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DISSOLUTION OF THE CHAMBER OF DEPUTIES IN THE CZECH REPUBLIC – THE ORIGIN AND ESSENCE OF APPLICABLE CONSTITUTIONAL LEGISLATION ¹

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***Annotation.** The constitutional system of the Czech Republic, which is established on the principles of a parliamentary form of government, takes into account the possibility of dissolving the Chamber of Deputies of the Parliament of the Czech Republic. The Chamber of Deputies is a chamber to which the government is accountable and this is the chamber in which the major part of the authority of Parliament is concentrated.*

Parliamentary systems have been also structured according to whether a certain amount of balance of power is preserved between parliament and the government. A typical characteristic of every parliamentary form of government is the possibility for a vote of confidence in the government by parliament, meaning a dependency of the government on the will of parliament. Some parliamentary systems counterbalance this relationship with a greater or lesser possibility for the government of dissolving that chamber of parliament, which votes confidence in it. This makes it possible for the government to be able to more significantly fulfil the role of political leader in a given country and it can actively initiate and form a political state.

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The contemporary Czech constitutional system lies within those variants in which the position of parliament in relation to the government is extraordinarily strong. The current Constitution in the first place does not give the government any possibility to initiate dissolution of the Chamber of Deputies. The Constitution moreover considers the dissolving of the Chamber of Deputies as only a sanction for inaction, if need be for inability to perform any kind of work.

Thus the strictly formulated possibility of dissolution of the Chamber of Deputies means, among other things, that the Chamber of Deputies is extremely difficult to dissolve in a situation where it expresses a vote of non-confidence in the government, but is not able to form a majority for the creation and support of a new government. In light of this task, which, in the framework of the system of the separation of power within the parliamentary republic, is a principal task, the Chamber of Deputies is incapable of action and is in political fragmentation. Its capability to fulfil further functions, specifically in the area of legislative process, is however often untouched. At the same time the Constitution associates the possibility of dissolution of the Chamber of Deputies in three of four cases precisely with its complete inability to function. The fourth case, associated with the setting up of a new government, is however difficult to apply, because political representation marks this process, in large part by law, as wasting time in a situation when it is simply obvious that a new government under existing relations in the Chamber of Deputies cannot be put together, and, if it could, it would not afterwards be workable.

It is necessary to look for the causes of this non-functional arrangement in the historical circumstances under which the contemporary Constitution was enacted and in the modifications, which preceded it. The pre-war version gave the power to dissolve both chambers of the National Assembly to the president of the Republic acting in cooperation with the government. This was a balanced and essentially classic arrangement. The period after the war together with the building of the system of a so-called people's democracy led to a conceptual change blocking the primacy of parliament, from which the other constitutional bodies derived their own authority and to which they were also accountable. In the conditions of the government of the people and its assembly it was unthinkable that some of the bodies derived from the Assembly might initiate its dissolution.

The dominating standing of parliament among the other constitutional bodies no doubt influenced the creators of the contemporary Czech Constitution. Now because the new constitution was prepared in Parliament and the creators of the new concept had experienced very well the blocking arrangement. A second significant factor was the reality that the applicable Constitution was prepared at the beginning of the period of an extensive transformation of society. The government of the time, among other things, wished for an arrangement of a type that a stable parliamentary background would preserve for it.

In the 15 years following it has been shown several times that the contemporary inelastic Constitutional version is not suitable for a fully functioning and stable state. Already several bills were submitted for an appropriate renewal of the Constitution, but in the meantime none were passed. Also because of this dissolution of the Chamber of Deputies has already twice come about through a special change to the Constitution, which in the given cases was a one-time shortening of the electoral term of the respective Chambers of Deputies.

Keywords: *constitutional law, dissolution of parliament, vote of non-confidence in the government, parliamentary form of government, constitutional system, Czech Republic.*

Introduction

1. Purpose of the Institution of Dissolving Parliament or One of its Chambers

The institution of dissolving the whole Parliament or one of its chambers, on which the government is dependent for confidence, belongs among the characteristic features of the parliamentary form of government, and also of those forms, which are derived from it. From a theoretical point of view this institution has been founded on the necessity of protecting the balance between the body of law-making power, which is at the same time equipped with the legal authority to decide on the legitimacy of the government as the primary body of executive power, and that very government.

