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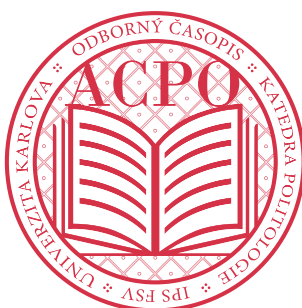

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Katedra politologie Institutu politologických studií
Fakulta sociálních věd Univerzity Karlovy

Department of Political Science, Institute of Political Studies
Faculty of Social Sciences, Charles University

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Czech Presidents In Trouble: How Successful Can The System Be Against Presidential Misbehaviour?[1]

Gor Vartazaryan, Kateřina Ochodková[2]

Abstract:

Presidents in parliamentary regimes are generally less powerful in their competencies and serve more as moderators of political disputes rather than as the main actors of executive power. Despite this, they can often appear at the edge of constitutionality in the performance of their powers. In Central Europe, it is the President of the Czech Republic who finds the greatest discrepancy between written and politically practised powers. Constitutional actors can bring a constitutional lawsuit, a competence lawsuit, or activate against the president Article 66, transferring the performance of certain duties to the other constitutional actors. Often, however, these instruments are not used. Semi-structured interviews with experts (N = 6) in the field of constitutional law revealed to us that the Czech president has broader powers than the Constitution gives him because many constitutional actors do not file a lawsuit even if they had a significant possibility of winning. Our analysis also showed that there are some cases where the experts disagree among themselves such as on the appointment of the governor of Czech National Bank. At the same time, this work revealed the different approaches of the individual presidents in the situations studied.

Key words*: President of the Czech Republic; Constitutional Lawsuit; Competence Lawsuit; Article 66*

Introduction

All the previous Czech presidents, Václav Havel, Václav Klaus, and Miloš Zeman, have taken an active approach to the exercise of their presidential powers. Some of their actions were on the edge of the powers granted to them by the Constitution, or even beyond them. Other constitutional actors have, under certain circumstances, considered three main legal instruments against these acts: 1) a constitutional lawsuit, 2) a competence lawsuit, or 3) activation of Article 66 of the Constitution, transferring the performance of certain duties to the other constitutional actors (hereinafter „instruments against the president"). Given the recent end of Miloš Zeman's second five-year mandate (2018–2023), we consider it

[1] The study was supported by Charles University, project GA UK No. 146323.

[2] Gor Vartazaryan is student at Faculty of Social Sciences Charles University (U Kříže 661/8, 158 00 Praha 5). Contact: gorike2000@gmail.com. ResearcherID: GQA-8748-2022, ORCID: https://orcid.org/0000-0002-0367-7274.

Kateřina Ochodková is researcher at Judicial Studies Institute, Faculty of Law, Masaryk University, and Ph.D. student at Department of Constitutional Law and Political Science, Faculty of Law, Masaryk University (Veveří 158/70, 611 80 Brno). Contact: katerina.ochodkova@law.muni.cz. ResearcherID: HNJ-3693-2023, ORCID: https://orcid.org/0000-0002-9049-3894.

important to evaluate three decades of presidency in the Czech Republic based on the experience of the active exercise of that constitutional office.

Czech doctrinal legal research has thoroughly explored the responsibility of the President of the Czech Republic and his position (Filip 2010; Novák, Brunclík 2008; Malíř 2020; Kudrna 2013; Koudelka 2018; Šimíček 2008; Sládeček, Hofmannová 2021). Fewer works have dealt with ad hoc cases of breach of constitutional powers by presidents (Filip 2000; Janstová 2015). The scholarly discussion has always alluded to the issue of the introduction of a direct presidential election (Antoš 2015; Charvát 2013; Němec, Kuta 2009) and examined the shift of presidential powers in light of the transformation of the political system (Brunclík, Kubát 2016; Kysela 2011). Research on the area of presidential breach of powers remains an untouched topic, despite being a closely watched issue in the media. This article fills that gap by presenting an analysis of considerations and initiatives of instruments against presidents. By consideration, we mean all the acts that remained in the drafting phase and did not reach the Constitutional Court, and by initiatives, we mean all the cases that were proceeded by the Constitutional Court. We must take into account that the cases of consideration can be based on a political statement, which is not followed by a draft of an actual lawsuit. In those cases, we assume that the potential content of the lawsuit would be only based on that statement.

This article aims to answer the following research question: *Which considerations and initiatives of instruments against the president had a chance to succeed before the Constitutional Court?* To answer this research question, we will present a dataset of the cases of initiatives and considerations. We consider it important to point out that even though the Constitutional Court ruled in the cases of initiatives, the reason for its decision may have been procedural. For example, in the constitutional lawsuit against Václav Klaus, the Constitutional Court stopped the proceedings due to the expiration of his mandate (CC 17/13), and it didn‘t even get to the actual merit of the lawsuit. That said, we conducted semi-structured interviews with experts on constitutional law with whom we discussed the cases. It is the semi-structured interviews with experts that help us to discover the possibilities of viewing the cases from the perspective of constitutionality. At the same time, we asked the constitutional lawyers for their expert opinions – whether they would uphold the lawsuit in particular cases. By moving away from the procedural aspects of the cases, we can examine the individual acts of the President and their possible unconstitutionality. The selection of respondents is set to present the opinion of the most prominent legal scholars from various legal professional fields who are engaged academically or professionally on the issue of the powers of the President of the Czech Republic.

This article is structured as follows. In the first chapter, we present the instruments against the president and their legal definitions. In the second chapter, we present the data collection and methodology. In the third chapter, we present the factual circumstances of the cases of the instruments against the president. In the fourth chapter, we summarise the results of our interviews.

1. Instruments against the President

Article 54 paragraph 1 of the Czech Constitution states, “*The President of the Republic is a head of the state*”. The institution of the president in the Czech Republic is unique. First of all, turnout for presidential elections is higher than in parliamentary elections, even though

the strongest political actor is the prime minister. Secondly, presidents are viewed as important figures in political crises (Kopeček, Brunclík 2019). The President is not responsible for the office, which means that he is a constitutionally independent body and is not accountable to the Parliament or any other body for his actions (except as for Article 65; see below). On the contrary, he is civilly liable, i.e., he can sue and be sued in cases unrelated to the exercise of his functions (Koudelka 2018: 31). The President cannot be prosecuted while in office. In the Czech political system, checks and balances provide instruments that can be used against the President when he commits an unconstitutional act or is unable to perform his duties (e.g., for health reasons). Those instruments can lead to different outcomes as we will discuss further.

1.1 Constitutional Lawsuit

For this article, we must distinguish between the period before and after 2013 in two ways – the possibilities of a constitutional lawsuit and elections of the president (indirect and direct). Before 2013, constitutional lawsuits could be filed by the Senate and only for treason. Article 65 is defined in paragraph 2:

> *"The President of the Republic may be prosecuted for treason before the Constitutional Court based on a lawsuit brought by the Senate. […] The penalty may be the loss of the office of President and the eligibility to regain it."*

Under Article 39, such a lawsuit shall be adopted by a majority of the Senators present, with the required quorum of at least one-third of the Senators, i.e., at least 14 Senators out of 27 must vote in favour (Gerloch et al. 1999: 235). Treason was defined[3] as an "*act of the President of the Republic directed against the sovereignty and integrality of the Republic, as well as against its democratic order"* (Article 96 of the Constitutional Court Act). The Constitutional Court always holds a hearing on a constitutional lawsuit against the president. At the end of the hearing, the Constitutional Court will either uphold the lawsuit and rule that the President committed treason, or the Constitutional Court will acquit him. Once the ruling upholding the constitutional lawsuit has been pronounced, the President of the Republic loses his office and his capacity to regain it.

