Anticipating the Role of the Czech Parliament as a Decision-maker in EU-affaires.

By Jiri Zemanek *

1. Seen from the Czech perspective, a country applying for membership in the European Union, the European Council in Nice 2000 was a satisfaction. Saying this, I do not refer primarily to the common position to be adopted by the Member States at the accession conferences as regards the distribution of seats at the European Parliament, the weighting of votes in the Council and composition of the Economic and Social Committee and the Committee of the Regions, agreed in "Declaration on the Enlargement", annexed in the Final Act of the Conference [Annex II]. The successful and early ratification of the Treaty of Nice by the Member States would be welcomed by the candidate countries as the completion of institutional reform of the Union, indispensable for the following accession of new members.

2. I wish to appreciate the consent of the Member States on "Declaration on the future of the Union" [Annex IV] which opens the way for a deeper and wider debate about the options of its development, encouraging discussions among representatives of national Parliaments, public opinion, academic bodies and other branches of civic society on the four issues, important for strengthening of democratic legitimacy of the Union and transparency moving it closer to its citizens.

3. Moreover, this process should not constitute any obstacle or additional precondition to the enlargement, as the candidates, which would have already concluded their accession negotiations, will be invited to join the Intergovernmental Conference 2004 as its participants (those, which could not reach this date, shall be invited as observers). This perspective is requiring from the Czech Republic to intensify and speed up its efforts in meeting standards and requirements of the membership, reinforcing supporters of European integration in their dispute with conservative Europhobes.

4. Taking the topic of our session – "The role of national Parliaments in the European architecture" – seriously, I should suggest the current outsider's position of candidate countries. First, they are faced with the need of democratic legitimisation of transfer of their sovereign powers in specified fields to the European Community, the challenge, the founding members had never been confronted with, at least until the ratification of the Maastricht Treaty on European Union. Let's take two uneasy circumstances into consideration: National Parliaments in the former Soviet-bloc countries of the Central and Eastern Europe re-acquired the position of independent constitutional bodies only a few years ago. Since that time they used to practice their law-making capacity enjoying a big portion of self-confidence, even if operating not rarely in a turbulent political environment. It is difficult for Parliaments to resign again to a large extent and with an irrevocable effect on their powers, without any direct and equivalent compensation of the loss of influence caused by the shift in balance of competencies in favour of the executive branch of the Government. Therefore, they will request guarantees of controlling potential they could exercise towards the Cabinet. Otherwise, they would feel frustrated.

The scope of such a transfer of powers has increased much since the pre- Maastricht era and became evolving in nature after recent enforcements of the integration dynamic. Clearing of distribution of competencies between the Union and its Member States as well as approaching constitutionalization of the Union, accompanying the expected extension of the "Community method" into the second and third pillars would be supportive in this respect, making the Union more accountable and predictable in the future.

5. The constitutional debate that had been running in the Czech Republic in spring 1999 focused on the introduction of a "European integration clause" in the Constitution (1992). After the first draft Constitutional Amendment had been rejected by the Chamber of Deputies, the next one is expected to pass to the Czech Parliament in March 2001. According to this, "the powers of the constitutional authorities may be transferred by an international treaty on an international institution" (Art. l0a). Any determination of the scope or purpose of such a delegation was not drafted. There is not a test of the EU's keeping up the principles of democracy, rule of law, protection of human rights and subsidiarity by national authorities previewed in the draft as a pre-condition for recognition of the effects of the Community law by them.
The enforcement of this treaty should be subject to ratification by the two thirds (i.e., constitutional) majority voting in both parliamentary Chambers or by the nation-wide referendum (the respective draft Act on Referendum is pending now in the Parliament). Prior to the ratification, the Treaty on Accession – like any other important international agreement – could be submitted to the Czech Constitutional Court for an assessment of its compatibility with the Constitution (it should be a new capacity of the Constitutional Court). In case of a dissenting opinion, the ratification would be frustrated until the removal of the difference. The same constitutional procedure would be applied for all treaties in the future, extending the scope of powers delegated by the Member States to the EC/EU.

6. The draft provision on respecting the effects of the Community law by national authorities (Art. l0b) reads as follows: "The Constitution, statutes and all other legislation must be interpreted and applied in conformity with the membership obligations of the Czech republic in the international institution". It seems to be a sufficiently broad constitutional command for public administration and courts to recognise the principles of direct applicability, supremacy, indirect effect of not implemented directives, etc. of the Community law within the national legal system. On the other hand, the provision is lacking an express warning for the Parliament to avoid enactment of law provisions contrary to the Community law (legislative breach of membership obligations), being then null and void.

7. The last part of the draft "European integration clause" (Art. l0c) stipulates respective duties of the Cabinet connected with the exercise of the parliamentary control over its EU-related performance. The draft has been inspired by practice of some Member States: The information duty of the Cabinet vis-à-vis the Parliament has been more advanced in Scandinavian countries, United Kingdom and Germany, i.e. in the countries having well established traditions of parliamentary democracy and being net contributors to the Community budget. Therefore, their Parliaments might be motivated to insist on strong controlling powers. But, there is a general tendency of deepening parliamentary control powers in other Member States, too, as evidenced by the activities of national Parliaments in the "Conférence des organes specialisés dans les affaires communautaires" (COSAC) and by

the "Protocol on the role of national Parliaments in the European Union", annexed to the Amsterdam Treaty. The scope of the duty to inform should be limited (Czech draft) to the information relevant for establishment of a new legal obligation of the Czech Republic as Member State. The extent of accompanying explanations and reasoning, the degree of secrecy to be guaranteed and the time-table of selection of information and responding, reflecting the Community's calendar would be determined by an ordinary statute, implementing this provision of the Constitution (the Act on Mutual Co-operation between Chamber of Deputies, Senate and Cabinet is to be drafted soon).
Subsequently, the Act on Parliamentary Procedure should strengthen competencies of the Committee on European Integration in this process, restricting competencies of plenary session of both Chambers to a reasonable scope of the most important issues. The Act on Mutual Co-operation between Chamber of Deputies, Senate and Cabinet should rule out the force of opinions of the Parliament and the mandates based on them as binding for the Cabinet, i.e. for certain communicated coming legislation. The criterion for such distinction should be the expected way of implementation of the peace of Community legislation – by a statute of the Parliament or by a decree of the Cabinet or one if its Ministers. Doing this, we have to be aware of the experience of some Member States that practice of parliamentary control over the executive branch of the Government is more diversified than any a priori doctrine. The controlling powers of the Parliament must be integrated in the specific national institutional environment and cultivated carefully.

8. Working mechanism of the parliamentary control over the Cabinet activities in EU-affairs could become a good reason for narrowing the democratic deficit of the European decision-making process. One of the promising options could be to establish the second chamber of the European Parliament composed of the representatives of national parliaments and regions.

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