The question offers itself as to what kind of reason there is that in some systems the balance between Parliament and government is preserved and in some is tilted in favour of Parliament. Here it is necessary to look at the circumstances under which the foundation of the constitutional arrangement of whatever country was laid. While in some countries the position of Parliament was determined in a situation where the bearer of executive power had a relatively strong position and was a real counterweight to the representative body, or this belonged to the tradition of the given country. In other countries the foundations of the constitutional structures were defined by the body of representatives, which did not have a relatively strong counterweight against it, whether in the form of the government or of the head of state. In this interdependence it is necessary to emphasize the reality that very rarely is the law prepared in such a way that it corresponds to the theoretical concept. As a rule, on the contrary, what becomes law is what at the given moment is perceived as practical or necessary.

The authority to dissolve Parliament or its chamber controlling the government is usually vested in the head of state. Through means of dissolution it is possible to resolve different types of constitutional situations. First it can be a case of being an instrument serving to resolve a conflict between the government and Parliament. If it is a matter of principle from the point of view of a government, which does not however have sufficient support in Parliament, the dissolution means a suitable ending of the electoral term of the chamber controlling the government and a call for elections. In reality a government confident of the rightness of its own ideas in this way asks the court of last resort, which in contemporary democratic states is the people, for a decision on the conflict. For this case there exists still different variants, which are distinguished from each other on the basis of how easy it is to achieve the dissolution of Parliament.

A second type of situation is dissolution of Parliament or its chamber as a sanction for its inaction. This is a matter of cases where Parliament is non-functioning and does not fulfil its constitutional role. Here, as a rule, it is asked that Parliament be shown to be incapable of action for a minimally specified period of time. The goal is to differentiate a crisis of little importance from complete inability to carry out the work conceived for it. Dissolution is a safety switch for the case that one of the primary constitutional bodies is not in reality capable of executing its authority and fulfilling its obligations, and the only way out is its renewal. As a specific example of this type it is possible to give a variation in which it is possible to dissolve Parliament with its temporary assistance. Agreement of Parliament or its appropriate chamber is here substituted with the passage of time, which might otherwise objectively confirm the seriousness of the crisis. As extraordinary it is possible to consider the authority of the head of state, or even the Prime Minister, to decide, according to its discretion, on ending the electoral term of Parliament or its chamber by means of calling an election.

As is evident from the above, the content of the authority to dissolve Parliament or a chamber on whose confidence the government depends is varied. As a minimal case it is possible to consider the solution when dissolution is conceived by the maker of the constitution as an extreme means for renewing the work of a blocked or, for some other reason, non-functional Parliament. This solution does not in any way give the executive power the possibility to interfere in the activities of Parliament, in so far as that interference itself is not called for by the fact that Parliament is not fulfilling its obligation. The possibility of dissolution exists from mere modification, if Parliament decides on this. In other words this is a matter of a situation when Parliament requests its own dissolution or does it itself directly, acting without regard to the government or head of state. Another variant expects the possibility of the government calling for elections in the case where it is convinced that Parliament holds an incorrect point of view in a matter of fundamental importance. With regard to the possibility of voting a lack of confidence in the government in a parallel type case it is possible to say that the positions of Parliament and government here are balanced. A special case is the deference of authority, in favour of the government, consisting in the possibility for it to call elections at its own discretion even if there is not a basic conflict here in the political priorities of either power.

2. General Characterization of Contemporary Czech Constitutional Legislation

With regard to the above it is possible to say that the legislation anchored in the contemporary Art. 35 of the Constitution of the Czech Republic (further only “Constitution”)² classifies the Czech constitutional system among the models of strong Parliamentarianism. The possibility of dissolving the Chamber of Deputies is conceived of

2 Full text of the Constitution of the Czech Republic. [interactive]. English translation [accessed 2009-09-08]. <<http://www.psp.cz/cgi-bin/eng/docs/laws/1993/1.html>>.

only as a sanction for their inaction, respectively as a safety switch against a Chamber of Deputies unable to fulfil its constitutional function.

The aforementioned Article 35 of the Constitution foresees four situations in which the President of the Republic is given the possibility, not the obligation, to dissolve the Chamber of Deputies. It should be emphasized that the possible fulfilling of one of the four situations still does not mean automatic dissolution of the Chamber of Deputies, since the Constitution in the situation of a similar crisis leaves it up to the discretion of the President whether to take action or not.