The amendment in 2012 changed the presidential elections from indirect to direct. Scholars from legal and political science fields agreed that this change of the system is inconsistent with the parliamentary regime (Kysela 2008; Antoš 2011; Charvát 2013; Brunclík, Kubát 2016). Despite the adversity of scholars, the amendment still passed through the Parliament. Since the election of the president was switched to direct, the amendment also expanded the possibilities for a constitutional lawsuit against the president.

[3] After the amendment in 2012, this provision was repealed and inserted directly into Article 65(2) of the Constitution.

Article 65[4]

(1) The President of the Republic may not be detained, prosecuted for a misdemeanour or other administrative offence during the exercise of his office.

(2) The Senate may, with the consent of the Chamber of Deputies, bring a constitutional lawsuit against the President of the Republic before the Constitutional Court for treason or a gross violation of the Constitution or any other part of the constitutional order; treason shall be understood as an act of the President of the Republic directed against the sovereignty and integrality of the Republic as well as against its democratic order. The Constitutional Court may, based on a constitutional lawsuit brought by the Senate, decide that the President of the Republic shall lose the office of President and the capacity to resume it.

(3) The adoption of a constitutional lawsuit by the Senate shall require the consent of a three-fifths majority of the Senators present. The consent of a three-fifths majority of all the deputies shall be required for the adoption of the constitutional lawsuit by the Chamber of Deputies; if the Chamber of Deputies does not give its consent within three months from the date on which the Senate has requested it, the consent shall be deemed not to have been given.

The amendment introduced several new elements: 1) the possibility to file a lawsuit for gross violation of the Constitution and the constitutional order, 2) the requirement of a three-fifths majority of the Senators and three-fifths majority of all Members of the Chamber of Deputies and 3) definition of treason in Article 65 paragraph 2.

Gross violation of the Constitution and the constitutional order broadens the possibilities for a constitutional lawsuit, however, most academics consider this limit requirement of three-fifths majority is too high and almost impossible to reach (Antoš 2011: 32-33; Kysela 2015: 1031-1032). Compared to the previous version, when only 14 senators (out of at least 27 present) were enough, this is a dramatic change.

1.2 Competence Lawsuit

A competence lawsuit is filed in case of a dispute between two or more public authorities over which of them is competent to make a decision (i.e., to issue an individual legal act) on a specific legal matter. Competence disputes can be divided into positive and negative. If at least two authorities claim to rule on the same matter, it is a positive competence dispute. If, on the other hand, all the authorities deny their competence to decide the case, it is a negative competence dispute.

Article 87 of the Constitution defines the competencies of the Constitutional Court. In addition to the power to decide on the Senate's constitutional lawsuit against the President of the Republic under Article 65(2), the Constitutional Court also can decide on "*disputes*

[4] The current wording of Article 65.

concerning the scope of competences of public authorities and authorities of local self-government, if they do not fall within the competence of another body under the law".

In this case, the President is also considered a public authority and can be an actor in competence disputes. However, in some cases regarding the President, there are procedural complications. Often, the President is dealing with disputes of shared competence. For example, in the appointment of ministers, the Prime Minister must propose the candidates and the President should appoint them (Article 68 paragraph 2). The Constitution does not provide the possibility for the President to reject candidates; however, it has happened several times in practice, which we further discuss. The only exception may be a conflict with Article 70 of the Constitution, which provides that *a member of the government may not carry out activities whose nature is contrary to the performance of his or her duties*. If a candidate engages in such activities, a refusal of appointment may be considered. The problem arises due to the fact that such a dispute cannot fall under the traditional competence disputes, as it is not to decide whether the power belongs to the President or the Prime Minister but rather to decide that the President should act and cooperate in accordance with the defined powers, i.e., that he has no power to reject the candidate.

For our paper, we do not go in-depth about the procedural aspect of competence disputes. We however agree with Grinc and think that even a shared competence lawsuit could be eligible for a procedure in the Constitutional Court (Grinc 2022: 233-255), but that is for the Constitutional Court to decide. To answer the research question, it is necessary to consider primarily the substantive content of the disputes.

1.3 Article 66

Article 66 of the Constitution regulates a substitute exercise of the powers of the President of the Republic by other constitutional authorities in two cases. First, when the office of the Presidency becomes vacant and before a new President of the Republic has been elected or has taken the oath of office. Second, if the President of the Republic is for serious reasons incapable of performing his duties and if the Chamber of Deputies and the Senate adopt a resolution to this effect.

Article 66 states: "*If the office of the President of the Republic becomes vacant and the new President of the Republic has not yet been elected or sworn in, or if the President of the Republic is unable to exercise his office for serious reasons, and if the Chamber of Deputies and the Senate so decide, the performance of the functions (…) shall be vested in the Prime Minister and the President of the Chamber of Deputies (…) If the office of President of the Republic becomes vacant at a time when the Chamber of Deputies is dissolved, the exercise of those functions shall be vested in the President of the Senate."*

The Constitution does not specify the notion of serious reasons for incapability. The doctrine often refers to the historical case of President Ludvík Svoboda, who was deprived of office for inability to exercise it because of serious health reasons, by the constitutional statute „Lex Svoboda" (Sládeček 2007; Sládeček 2016). The majority of doctrine states a health condition, such as serious illness or surgery, as a typical example of such a serious reason for incapability (Klíma 2005; Klíma 2009; Filip 2015; Herc 2016), and a long stay abroad, the capturing of the President by a foreign army or the President being a missing person, as less typical examples of such serious reasons of incapability (Klíma 2009; Filip 2015; Herc 2016).

Since Article 66 seeks to ensure the continuity in the performance of certain functions of the state entrusted to the office of the President, it follows from this that the nature of the serious reasons for incapability must be objective (Filip 2015; Herc 2016). If Article 66 is activated, the President can propose to the Constitutional Court to annul a resolution that activates Article 66. The Court would then assess if the serious reasons for incapability were given at the moment of adoption of such a resolution. Such a procedure is, however, limited by short deadlines. The President may submit such a proposal within 10 days of the adoption of a resolution, and the Constitutional Court has to decide on it within 15 days of receiving the proposal (§§ 109, 115 of the Constitutional Court Act).

2. Data Collection and Methodology

First of all, we present a dataset of all initiatives and considerations of instruments against the President. The data collection covered a period of 02. 02. 1993 – 08. 03. 2023, from the start of the mandate of Václav Havel, the first President of the Czech Republic, to the end of the second mandate of Miloš Zeman, the first to be elected directly. The first case was in 2001 and the last in 2023.

Considerations are all the cases when another constitutional official has publicly declared the intention to file a competence/constitutional lawsuit or to activate Article 66. The cases of consideration present those situations where a proposal was publicly discussed but ultimately not submitted to the Constitutional Court (CC). Initiatives, on the other hand, present all the cases where official filed lawsuits and the CC has already issued a decision. All data were collected from media articles.

