

MAKING OF THE EUROPEAN CONSTITUTION – THE CZECH VIEW

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1. Being Involved in the Debate

The Laeken Declaration stipulated, that “The accession candidate countries will be fully involved in the Convention’s proceedings. They will be represented in the same way as the current Member States (...) and will be able to take part in the proceedings without, however, being able to prevent any consensus which may emerge among the Member States.” This was very democratic and clever decision for at least two reasons:

- the involvement of the candidate countries could moderate the still existing lack of confidence of current Member States to them and contribute to an increase of predictability of their behaviour as potential new EU-Members;
- the participation at the Convention’s work would facilitate the acceptance of the outcomes of the Intergovernmental Conference 2004 by their peoples in presumably hardest period of their membership, following immediately after their accession.

At present, the meeting of the accession “Copenhagen criteria” is of the main concern for the Czech central authorities of the State and should crown the political and economic-social transformation of the country. Some of short-term effects of this process are uneasy to cope with. For example, the approximation of laws, aiming at full compatibility with the *acquis communautaire*, is resulting in different (mostly higher or stricter) technical standards or level of protection, raising the costs of adaptation and destabilizing temporarily by too many amendments the Czech legal order within a short time.¹

On the other hand, the “European integration clause”, introduced into the Czech Constitution² recently,³ has made possible the instrumentalisation of the EU-membership by the Treaty on Accession, which should be ratified after the public voting (Referendum).⁴ Although the clear majority (of the part of electorate willing to participate in the Referendum) would support the accession at present,⁵ the opinions of three Czech representatives at the Convention diverge, reflecting the national debate on the future of the EU, which seems to be still polarized.

Nevertheless, the Czech Government “supports the creation of a strong European Union playing a key political role in the world corresponding to its economic power” and that

¹ In the legislative period September 1998 - April 2002 submitted the Czech Government to the Parliament 458 draft acts, 196 from them had "an approximation focus" and 65 % had been enforced (source: resolution of the Government no. /2002, annex; unpublished).

² Const. Act no. 1/1993 Coll.

³ Const. Act no. 395/2001 Coll.

⁴ Const. Act is still debated in the Parliament.

⁵ Some 70 % would support the accession (source: STEM, Praha, May 2002).

“adapting to new conditions will always be anchored in the basic values on which the EU is founded ...”⁶ Recently, the Czech National Forum has been established under the auspices of the Senate/Under-Committee for the IGC, organizing public hearings during the running “listening period” of the Convention’s proceedings. Even if it will be not easy to reach a common position among the Czech representatives during “the drafting period”, a rapprochement of their opinions could be reasonably expected.

2. Factors Determinating the National Debate

During the pre-accession period, when the EU is for the Czech Republic the contracting party in the difficult negotiations, the primary focus of the “European debate” still remains to define the national interest. Only after becoming the Member State a capacity for its compromising and merger with the “common sense” of integration may occur.

The factors, making the background for the articulation of the Czech national interest, could be defined as follows:

- the position of a smaller state, placed with its population amounting 10 mill. among Belgium, Portugal and Greece (as well as Hungary), with a very sensitive geopolitical location;
- (but) not a rich, with 60 % of GNP per capita EU15 average (but 2nd best among the candidate countries)⁷ rather “poor” Member State;
- a new Member lacking the institutional and administrative experience and know-how of the “old” Member States;
- a young state, founded (Czechoslovakia) in 1918, re-established (after dissolution of Czechoslovakia) since 1993;
- a unitary state with the recent, precarious experience with the twin-federal structure.

The prevailing political philosophy to the debate on the future of the EU still was based on the state-centred constitutionalism (“Westphalia-model”) and the coordination at horizontal level as the basis for a delegation of sovereign powers to external entities by an agreement.

3. Predestination of the approach by these factors

The extra-legal context of the country’s placement in the debate on the future of the EU as just mentioned is influencing its positions, generally speaking, in these respects:

- the European Commission, as the genuine guardian of the integration’s drive, is perceived - paradoxically - as the power counterbalancing the existing asymmetry between big and small Members; therefore, reforms aiming at the reinforcing of the Commission, started with “A White Paper on European Governance”⁸ and continued recently,

⁶ Speech of the Czech Minister for Foreign Affairs Mr. Jan Kavan at the first meeting of the Convention on February 28, 2002.