Art. 35

- (1) Chamber of Deputies may be dissolved by the President of the Republic, if*
- a) the Chamber of Deputies fails to vote confidence in a newly appointed Government the Prime Minister whereof was appointed by the President on the proposal of the Chairman of the Chamber of Deputies;*
 - b) the Chamber of Deputies has not decided on a Government Bill the consideration whereof the Government tied to the question of confidence;*
 - c) the session of the Chamber of Deputies has been recessed for a longer than admissible term; and*
 - d) the Chamber of Deputies has not had a quorum for a period longer than three months although its session was not recessed and although during the said period it had been repeatedly convened to meet.*

(2) The Chamber of Deputies may not be dissolved three months prior to the end of its electoral term.

Art. 68

(1) The Government shall be accountable to the Chamber of Deputies.

(2) The Prime Minister shall be appointed by the President of the Republic who shall appoint on the Prime Minister's proposal the other members of the Government and shall entrust them with the direction of individual ministries or other agencies.

(3) Within thirty days after its appointment the Government shall present itself to the Chamber of Deputies and shall ask it for a vote of confidence.

(4) If a newly appointed Government fails to win the confidence of the Chamber of Deputies, the procedure specified in paragraphs 2 and 3 shall be followed. If a thus appointed Government again fails to win the confidence of the Chamber of Deputies, the President of the Republic shall appoint a Prime Minister on the proposal of the Chairman of the Chamber of Deputies.

(5) In other cases the President of the Republic shall appoint and recall on the proposal of the Prime Minister the other members of the Government and shall entrust them with the direction of ministries or other agencies.

2.1. Dissolution for Inability to Vote Confidence in the Government

The first situation, which can lead to dissolution of the Chamber of Deputies, is a vote of non-confidence in the government, whose chairman was named by the Presi-

dent of the Republic at the proposal of the chairman of the Chamber of Deputies. This is concerned with the case of a third attempt at building a government, when the two preceding tries ended in failure. Here it is a matter of two governments led by a Prime Minister appointed by the President of the Republic being successively unsuccessful in his request for a vote of confidence.

From the viewpoint of the overall construction of mutual relations between the Chamber of Deputies, the government and President of the Republic this case means a reasonable solution and safety switch when the President of the Republic during two attempts, which the Constitution gives him, was unable to gauge, or did not want to respect, the distribution of forces in the Chamber of Deputies and in the naming of the Prime Minister wanted to perform in an activist way and promote his own will contrary to electoral results. The maker of the Constitution obviously sought a way out of this potential impasse, consisting in the assertion of the will of the President over the will of the Chamber of Deputies, which would not lead to the formation of a functioning government and a vote of confidence in it.

The third attempt at formation, which is the responsibility of the chairman of the Chamber of Deputies, is supposed to be a way out of a similar potential crisis caused by the promotion of the President of the Republic's own political goals.³ Thus a new participant enters into the third formation of government, who according to the maker of the constitution is supposed to represent and respect the majority in the Chamber of Deputies. The chairman of the Chamber of Deputies however is able to perform his role in the formation effectively only when the President first actually promotes his own concept of the form of government contrary to the will of Parliament.

A relatively similar situation, with respect to experience from the last parliamentary elections, which took place in June 2006, is that where a coalition capable of pushing through the creation of a government did not arise in the Chamber of Deputies. For this case the Constitution strengthens the moderating role of the President of the Republic, in whose hand the threat of dissolution can become a useful instrument for further negotiation.

At the same time it is, however, necessary to state that even this consideration has its own weakness, since it is not clear on the basis of what kind of reason Parliament should not constructively react if the Constitution should for this situation put on the President of the Republic the *obligation*⁴ to dissolve it. It is necessary to also emphasize that through the *non-dissolution* of the Chamber of Deputies and with the conducting of further activity the situation gets completely outside the constitutional framework and

3 In the framework of the Czech political and constitutional system the President of the Republic is not supposed to carry out his own personal politics. He is supposed to be a representative of state politics, expressed above all in the will of the political parties in the Chamber of Deputies and in the government.

4 This question will return repeatedly in the case of the Constitution of the Czech Republic. In the majority of cases it is not clear why the Constitution, in cases of an objectively existing serious crisis, when the Chamber of Deputies does not fulfil its role, still leaves room for the President of the republic. At the same time however the Constitution does not put forward any further mechanisms for those cases where the President of the republic does not dissolve the Chamber of Deputies, but at the same time it does not renovate its own activity.

it is not clear how one might proceed further. Potentially the way is opened to endless naming of a government, which will not gain confidence, its demise, and, again, naming of a new, similarly unsuccessful government.⁵

With regard to this it might be more suitable if the Constitution in force would either place on the President of the Republic the obligation to dissolve the Chamber of Deputies after a third unsuccessful attempt at forming a government, or, if this actuality should occur automatically with the non-expression of confidence in the third government.