We consider it important to re-examine the initiatives, even though they were already decided by the CC, to clarify whether there is a consensus among experts on the decisions. At the same time, in the cases regarding consideration, we create hypothetical situations without which the cases could not be judged. As our data collection showed, many cases of consideration did not become initiatives because the President of the Republic changed his mind on the issue that raised the case. To give an example – competence lawsuits are often considered when the President refuses to appoint a minister. But after some time, the President often relents. At the time of his unclear position, a competence lawsuit was considered. If respondents were asked how they would decide the case based on the facts, i.e., when the President backed down, the question would often be irrelevant. Since the President had conceded, the subject matter of the lawsuit disappeared. We, therefore, create hypothetical situations in which the President has not conceded. We are interested in whether these particular cases would be successful. We do not need to complete these hypothetical situations for invocations because the act of the President in question simply reached the constitutional court (i.e., the President likely did not retreat from his position). At the same time, we also ask respondents for their assessment in relation to the law in force at the time. Given that in 2013 the possibility of filing a constitutional lawsuit for a gross violation of the Constitution was added, in cases of constitutional lawsuits before 2013 we only ask about a constitutional lawsuit for treason (there were not any other options). The methodological shortcoming of this model is that we create a hypothetical situation that assumes that only the dispute will be part of a given constitutional lawsuit/competence lawsuit. But it is of course crucial to what the constitutional lawsuit would look like, what would be included in it, how it would be written, etc. Respondents were thus put in a „what if" situation that may have had some

influence on the assessment of the cases. In the absence of drafts or other documents, we, therefore, proceed on the assumption that the content of the constitutional lawsuit would be only the dispute referred to or the disputes that have arisen.

With all the data that will be presented in the next chapter, we prepared a questionnaire in Czech for semi-structured interviews. We chose semi-structured interviews for two main reasons. First of all, thanks to the chosen methodology, the article aims to break away from classical doctrinal legal research that presents the personal opinions of the authors. We believe the results of such a paper will be of higher relevance as it seeks to summarize the views of the most relevant academics in the country. Secondly, rigorous methodology makes it possible to deal only with the factual aspect (merit) of the cases in question. Despite these advantages, this paper is limited only to the information that is publicly known. It's possible that there were proposals for legal lawsuits behind the scenes that didn't end up reaching the public.

Interviews were conducted with constitutional experts who meet the following conditions: 1) have a minimum of 3 years post-doc or higher degree, 2) have authored academic publications related to the President of the Czech Republic, and 3) are academically active or actively practising a legal profession. The selection of experts is diverse in terms of profession, gender, and workplace. We have collected answers from 6 respondents meeting those criteria. Our aim was to select a smaller number of experts focusing on the specific issue of our study rather than a larger number of experts who would not be as knowledgeable on the issue. We chose to anonymize their names and use generic masculine for all their quotes. In the text, we have assigned a random number to each respondent. When quoting, we use e.g., "Respondent n. 1". First of all, the selected experts may include individuals who would not be legally able to participate publicly in such an exercise because of their profession. Secondly, most experts would not participate in such research without being anonymous, as many issues can be very politically sensitive and affect their jobs or careers (Smekal, Benák, Vyhnánek 2022: 1243). Regarding sample size selection, we took the path of stricter conditions for selecting experts, which also narrowed the total number of possible respondents. At the same time, we excluded from the selection of respondents active Constitutional Court Justices who could not comment on some cases at the time of the research for legal reasons (in theory, they could still be brought before the Constitutional Court).

Semi-structured interviews consist of a list of 17 questions with a detailed description of the facts of the case and a scale for the final assessment. There are two reasons why we created scales and questions for our interviews. Scales will help us assess whether the experts would be upheld or not in the particular case. We believe it is impossible to simply reduce legal cases to a binary division between „yes, I would uphold the claim" and „no, I would not uphold the claim". That's why we chose the typical five-level Likert scale that allows us to examine the intensity of experts' opinions by choosing one of those five options: 1) strongly disagree, 2) disagree, 3) neither agree nor disagree, 4) agree, and 5) strongly agree. Given the potential complexity, difficulty, or lack of clarity of the particular cases, we have decided to include the possibility of answering „neither agree nor disagree" (Trochim, Donnely, Arorar 2016: 153-155). The method of semi-structured interviews allowed us to examine the arguments behind their opinions (Disman 2002: 140-166; Guthrie 2010: 120-122; Smekal et al. 2021: 181; Smekal, Benák, Vyhnánek 2022: 1242-1243; Havelková, Kosař, Urbániková 2022: 1108). It is

unclear where the experts will go in their arguments, so we leave open the space and opportunity to ask questions that we as researchers cannot prepare in advance.

Our study is limited due to 1) the small number of respondents, 2) the possibility of prior knowledge of the cases and the political stance of the respondents, but we assume that they do not take their political preferences into account in their academic activities, and 3) the possibility of available information about the cases, as it is possible that some cases did not reach the Constitutional Court for political reasons (which are not public).

3. Cases of Considerations and Initiatives in the Direction of Instruments Against the President

In the following section, we present summaries of all considerations and initiatives of the instruments against the presidents. We present the 16 collected cases in the order in which our respondents assessed them, except the case of consideration of constitutional and competence lawsuits against President Miloš Zeman in 2017 since both instruments were considered for the same conduct.

3.1 Constitutional Lawsuit

The first case is a consideration against President Václav Havel. In an interview with the news server Aktuálně.cz published in 2021, Vladimír Špidla, who served as Prime Minister from 2000 to 2004, said he was considering bringing a constitutional lawsuit against Havel for signing the "letter of eight" (Klézl 2021). The open letter, officially titled "*Europe and America Must Stand United*", was published by world newspapers at the end of January 2003. Its signatories, Havel and seven other European statesmen,[5] indirectly expressed their support for the intention of the United States to carry out a military intervention in Iraq. Špidla's government disagreed with this intention, among other reasons, because of the absence of a mandate from the United Nations for such an intervention. It also refused to join the "coalition of the willing", an informal coalition of states that supported the United States. Despite being informed of the government's opinion (Klézl 2021), Havel signed the letter.

The second case is an initiative against President Václav Klaus. The Senate brought the constitutional lawsuit in 2013, accusing Klaus of treason on five grounds: 1) Continued failure to sign the Lisbon Treaty amendment on the new eurozone rescue fund; 2) Failure to appoint the Justices of the Constitutional Court and its Vice-President from among its Justices in the year preceding the bringing of the lawsuit; 3) Granting amnesty with abolitionist article II on New Year's Day 2013; 4) Continued failure to decide on the proposal to appoint Petr Langer as a judge, despite the Supreme Administrative Court's decision confirming Langer met all necessary statutory conditions (SAC 2007); and 5) Delay in signing the Additional Protocol to the European Social Charter from 2008 to 2012 (Senate 2013). The Constitutional Court stopped the proceedings on the lawsuit, given the upcoming expiration of the President's second mandate (CC 2013).

The third case is a consideration against President Miloš Zeman. In a petition addressed to the Senate, 11,000 citizens demanded the Senate file a lawsuit against Zeman (Lidovky 2015). According to the petitioners, Zeman committed treason in connection with

[5] Havel's fellow signatories were José María Aznar, José Manuel Barroso, Silvio Berlusconi, Tony Blair, Péter Medgyessy, Leszek Miller, Anders Fogh Rasmussen.

his statements on the Russian-Ukrainian conflict. Zeman had described the Russian annexation of Crimea as a *fait accompli* and had advised Ukraine to reach an agreement with Moscow and rejected the European Union's anti-Russian sanctions (Lidovky 2015). In this case, the Senate Committee on the Constitution and the Constitutional Law Committee of the Senate found no grounds for filing a constitutional lawsuit.

The fourth case is a consideration against President Miloš Zeman. Prime Minister Bohuslav Sobotka proposed to Zeman the dismissal of Andrej Babiš from the posts of 1st Deputy Prime Minister and Minister of Finance in the spring of 2017. Zeman postponed the dismissal. A group of senators prepared a draft constitutional lawsuit and gave Zeman a deadline to dismiss Babiš. At the same time, Sobotka was preparing a competence lawsuit. When the deadline expired, 27 senators signed the lawsuit. Zeman subsequently removed Babiš from his posts and appointed Richard Brabec to the post of 1st Deputy Prime Minister and Ivan Pilný to the post of Minister of Finance (Aktuálně 2017).

