, there has been a lack of agreement on which type of electoral system is the most suitable one; however, Czech political scientists generally agree that having an electoral change is desirable and that it could help alleviate systematic problems in Czech politics.

4. Conclusion

In our article we discussed the origins, developments and challenges of the Czech polity. As can be seen, the Czech political system faces serious problems subject to intense discussion by Czech political scientists and, to a lesser extent, by constitutional lawyers. The aim of these debates is to identify critical moments, identify their causes, and also – or perhaps above all – to propose solutions that could either solve the problems described above or at least mitigate them. These efforts have not been successful thus

far. The problems of the Czech polity are very deep and multi-layered and above all are of a structural nature. They are connected with all the main aspects of a democratic polity, notably with the constitutional system, the party system and the electoral system. In this article, we have tried to provide such a comprehensive overview of the problematic issues of the Czech democratic polity. A more detailed look at various aspects is provided by the case studies contained in this issue.

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