⁷ Revue élargissement no. 26, April 29, 2002.

⁸ COM(2001) 428 final, 25.7.2001.

a.o., by “A Project for the European Union”⁹, would be basically supported by the Czech Republic, even if not without exception;

- the policies implementing the principles of solidarity and economic and social cohesion are supported, their adaptation in the enlarged Union should not go at the expense of initial comparative advantage of the new members (like low costs of products and labour), which will anyway disappear (with the application of the European standards of consumer and social protection, taxation, etc.);
- the Czech Republic as a new Member State would be encouraged and willing to simplify and introduce more transparency in decision-making processes as well as to accept innovative changes of the institutional system of the EU, although the improvement of the “soft” methods based on coordination would be given priority;
- the looking for an identity, combined with a strong emotional, rather than rational perception of sovereignty, would have an impact on the country’s position in the debate on the definition and division of competence between the EU and the Member States; it should be distributed in a way as clear as possible;
- weak regional identities of the recently established new Czech territorial self-administrating units do not compel to a far-reaching forwarding of the regions as players in the integration process, which could bring an equalization *de facto* of some of the strong European regions (like Bavaria) with smaller unitary states.

Some of the assumptions outlined above are conflicting each other in effect. The only way how to make the behaviour of the Czech Republic as a new Member State predictable is to address the concrete objects of the agenda of the Constitutional Convention.

4. Assessment of the Czech Position on the European Constitution¹⁰

The *consolidation* of the EC/EU Treaties and the leading principles of the ECJ-case law is of primary importance. The European Union must receive the *legal personality*, based on an extension of the current legal status of the Communities.

First, the statutory *objectives* (missions) of the Union should be defined more precisely and incorporate foreign, security and defence policies, police and criminal justice and policy on human rights. As the country could join the Eurozone on a later occasion, the “economic governance” does not seem to be of its prominent concern.

Each of the objectives should have to be equipped with concrete the *competence* and adequate *implementation measures*. The mixed model of attribution of competencies should have to be agreed on, including the catalogue of exclusive, parallel and complementary Community’s competencies and an instrumentalized use of the principle of *subsidiarity*. The legislative initiative (pre-draft act) should have to be consulted by the Commission with law-making bodies of the Member States - Governments, Parliaments or parliamentary Committees on European Integration, as the case might be, assembled in COSAC (political con-

⁹ COM(2002) 247 final, 22.5.2002.

¹⁰ Some of the conclusions reflect the opinions expressed in the document "Czech Republic at the Convention: Contribution to the Discussion", Institut of International Relations, Prague, February 2002.

trol); the establishment of a new chamber of the European Parliament for this purpose does not seem to be necessary. The application of the principle of *proportionality* by the law-making bodies of the Union might be subjected to the supervision of the European Court of Justice under a special procedure (legal control). The admissibility of re-nationalization of Community's competencies might be avoided, the criteria for opting-out added to the respective clauses, when appropriate.

The distinction between legislative and executive competencies should be drawn and accompanied by specific measures of implementation and their hierarchy. The established practice of tertiary law (incl. *comitology*) must be redefined. The Art. 308 TEC should be revised and applicable only in quite exceptional cases, for a limited time; its use could not create a precedent for next cases as a hidden competence-competence provision.

The strengthening of law-making capacity of the *European Parliament* would necessitate a more active approach of the political parties to their mutual cooperation on the European level. This could stimulate the composition of a European *demos* as a condition of the forthcoming and enhanced constitutionalisation of the Union.

The control of the European policy of Governments by Parliaments of the Member States could be intensified (one of the examples working well seems to be the Danish model), which would be an indirect, but important contribution to the guarantees of democratic legitimacy of the decision-making processes at the European level, too.

The EU-constitution in legal form of a *Constitutional Treaty*, passed by qualified majorities in national Parliaments or by Referenda in the Member States or by a Europe-wide Referendum, should be complementary to the national constitutions and/or to the constitutions of lower autonomous units in the federal states. The national ratifications of the Constitutional Treaty could at the same time authorize the governmental representatives in the Council to conclude and - as the case may be - to change an Agreement on modalities of the application of the Constitutional Treaty, i.e. without the ratification. This Agreement would serve as the basis for legal acts decided by the EU-institutions.