2.2. Dissolution for Inaction on a Key Government Bill

The second instance when the Constitution expects the possibility of dissolution of the Chamber of Deputies is the Chamber of Deputies' non-deliberation of a government bill, on which the government has linked acting on it with the question of confidence. In this case the dissolution of the chamber is conceived as instrumental in resolving a conflict between the government and Parliament in a matter of fundamental importance in the eyes of the government. It may be understood also as an extreme means of pressure from the government on the Chamber of Deputies for the government to determine whether it still has appropriate political support or not.

On the whole this instrument is conceived such that it again protects the priority of Parliament over the government. The Constitution, by the way, does not present as a possible reason for dissolution the rejection of a bill submitted by the government, but rather *non-deliberation* of the draft within the fixed time limit. The contingent dissolution of the Chamber of Deputies is thus a sanction for its non-performance, or insufficient ability to act, the results of which in appearance approaches inaction. In current form, however, the described construct is not an instrument, which the government might be able to use to appeal in a conflict with Parliament over a matter of fundamental importance to a higher arbitrator, in this case to the people. In order for such a step to be possible, the Constitution would have to set forth as reason for the eventual dissolution the *not passing* of the government bill, to which the government linked the question of confidence. Dissolution, if need be, is a safety switch in case the Chamber of Deputies should not be capable at all of performing, but not an instrument for asserting government politics.

A stronger positioning of the Chamber of Deputies against the government is apparently also from the fact that the formulation of the Constitution requests *a contrario* only a decision⁶ on the submission of the proposed bill. It is not necessary here for Par-

5 The fact that these considerations are not foreign to Czech politicians, is borne witness to by the situation in the parliamentary elections in the year 2006, when the conclusions-findings, to which the representatives of the future government coalition came to, in the better case meant a circumvention of the Constitution, and in the worst case however direct violation of it. For more on this theme, viz., for example: Foltýn, T.; Havlík. *V. Povolební hrátky s ústavou* [interactive]. 2006 [accessed 2009-09-08]. <<http://aktualne.centrum.cz/blogy-a-nazory/clanek.phtml?id=274718>>.

6 Should this provision of the Constitution fill at least some purposeful function, then it is necessary to construe the concept of the decision in such a way that by it the maker of the Constitution had in mind a meri-

liament to approve the draft legislation. Its potential rejection has an influence on the further existence of the government, since it amounts to a non-expression of confidence in the case of a government request in accord with Art. 71 of the Constitution, with the results presented in Art. 73, para. 2 of the Constitution.

At the same time the results of not discussing the draft or of its rejection are clear – the possibility of dissolution of the Chamber of Deputies in the first case, and the fall of the government in the second case – the passing of the bill within the framework of the current formulation of the Constitution opens several new questions. Namely the Constitution does not set forth in what manner the bill may be approved. The only possible interpretation with respect to the text of the Constitution is that there will be a formal expression of confidence in the government and, in that case, that the Chamber of Deputies approve the presented bill in an essentially amended form. Even when it might seem at first glance that one is concerned here with a question of the further existence of the government, and not of the Chamber of Deputies, the opposite is true. Specifically again, the construct used points to how markedly strong the position of the Chamber of Deputies versus the government is. Parliament has essentially a completely free hand and stands opposite the government in a position of priority. Not even in this case is it possible to talk about how the government might somehow influence the workings of the Chamber of Deputies, even if this issue would be considered as the most fundamental.⁷

2.3. Dissolution in the Event of an Unacceptably Long Session Recess

The third reason making possible the dissolution of the Chamber of Deputies is the recess of its session for a period longer than is acceptable. According to the provision of Art. 34 of the Constitution the sessions of both chambers of Parliament are continuous and may be recessed only by a decision of the relevant chamber. The length of the session recess is not allowed, according to Art. 34, para. 2 of the Constitution, to exceed 120 days in a calendar year and must actually occur in reality; it does not count as sufficient if only a decision is made which would recess the session for a period longer than 120 days in a given year. Even if such a decision was issued, it is not possible to presume whether the period of time allowed will be in reality exceeded, because Art. 34, para. 3 of the Constitution expects the possibility of renewing the session by a decision of the chairman of each chamber earlier than the established time limit comes to be fulfilled.