The fifth case is a consideration against President Miloš Zeman. In May 2018, a group of senators from the Mayors and Independents club in the Senate began to prepare documents for a lawsuit against Zeman (Lidovky 2018). According to them, Zeman committed treason through his statements about the production of the nerve agent Novichok in the Czech Republic. Specifically, he was to publicly state that the Novichok with which Russian agents attempted to kill their former colleague Sergei Skripal and his daughter in Salisbury, UK, was produced and tested in the Czech Republic. After a media storm lasting several days, experts ruled out the possibility that the substance used to attack the Skripals was manufactured in the Czech Republic. The Senate Committee on Foreign Affairs, Defence, and Security assessed Zeman‘s statements as false and threatening the security interests of the Czech Republic (ČTK 2018).

The sixth case is a consideration against President Miloš Zeman. The Senate brought it in July 2019, accusing Zeman of gross breach of the Constitution on eight grounds (PSP 2019a): 1) Appointment of Jiří Rusnok as Prime Minister and of other members of the government in 2013; 2) Organizing a meeting in Lány after the 2013 legislative election; 3) Refusal to accept the resignation of the government of Bohuslav Sobotka as the resignation of the entire government in 2017; 4) Delaying the appointment of the new government‘s Prime Minister and the appointment of other government members after the resignation of Andrej Babiš in 2018; 5) Refusal to appoint Miroslav Poche as Minister of Foreign Affairs in 2018; 6) Exerting pressure on the President of the Supreme Administrative Court, Josef Baxa, to influence the decision in a specific case in 2018; 7) Long-lasting refusal to remove Antonín Staňek from the Minister of Culture post while refusing to appoint Michal Šmarda to this post; and 8) Partial acts against the legal order of the Czech Republic (PSP 2019a). The Chamber of Deputies did not consent to the lawsuit (PSP 2019b).

Table 1: Constitutional lawsuit considerations and initiatives

No.	President	Year	Stage	Type	Summary
1	Václav Havel	2003	C	T	Signing the so-called letter of eight
2	Václav Klaus	2013	I	T	A constitutional lawsuit based on 5 main grounds
3	Miloš Zeman	2015	C	T	Petitioners demand the Senate file a lawsuit regarding Zeman's statements on the Russian-Ukrainian conflict
4	Miloš Zeman	2017	C	G	Refusal to dismiss Andrej Babiš (1st Deputy Prime Minister and Minister of Finance)
5	Miloš Zeman	2018	C	T	Miloš Zeman's statement about Novichok
6	Miloš Zeman	2019	C	G	A constitutional lawsuit based on 8 main grounds

Note: Stage: I = initiative, C = consideration. Type: T = constitutional lawsuit for treason, G = constitutional lawsuit for gross violation of the constitution.
Source: *authors.*

3.2 Competence Lawsuit

The first case is the initiative against President Václav Havel. Prime Minister Miloš Zeman brought a competence lawsuit to the Constitutional Court regarding the appointment of Zdeněk Tůma as Governor of the Czech National Bank. The Court, however, ruled in favour of Havel. According to the Court, a constitutional convention, according to which the Prime Minister's countersignature is not required when appointing a central bank Governor, had arisen and such appointment is within the exclusive competence of the President of the Czech Republic (CC 14/01).

The second case was an initiative against President Václav Klaus. The President of the Supreme Court, Iva Brožová, brought a competence lawsuit to the Constitutional Court regarding the appointment of the Vice-President of the Supreme Court, Jaroslav Bureš. The Court ruled in favour of Brožová. According to it, the President is competent to issue a decision on appointing the Vice-President of the Court from among the judges assigned to the Supreme Court by a valid decision of the Minister of Justice after the prior consent of the President of the Supreme Court (CC 87/06).

The third case was a consideration against President Miloš Zeman. After the 2013 parliamentary elections, Zeman stated that he would not appoint a person with a positive lustration certificate[6] to a ministerial position. Later, he made Babiš's appointment conditional on approving the new service law in the first reading. During the negotiations on the composition of the government of the Social Democrats (ČSSD), Babiš's ANO, and the Christian Democrats (KDU-ČSL), Zeman expressed his reservations about other possible candidates, namely: M. Stropnický (lack of expertise), J. Dienstbier (potential candidacy for the European Parliament), M. Chovanec ("dubious university studies") and J. Mládek (not having obtained a security clearance in the past). ČSSD Chairman B. Sobotka said that in case of problems with the appointment of some members of the government, filing a competence

[6] Lies in the fact that leading positions in the public administration, the judiciary, the army, the police, and the public media can only be held by those who were not members or collaborators of the Communist-era Communist-era state security services (StB), or or functionaries of the Communist Party of Czechoslovakia at the district secretary level or higher. A positive lustration certificate indicates that the person was an StB collaborator or officer, and, therefore, is prohibited from holding any of the protected positions.

lawsuit against Zeman was not ruled out (Maňour, Pfeifferová, Havlová 2014). Sobotka was appointed Prime Minister in the middle of January 2014 by Zeman, who subsequently held meetings with all the candidates for ministers, whom he later appointed.

The fourth case was a consideration against President Miloš Zeman. Prime Minister Bohuslav Sobotka proposed to Zeman that he dismiss Andrej Babiš from the posts of 1st Deputy Prime Minister and Minister of Finance in the spring of 2017. Zeman postponed the dismissal. Sobotka stated he was ready to file a competence lawsuit against Zeman if he did not dismiss Babiš upon his return from China (Zpěváčková 2017). Zeman subsequently removed Babiš from his posts and appointed Richard Brabec to the post of 1st Deputy Prime Minister and Ivan Pilný to the post of Minister of Finance (Aktuálně 2017).

The fifth case was a consideration against President Miloš Zeman in 2018. Prime Minister Andrej Babiš nominated Miroslav Poche (ČSSD) as Minister of Foreign Affairs. Zeman announced he would refuse to appoint Poche because of his positive attitude towards refugees and allegations of corruption. The ČSSD proposed filing a competence lawsuit (Zpěváčková 2018). Babiš eventually relented, put Jan Hamáček (ČSSD) temporarily in charge of the Ministry of Foreign Affairs, and later nominated Tomáš Petříček (ČSSD) to be appointed minister in place of Poche.

The sixth case was a consideration against President Miloš Zeman. Zeman announced that he would refuse to appoint Miroslav Šmarda (ČSSD) as Minister of Culture because he had no directly relevant experience and, therefore, was not professionally competent to hold that office. The ČSSD proposed bringing a competence lawsuit (ČTK 2019). Prime Minister Andrej Babiš eventually gave in to Zeman, and instead nominated Lubomír Zaorálek (ČSSD), who became Minister of Culture.

The seventh case was a consideration against President Miloš Zeman. After the 2021 legislative election, Zeman refused to appoint Jan Lipavský (Pirate Party) as Minister of Foreign Affairs and published four reasons on the official website of the Czech President (Hrad 2021): 1) Lipavský's low academic qualifications, holding only a bachelor's degree; 2) Lipavský's distance from the Visegrad Four; 3) Lipavský's attitude towards Israel; 4) Lipavský's proposal that the Sudeten German Days should be held in the Czech Republic (Hrad 2021). Prime Minister Petr Fiala (Civic Democrats – ODS) announced that if Zeman did not appoint all the new government ministers, he would have to file a competence lawsuit (iRozhlas 2021b). President Zeman backed down and eventually appointed Lipavský as a Minister of Foreign Affairs.