Because during the recess period of the chamber its bodies also are not in session, so they are not performing their work, nor is control over the government secured, nor co-activity of the chamber with other state bodies. With regard to control and the sepa-

torious decision having influence also outside, never a decision affecting only the course of the legislative process internal to the Chamber of Deputies alone. There can be a matter here both of a decision at the end of the first reading about returning the proposal for rework, just as well as a negative or approving decision at the end of the third reading, which mean either the end of discussion of the draft law, or its transfer for further action in the Senate. It is not possible however to be, for example, a question of a decision by which the Chamber of Deputies assigns the proposal to one of its own committees for action.

7 Should a situation arise where the Chamber of Deputies approves a bill with which the government links the question of confidence, the only rational solution to this impasse would be the demise of the government.

ration of power at issue here is a long-term undesirable state, which, if it exceeds the allowed limit, can have negative effects. It is necessary to eliminate these as much as possible. The purpose of the maker of the Constitution here was to renew the activity of the Chamber of Deputies by way of elections in an extraordinary case where the course expected by Art. 34, para. 3 of the Constitution would not be able to be taken.

Also in this instance the dissolution of the Chamber of Deputies is conceived as a punishment for inaction or inability to perform.

Different from the situation described above, it is possible to find theoretical grounds consisting in the consideration that situations might occur where an unintended exceeding of the permitted time limit comes about and the dissolution of the Chamber of Deputies would be useless, even counter-productive. At the same time it is also necessary to add that in cases where Parliament is unable to meet even by way of a request for calling a meeting in accord with Art. 34, para. 3 of the Constitution, and this condition would suit the President of the Republic, there would not be a means here by which their activity could be resumed earlier than their electoral term would be completed.

Another special characteristic of the legislation is that it is possible to consider the manner of determining the length of time of a constitutionally acceptable session recess. Here it is not a matter of a total period of more than 120 days but of 120 days in a year. Should the session of the Chamber of Deputies be recessed repeatedly for short periods of time, then these periods will be counted together and, if the combined total exceeds 120 days, then the possibility is given here to dissolve the Chamber of Deputies.

This framework can be a further reason for *justification*, but not an obligation for the President of the Republic to dissolve the Chamber of Deputies. One of the considerations here can be that the maker of the Constitution was aware of this possibility and did not consequently desire a needless dissolution if multiple recesses for short periods should occur, when Parliament's control of the government would be less threatened than in the case of a single recess for the maximum allowable time period.

From the point of view of constitutional practice it is possible, in conclusion, to add that we are dealing here with a provision that is practically obsolete, since in the 16 years of existence of the independent Czech Republic and 14 years of the existence of the current procedural law on the Chamber of Deputies⁸ a recess of a session of the Chamber of Deputies has never yet occurred. In practice the Chamber of Deputies and its bodies proceed in a way that even for the period of time of parliamentary holidays they do not disrupt the session but they set up a timetable of their work in principle, so that calling a plenary meeting or a meeting of committees and commission occurs after the elapse of that time which was specified as a free period. At this stage, when Parliament specifies a timetable of its work for itself a resolution about a session recess would mean one more decision which would moreover not in reality bring any change over and above the current method of conducting the work of the Chamber of Deputies. Most probably any change in this direction is unlikely to come about in the future by which even the realization of a provision on the possible dissolution of the Chamber of Deputies due

8 This refers to Act No. 90/1995, on the Procedural Rules of the Chamber of Deputies, in its current wording.

to this particular reason is impossible, because the filling conditions of substantive law very likely will be missing from it.

2.4. Dissolution in the Case of an Unacceptable Long Duration of the Inability to Pass a Resolution

The fourth and final situation which can lead to the dissolution of the Chamber of Deputies is that when the Chamber of Deputies has not be able to pass a resolution for a period of time longer than three months, although its session was not recessed and the meeting was repeatedly convened. In practice this may be an unlikely situation when for a period of three months less than one third of the representatives, according to Art. 39, para. 1 of the Constitution the requirement for a chamber quorum, have come to each meeting.

The defined conditions must be met cumulatively. The inability to have a quorum must last longer than three months, and the Chamber must be called to meeting in vain. From the formulation of the Constitution it follows that the number of attempts to convene must be more, thus at least two, though in practice it would presumably be a matter of still more attempts. Fulfilment of this condition is exempted in that period of time when the session of the chamber is in recess.