The eighth case was the consideration against President Miloš Zeman. In December 2022, Prime Minister Petr Fiala proposed to Miloš Zeman that Petr Hladík (KDU-ČSL) be appointed Minister of the Environment. In January 2023, Zeman refused to appoint Hladík for four reasons: 1) Lack of education in the field; 2) His investigation in the Brno flats criminal case; 3) Publication of the advertisement in the party press; 4) the President's possibility of not appointing the candidate a minister, arising from the Constitution. Fiala and the KDU-ČSL party leadership insisted on the appointment. Fiala mentioned the possibility of filing a competence lawsuit while noting any dispute would take many months to resolve (Tran 2023). Hladík was eventually appointed minister by the next president, Petr Pavel (iRozhlas 2023).

Table 2: Competence lawsuit considerations and initiatives

No.	President	Year	Stage	Summary
7	Václav Havel	2001	I	Dispute over the appointment of governor of Czech National Bank.
8	Václav Klaus	2007	I	Dispute over the appointment of the Deputy President of the Supreme Court
9	Miloš Zeman	2014	C	Dispute over the appointment of ministers nominated by Prime Minister Bohuslav Sobotka
10*	Miloš Zeman	2017	C	Refusal to dismiss Andrej Babiš (1st Deputy Prime Minister and Minister of Finance)
11	Miloš Zeman	2018	C	Refusal to appoint Miroslav Poche as Minister of Foreign Affairs
12	Miloš Zeman	2019	C	Refusal to appoint Miroslav Šmarda as Minister of Culture
13	Miloš Zeman	2021	C	Objections to the appointment of Jan Lipavský as Minister of Foreign Affairs
14	Miloš Zeman	2023	C	Refusal to appoint Petr Hladík as Minister of the Environment

Note: * This case was already mentioned in the chapter above. A competence lawsuit was considered by Prime Minister Bohuslav Sobotka because President Miloš Zeman refused at first to dismiss Minister of Finance Andrej Babiš.
I = initiative, C = consideration.
Source: *authors.*

3.3 Activation of Article 66

The first case is a consideration against President Miloš Zeman. The activation of Article 66 was considered in 2021 in connection with the Vrbětice case. In 2014, two ammunition depots in the village of Vrbětice exploded, leaving two people dead. According to later findings from Czech security services, the explosions were orchestrated by the same Russian military intelligence (GRU) officers suspected of poisoning the Skripals in Salisbury, UK, in 2018. The report of Senator Pavel Fischer (independent) listed seven reasons to activate Article 66 (Fischer 2021): 1) Zeman's inability to orient himself in space and time; 2) Zeman's inability to interpret events and take into account their significance and assess priorities; 3) Zeman's inability to understand the elementary rules of conduct and interpret them in compliance with the Constitution; 4) Zeman's inability to subordinate his statements and behaviour to his constitutional oath; 5) Zeman's inability to subordinate his statements and behaviour to the fundamental value orientation of the Czech Republic; 6) Zeman's inability to subordinate his statements and conduct to his international obligations; 7) Zeman's inability to subordinate his statements and behaviour to the requirements of international law (Fischer 2021).

The second case is a consideration against President Miloš Zeman. After the legislative election in October 2021, Zeman was hospitalized in the intensive care unit (ICU) of the Central Military Hospital. For a certain time, his health condition was not known. Senators, especially members of the Senate's Standing Committee on the Constitution and Parliamentary Procedures, started discussing the possible activation of Article 66. President of the Senate Miloš Vystrčil then requested the hospital provide information on Zeman's ability to exercise his presidential function. According to the hospital's statement, Zeman could not perform any duties, due to health reasons (Ochodková 2021). Subsequently, the Senate's Standing Committee on the Constitution and Parliamentary Procedures issued an opinion that the conditions for activating Article 66 were met (Senate 2021a). However, after Zeman

was transferred to a standard bed in November 2021, the Senate Committee reconsidered its position, stating that if Zeman were able to exercise at least significant presidential powers, it would not start the procedure of activating Article 66 (Senate 2021b).

Also, we divided the second case of activation of Article 66 in two questions for our respondents, anticipating that their opinions would probably vary along with the presented chronology. Firstly, we asked our respondents if they would have activated Article 66 before Zeman was transferred from the ICU to a standard bed, when the medical report was issued later. Secondly, we ask them if their opinion changed after the transfer.

Table 3: Article 66 Considerations and Initiatives

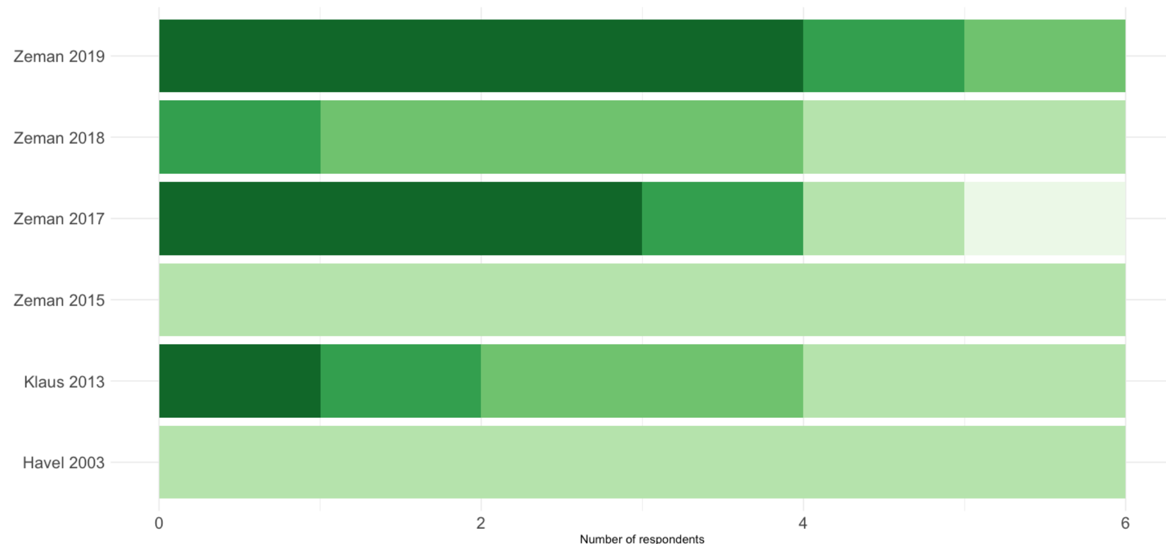
No.	President	Year	Stage	Summary
15	Miloš Zeman	2021	C	Report from Senator Pavel Fischer
16	Miloš Zeman	2021	C	Hospitalization of President Zeman after the 2021 general elections (October)

Note: I = initiative, C = consideration.
Source*: authors.*

4. Results

Semi-structured interviews with constitutional lawyers produced results about cases of consideration and initiatives in which they asserted that conditions for granting the claims could be met. It also became clear through their answers that many cases remain contentious. There was a clear consensus on cases of a constitutional lawsuit for treason for statements made by the President of the Republic where the lawsuit would not succeed. On the other hand, in competence lawsuits for the appointment of ministers, most respondents would uphold the lawsuit (i.e., believe that the President of the Republic should have been obliged to appoint the ministers).