In light of the relationships between the executive power and Parliament it again follows that the dissolution of the Chamber of Deputies is for this case understood as an extraordinary means for renewing the work of a non-functioning chamber; it is possible here to see an element of sanction against representatives who do not fulfil their obligations.

Also in this last case a constitutional modification might be of benefit if it were to provide automatically for the dissolution of the Chamber of Deputies, that is, should the President of the Republic have to act. The current form of the legislation raises more questions here than it offers answers for.

For all four situations anticipated by the Constitution a limitation applies prohibiting dissolution of the Chamber of Deputies in the last three months of its electoral term. With respect to the fact that this is also an issue equally in which elections are already supposed to be announced and being prepared, this limitation does not have any practical meaning except that the situation cannot lead to disruption of the accepted timetable of the ongoing preparation of the elections. In this direction the maker of the constitution bore in mind the reality that the systematic preparation of the elections is of higher value than sped up renovation of the work of a non-functioning Chamber of Deputies, which will happen anyway in a very short period of time.

2.5. Evaluation of Current Constitutional Legislation

The contemporary form of Art. 35 of the Constitution governing circumstances under which the dissolution of the Chamber of Deputies can come about creates a very strong position of the Chamber of Deputies in opposition to the executive power. Early ending of the electoral term is in essence explicitly conceived as a sanction against a

non-functioning Chamber, which threatens the system of separation and control of power, along with the work of other constitutional bodies. If the constitutional systems of some other countries are conceived such that the government would have a mechanism over Parliament corresponding to its possibility to express non-confidence, in the Czech Republic this is not the case.

The Chamber of Deputies is almost untouchable; it stands opposite the government and Prime Minister in a markedly strengthened, it is possible to say even supreme, position. This arrangement from the point of view of the system of the Chamber of Deputies can be suitable because it renders it almost untouchable. On the other hand however it also closes the Chamber in any way to external influences and conserves the election result for the entire electoral term. Should there come to be a more significant political shift transforming the actual result of the election, whether in society or in the Chamber itself, it is not possible to legitimise the new condition by way of election; however it is necessary to resolve the shift within the Chamber. In this way the standing of the existing Chamber of Deputies is, on one hand, strengthened even against the voters alone, which some representatives are able to perceive positively; but, on the other hand, this situation in reality damages the chamber. Internal pressures in some moments can be so strong that this almost blocks the work of the Chamber of Deputies by the fact that it is scarcely capable of constructively fulfilling its role. At the same time a solution other than establishing a new coalition in the existing situation is almost impossible.

As a way out one can only take a non-system measure, which is, for example, to pass a one-time constitutional law by which the electoral term of the Chamber of Deputies is shortened. The disadvantage of this solution is the reality that for its approval there even does not need to be initially sufficient support; and afterwards as well, because it means the dismissal in reality of the constitution maker from the preparation of good quality text of a rule, which will provide for the possibility of an existing crisis and its acceptable resolution following a procedure known before.

For the reasons why the adoption of the legislation strengthening the position of the Chamber of Deputies in such a basic way in relation to other constitutional bodies occurred, it is necessary to look at the circumstances in which the Constitution was approved and in the points of departure of the proposals presented, as well as its historical development.

3. Dissolution of Parliament or its Chamber in the Development of the Czechoslovak Constitution

3.1. Provisional Constitution prior to the Adoption of the First Czechoslovak Constitution

Neither of the first two documents forming the constitutional base for the independent Czechoslovakia, Act No. 11/1918, nor Act No. 37/1918, deal with the question of the possible dissolution of the legislature. This issue would not, under the circumstance

for which both laws were adopted, make any sense. The goal of the take-over, just as of the documents coming out of it, was to establish and fortify the law making power of the new state. Both temporary constitutional rules actualised the revolution, and it was not their purpose to resolve questions, which might in theory arise; but, should it so happen, it would be a matter of a threatening of the revolution itself and the existence of the new state.

It is possible to theoretically justify the non-admission of the possibility of dissolving the Revolutionary National Assembly moreover also by the fact that at issue is one of the manifestations of an elected form of government, by which the government was an assembly in which Parliament, in the framework of the system of separation of power, is placed in a sovereign position and it is the one who decides on the existence of the other constitutional bodies. From the practical point of view the ongoing overturn of government and its getting established was a guarantee that Parliament will be operational. The first not quite two years of existence of the new state were a period when there was no place for inactivity and for not finding compromises, because impending losses were higher than possible gains. The representatives were by this more clearly motivated to working than might be achieved by the threat of the dissolution of Parliament.