4.1 Constitutional Lawsuits



Source*: authors.*

The first and most clear result is that considerations for a constitutional lawsuit from 2003, 2015, and 2018 didn't have a chance of success. All those mentioned considerations have two things in common. Firstly, the main thing contested in those cases was some kind of a statement (or, in Havel's case, signing a letter supporting the US invasion of Iraq in 2003) of the President of the Czech Republic. Secondly, all those cases are considered constitutional lawsuits for treason. Respondents agreed that all those cases lacked a legal basis in the Constitution. The main problem is that a statement by the President has no legal implications. Respondent n. 2 stated: "*Undoubtedly, I would not have upheld the constitutional lawsuit in this case (Havel 2003). Signing a letter of this type does not constitute treason. Treason is clearly defined... I can imagine a situation in which the President would commit it, e.g., a situation in which after a certain statement by the president (e.g., support for a hostile state), neighbouring states would start withdrawing their ambassadors. What needs to be considered is the impact of the statement. It seems to me that these are mostly political statements. We don't have to agree with them, but that doesn't mean it's treason.*" The only case that differed from this trio was the one in 2018. The problem with the statement was that President Miloš Zeman gave false information about the alleged creation of Novichok nerve agent nerve agent in the Czech Republic, later used by Russian agents in an attempt to kill Sergei Skripal. The Czech security services claimed otherwise. Only one of our respondents would uphold the lawsuit here. In the case in question, respondent n. 1 stated the following: "*The question is whether we judge a deliberate lie to be treason. The point is that the security of the state is at stake here, and the question is whether it could be subsumed under the sovereignty and integrality of the republic. It seems to me that I would uphold the lawsuit here. But I mean, it's more of a feeling. I don't think I can come up with a long argument here. I think it runs up against the security interests of the Czech Republic.*" Compared to the first two cases, others here also perceived differences and therefore opted for the 'rather disagree' option than the 'strongly disagree' one.

Secondly, constitutional lawsuits in 2017 and 2019 would be likely to succeed. The situation in 2017 concerns the dismissal of Andrej Babiš as 1st Deputy Prime Minister and Finance Minister. The President of the Republic refused to dismiss Andrej Babiš. However, the Constitution clearly defines in Article 74 that "*The President of the Republic shall dismiss a member of the Government if the Prime Minister so proposes.*" A clear interpretation leads to the fact that here the President does not have the right to refuse the dismissal since the Prime Minister is the head of government and decides who will be part of the cabinet. However, an interesting constitutional-legal issue opens up here, namely the possibility of filing either a constitutional lawsuit for gross violation of the constitution or a competence lawsuit. In this case, a competence lawsuit could be brought by the Prime Minister seeking cooperation in the appointment. A constitutional lawsuit would lead to the end of the President's mandate and would have to be brought by the Senate. Respondent n. 2 stated: "*The first question is whether the Constitutional Court would consider a competence lawsuit to be a competence dispute (since this is a dispute in which you want the President just to co-sign). I would probably uphold the competence claim here. But if the President would not hear the Constitutional Court's decision in a competence lawsuit, only then would I file a Constitutional lawsuit. I don't think it's possible to file the lawsuits in reverse order. By the logic of things, it doesn't make much sense to me.*"

There is a clear preponderance in favour of upholding the constitutional lawsuit for gross violation of the Constitution in 2019. This result is all the more interesting when

the Chamber of Deputies could approve the lawsuit and file it to the Constitutional Court. However, they rejected it. There was agreement among most respondents not only on the assessment of the individual counts but also on their cumulative nature. Interestingly, though, each of them perceived differently the most relevant of the 8 points (see the sixth case in chapter 3.1.); on the other hand, there was consensus on the least serious point.

Table 5: The most and least relevant points of the constitutional lawsuit from 2019

Respondent number	Most relevant point	Least relevant point
1	refusal to accept the resignation of the government of Bohuslav Sobotka	organizing the meeting in Lány
2	*did not comment*	*did not comment*
3	delaying the appointment of the new government's Prime Minister in 2018	*did not comment*
4	long-lasting refusal to remove Antonín Staňek from the Minister of Culture	organizing the meeting in Lány
5	exerting pressure on the President of the Supreme Administrative Court Josef Baxa to influence the decision	organizing the meeting in Lány
6	delaying the appointment of the new government's Prime Minister in 2018	organizing the meeting in Lány

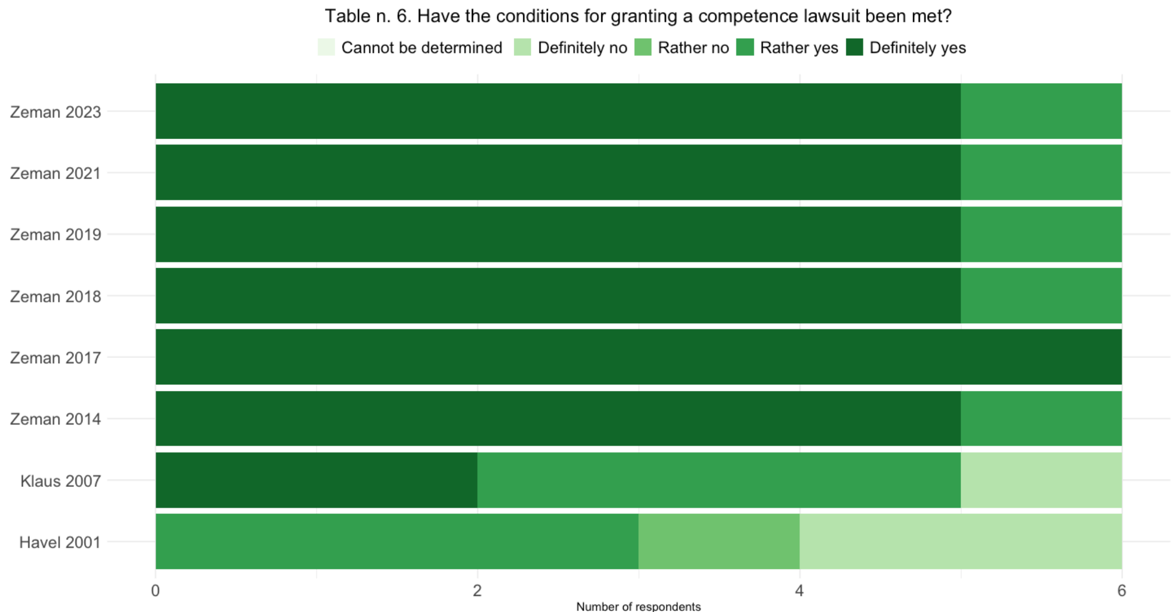
Source*: authors.*

Table 5 says the following: constitutional lawyers simply recognize a case that is politically controversial but has no legal support, similar to the above-mentioned cases of political statements. Organizing the meeting in Lány was Miloš Zeman's attempt at a „coup" in his former political party – the Czech Social Democrats. Although this is a very controversial act from a political point of view – in 2013, the president met with some members of the Czech Social Democrats with whom he wanted to overthrow the chairman Bohuslav Sobotka[7] – there are no grounds for filing a constitutional lawsuit. However, when it comes to controversial acts concerning the exercise of powers, everyone sees the intensity according to their professional perspective.

The last case left for discussion is the constitutional lawsuit against President Klaus in 2013. As mentioned, the Constitutional Court rejected it due to procedural circumstances. However, most of the panel agreed (in a ratio of 4:2) that this lawsuit had no chance of success in a substantive hearing. In summary, the respondents' reasoning was based mainly on the argument that the lawsuit does not fit within the definition of a constitutional lawsuit of treason. At that time, it was not possible to file a lawsuit for gross violations of the Constitution, which many respondents agree would be more fitting for this lawsuit. On the other hand, respondent n. 4, who would uphold the lawsuit, argued as follows: "*For me personally, the biggest role is the accumulation of those points in the lawsuit. Each point alone would not pass, but if we look at it cumulatively, I would uphold the lawsuit.*"

[7] Bohuslav Sobotka subsequently retained his position.

4.2 Competence Lawsuit



***Source**: authors.*

Regarding the consideration of competence lawsuits, there was a clear consensus among respondents that they would uphold competence lawsuits in a dispute over the obligation of the President to appoint and dismiss ministers as required by the Prime Minister. There was consensus that the President could express some reservations to the Prime Minister about ministerial candidates. Respondent n. 1 said the President could somehow correct the Prime Minister's intention („*Do you want the one who wrote her thesis on rabbit breeding as a minister? Consider it.*"). Respondent n. 3 said he agreed with reservations about candidates with "questionable education", and respondent n. 5 would understand the President's reservations about a candidate under criminal prosecution. Despite these reservations, however, all respondents stressed that it is the Prime Minister, not the President, who is responsible for selecting the Cabinet members, and therefore it is up to him to decide who should be part of it. „*The President is not the master of the government*", said respondent n. 1. If President, respondent n. 6 would have some reservations about appointing a minor as a minister or appointing artificial intelligence ("*it should be a flesh and blood human being*").[8] Despite this consensus, however, we have to underscore that only two respondents of six said that the only case where the President was not required (and according to one of those two, was not even allowed) to appoint a minister was that of Andrej Babiš in 2013, due to a legal obstacle (see the third case in chapter 3.2). The two respondents pointed out that even ministers were required to have a negative lustration certificate under the then-existing Lustration Act, and Babiš, who did not have one, should, therefore, not be appointed a minister. Four other respondents did not recall this condition and considered the President's reservations about all ministerial candidates altogether.

With regard to the cases of the two competence lawsuit initiatives that have been considered by the Constitutional Court in the past, respondents agreed (by a ratio of 5:1).

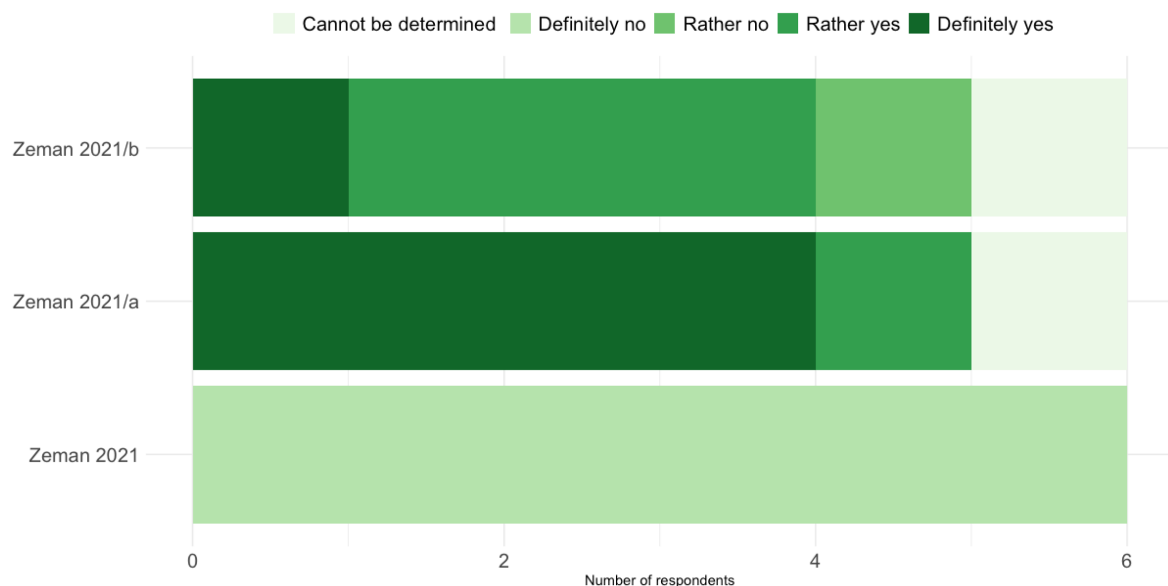
[8] However, he would not have any objections about appointing a cannibal.

On the other hand, no consensus was reached (by a ratio of 3:3) in the case of the competence dispute concerning the appointment of the Governor of the Czech National Bank.

In the case of Brožová, most respondents pointed to the complexity and problem of the situation, which had to be resolved in some way. Respondent n. 2 did not have a problem with the result of the case; however, he stated that "*it's rather questionable whether it should have been rejected*". Respondent n. 3 would also "*rather consider whether it was a competence dispute or not*".

In the case of the competence dispute concerning the appointment of the Governor of the Czech National Bank, the consensus of whether they would side with the President President or with the Prime Minister wasn't reached. Respondent n. 1, who would dismiss the competence suit, said: "*I don't see any support in the Constitution for it being a counter-signatory power*." Respondent n. 4, who would dismiss it as well, claimed "*the function of governor and deputy governor was a designation of a position within the board without any basis in quality. It seemed to me that they were more just functional descriptions*." Respondents who would side with the Prime Minister argued primarily that no constitutional convention was set at that time. For example, respondent n. 3 said: "*I don't think there was a constitutional convention. The practice was too fragmented and short-lived. It was a straw that they were grasping at like a drowning man. I didn't find it convincing*". Respondent n. 6 said: "*In my opinion, there was no constitutional convention given. There was a contradictory practice*." However, even respondents who would have upheld the Prime Minister's competence lawsuit at the time would not have tried to change it. Respondent n. 6 said he respects "*that after more than 20 years it's a settled matter*" and that he "*wouldn't try to change that opinion anymore*".

4.3 Article 66



***Source**: authors.*

Concerning the cases of the consideration of activation of Article 66, respondents agreed unanimously that in the first case of consideration, the one related to Senator Fischer's report, the conditions for its activation were not present (''strongly disagree'). The respondents' views are thus consistent with the doctrine that the article is connected to the objective nature of reasons for inability rather than subjective ones. All but one respondent, who answered only briefly that the conditions were not given, pointed out that the reasons stated in the report were more suitable for bringing a constitutional lawsuit under Article 65. Respondent n. 1 said: "Zeman's action was that he wanted to harm. His sentences were fine; we just disagreed with their content. They conflicted with the security interests of the republic; I could see it as treason." Respondent n. 2 explained the difference between these articles Article 65 "is a question of what to do and what not to do", hence "the question of will or normativity", and Article 66 "is a question whether the President is or is not, whether he's lost or his cognitive abilities have been lost," hence "a question of ability". Respondent n. 4 stated the report "was based on an insufficient distinction between these two articles"; respondent n. 5 similarly said that "some of the reasons are to be used for a constitutional lawsuit." Respondent n. 6 characterized the report as a "political polemic" and stated that "this is what a constitutional lawsuit is for". From these answers, it is, therefore, possible to claim that if Article 66 was eventually activated on the grounds of the report and the President subsequently turned to the Constitutional Court for protection, the Court would not have upheld such activation.

In the second case of the consideration of the activation of Article 66, concerning the poor health (incapacity) of President Zeman, the majority of respondents (in a ratio of 5:1) agreed on the existence of reasons for the activation of Article 66 before the transfer of Zeman to a standard bed, respectively after the release of the medical report of the Central Military Hospital. Their agreement on the existence of such reasons after Zeman's transfer to a standard bed however was not that strong.

In the first situation, most respondents reasoned that Article 66 was meant to be used for similar situations. Respondent n. 1 said: „*This was precisely the situation Article 66 anticipates. Zeman was unable to communicate with the public.*" Respondent n. 3 stated: "*In principle, it was right to consider and take steps to activate Article 66 before Zeman's transfer to the standard bed. The Senate committee's steps were right; I thought about it in a similar way.*" An interesting difference, however, exists between some respondents on how carefully they would proceed in seeking to activate the article. For example, respondent n. 3 would be cautious when assessing the situation without sufficient information about Zeman's condition. He considered Chancellor Mynář keeping secret information on Zeman's health unfortunate but not sufficient for deciding on activation of Article 66. He stated: „*I would write a letter to the hospital, even before the Senate committee eventually did, to provide provide info on whether he is able to stay awake for half an hour and sign 20 papers, or whether he can read 10 pages of text without it slowly killing him*." Respondent n. 2 held a similar view, saying that "*Article 66 is not linked to whether or not someone provides information about the President; that should not be the decisive argument*". Respondent n. 6 on the other hand mentioned that a "*lack of information creates a presumption of inability*" and that he "*would probably write a letter to Mynář and inform him about the intention to activate the articl*e."

In the second situation, even though most respondents agreed on the existence of the reasons for the activation of the article (in a ratio of 4:2), the reasoning of most

respondents implied a certain caution, pointing to the sensitivity of such a decision. Respondent n. 4 said that "*the mechanism is technical, but it has a political context*; *you can have demonstrations…they are kidnapping our president, eliminating our only support*". Respondent n. 3 said he would consider whether to refine the Constitution since it could be questionable if serious reasons of incapacity were given if the "*President was able to receive visitors in a hospital or to sign some papers.*" And, for example, the arguments of respondents n. 1 and n. 5 pointed to the need to consider the gravity of the medical condition of the President, such as the length of anticipated stay in hospital or the health prognosis.

5. Discussion

Taking a step back from the data presented, it seems important to discuss the following aspects of the issue under investigation as well as the research design itself.

First, it is important to emphasize here that although the respondents did not always agree on how to assess individual cases, their reasoning was always based on legal assessment. Respondents were unanimous in distinguishing whether a certain consideration or initiative against the President had a legal basis or whether it was just a disagreement with his political actions. This can best be illustrated by assessing the relevance of individual points of the constitutional action against President Zeman in 2019 (see table n.5). Respondents assessed the political meeting in Lány as clearly a political step of the President, unproblematic in terms of constitutionality. Similarly, President Klaus's amnesty, although respondents agreed that it was perceived as problematic politically, was unproblematic constitutionally. Likewise, the case of the first consideration of activation of Article 66, based on Senator Fischer's report, was assessed as a political move with no real legal relevance to the use of the specific article. Hence, the key to the success of any of the three instruments is to first consider the purpose of each. Where the activation of Article 66 will seek to substitute for a constitutional action, there is no chance of success.

Secondly, there is no longer anything to wait for in the case of competence actions concerning the appointment or dismissal of ministers. The clear consensus among respondents was that the final decision is the responsibility of the Prime Minister, not the President, and the issue should be clarified by the Constitutional Court at the earliest possibility. The filing of such a competence lawsuit is important not only because it will prevent delays in the formation of governments in the future but also for the success of a possible constitutional lawsuit for a gross violation of the constitutional order. At present, it is not clear – and the lack of consensus among respondents confirms this – whether a constitutional lawsuit brought against the President over problems with the appointment or dismissal of ministers would be successful in the absence of a previous decision of the Constitutional Court on this issue based on a competence lawsuit.

Thirdly, even after three decades of Czech constitutionalism, some issues have not been fully resolved, and only events of recent years have shown the need to clarify them. This applies not only to the aforementioned competence lawsuit but also to the more subtle issues of Article 66. How serious must the President's health be? How long must he be hospitalized? How serious must his prognosis be? Respondents' views differ. Hasty activation, or just the consideration of activation, of an article, can be perceived as using a tool against a political opponent. Delayed activation, on the other hand, can lead to a slowdown of the constitutional system. An important point with which we agree was made by one

of the respondents – the temporary exercise of powers by another constitutional actor should be considered not only in the case of the President. The possible inability of the Prime Minister to exercise his powers could not only slow down a constitutional system but even paralyze it. Yet the Constitution considers only the case of the President.

We make a certain incentive at the end of this section. Since our research has only examined the opinions of constitutional lawyers, we believe that it would be beneficial to conduct the semi-interviews with political scientists as well. We think that political scientists could provide a different perspective on the issue, and possibly greater consideration of the relationships between constitutional actors as an extra-legal factor. Also, political scientists could bring a deeper explanation of why Prime Ministers Ministers often did not file competence lawsuits. In addition, they could further explain the relations between the constitutional actors in the political sense and thereby help us better understand each case of a dispute.

Conclusion

There are three instruments in how political actors can deal with a President who is not exercising his constitutional powers properly in the Czech Republic — the constitutional lawsuit, competence lawsuit, and activation of Article 66. Every instrument leads to a different ending — a successful constitutional lawsuit can, by a ruling of the Constitutional Court, revoke the mandate of the President. A successful competence lawsuit can end in the Constitutional Court‘s ruling to force the President to act in a certain way, and activation of Article 66 may divide the President‘s powers between the Prime Minister and the President of the Chamber of Deputies or the President of the Senate due to his temporary incapacity.

The aim of this paper was to collect and evaluate the cases of initiatives and considerations of constitutional and competence lawsuits and the activation of Article 66. Our dataset presents 16 cases of instruments against the President, including the period from 02. 02. 1993 to 08. 03. 2023. Evaluation of those cases was done by semi-structured interviews with legal experts (N=6) in the field of constitutional law. Our research came to the following conclusions.

Firstly, presidential powers are generally used more broadly in the Czech Republic because political actors often do not file constitutional lawsuits against the President due to political reasons or because there were not enough votes in the Chamber of Deputies to do so. In many cases, the lawsuit would be most likely successful. It is impossible to be precise, as everything in reality depends on how the lawyers would draft the lawsuit. However, from a factual point of view, there was a consensus among the experts about the likely success of many competence lawsuit, especially as concerns the era of Miloš Zeman where the cases involved the non-appointment of ministers.

Secondly, our research revealed cases where constitutional lawsuits were brought more for political reasons but had no real legal basis, i.e., cases stemming from controversial statements by the President. The constitutional lawsuit for treason, which was considered in those cases, is defined in the Constitution as a lawsuit directed against the sovereignty and integrality of the Republic as well as its democratic order. However, this definition was not fulfilled in either of the cases cited.

Thirdly, Article 66 primarily focuses on the health condition of the President. This instrument should be activated when the President is temporarily or permanently

unable to perform his duties. The reason may be, for example, death or sudden hospitalization during a period when it is necessary for the President to exercise his powers. However, this instrument is not designed for situations where parliamentary actors want to deprive the President of his powers because they believe he is not in his right mind but have no relevant evidence.

Fourthly, in the cases of the appointment of the governor and vice-governor of the Czech National Bank, the interviewed respondents were evenly divided. Three would have decided as the Constitutional Court did 22 years ago and three would have decided otherwise. It is interesting that even the Constitutional Court decision at that time caused many controversies, and the decision itself contains a strong dissenting opinion, which largely coincides with the arguments of our respondents, who were also in favour of granting the lawsuit. It turns out that in some cases, there is an argument in the legal world for both sides, and it is impossible to say unequivocally which view is correct. In such cases, the opinion of the democratic majority prevails.

We make certain incentives for future research. Since our paper has only examined the opinions of constitutional lawyers, we believe that it would be beneficial to conduct the semi-interviews with political scientists as well. We think that political scientists could provide different perspectives on the issue, and possibly greater consideration of the relationships between constitutional actors as an extra-legal factor. Also, political scientists could bring a deeper explanation of why Prime Ministers often did not file competence lawsuits. In addition, they could further explain the relations between the constitutional actors in the political sense and thereby help us better understand each case of a dispute.

In concluding, we would like to underscore the unmissable finding of this work. Many cases directed against President Miloš Zeman would have a great chance of success before the Constitutional Court. Of the 16 cases of considerations and initiatives, 12 were from Miloš Zeman's presidency. The overall results showed that from those 12 cases, 10 would be upheld by the Constitutional Court. However, there was not enough political will to file the lawsuits and they remained only as a tool for political threats. In some cases, the President backed down, but in the vast majority of cases he managed to assert his (unconstitutional) position.

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