3.2. Constitutional Legislation in the Years 1920–1939 (-1948)

The Constitutional Document of 1920, contained in Act No. 121/1920, meant a transition to a parliamentary form of government and the institution of dissolving the chambers of the National Assembly was recognized. This right, in § 31, was vested in the President of the Republic, who could apply it against both chambers. The Constitutional Document did not specify the circumstances, which could lead to dissolution of the chamber; it left it to the discretion of the President whether and when he would initiate such a step. A significant limitation in this was the necessity of a counter signature to such a decision by an appropriate member of the government. In practice then it was not possible to come to a dissolution without agreement, and so also without preceding consultation, especially with the Prime Minister. The constitution also does not exclude the possibility that the Prime Minister might give the President of the Republic an informal proposal in this matter. Decisive was the necessity of cooperation of the head of state with the government and its Prime Minister.

Further limitation lay in the fact that the President of the Republic could not dissolve the National Assembly or its chamber in the last six months of its functional term. It is interesting that the fixing of the time limit for dissolution is connected to the functional time of the dissolving organ and not to the dissolved organ. As the literature of the time presents, the idea was to prevent dissolution of the National Assembly, which ought to move towards securing a more reliable majority for the approaching presidential election.⁹

As is evidenced by the above, the definitive constitutional legislation valid for the entire period of the existence of the First Czechoslovak Republic established in prin-

9 See Adler, F. *Prezident republiky* in: *Slovník veřejného práva československého*. Volume 3. Brno: Polygrafia, 1934.

principle an equitable standing of both components of state authority. So just as Parliament could decide on the further existence of the government, the government together with the President of the Republic could decide on the further existence of Parliament. The dissolution of the National Assembly or of one of its chambers was not conceived only as a sanction in a case of inaction, even though it could of course be so used, but also as a means for promoting government politics.

Although in many ways the Constitution of the III. French Republic was a model for the Constitutional Document of the Czechoslovak Republic, in the case of the institution of dissolving Parliament it was not. As opposed to the just mentioned French Constitution, the Czechoslovak legislation in this matter did not anchor the dominance of Parliament. This rather came from the model of the Austrian December Constitution of 21 December 1867.

The practice of applying this statute of the Constitutional Document was relatively rich, both chambers of the National Assembly were repeatedly dissolved; the Senate never even finished its constitutionally specified electoral term. The last dissolution of the National Assembly occurred on 21 March 1939.

3.3. Constitutional Legislation 1948–1960 – the Constitution in Law and in Reality

The post-war constitutional legislation anchored in Act No. 150/1948 did not in any way differ conceptually from the constitution of the First Republic. The provision § 74, para. 1, point 3 gave the President of the Republic the authority to convene, postpone and dissolve the National Assembly. Also here a counter-signature of a responsible member of the government was necessary for dissolution.

As is evident from the above, the constitution enacted in 1948 agrees almost word for word in the matter of dissolving the National Assembly with its predecessor. In practice, however, in opposition to the First Czechoslovak Republic due to reasons of quite changed political relations, a dissolution of the National Assembly never occurred. It was a matter of a dead provision. Neither theoretically nor in practice could there be a conflict between the government and the legislature. Although the people were supposed to determine the basic political line, in practice supremacy in this matter lay with the highest leadership of the communist party. Because of this, the possibility of conflicts at the level of the constitutional bodies was eliminated; their task was, on the contrary, to implement the political decision that had been made.

3.4. The period 1960–1968 – Change in the Concept of the Constitution

The passing of the new constitution in 1960 brought a fundamental change in concept. This in many ways returned to the concept of government assembly, where in the system of the highest constitutional bodies, at least formally, the legislature, as representative of the will of the people, played a dominant role. With regard to the ideological standpoint, according to which the people were the bearer of unified and fundamentally

indivisible power, which they exercised by means of the National Assembly, the possibility of dissolving the legislative body did not have a place in the new constitution. It is not possible to put the idea of the supremacy of the body representing the people, to whom all the highest constitutional bodies are answerable, or at least are rendering an account of their work to, together with the possibility of dissolving this body. This would mean that a subordinate body is able to decide on the existence of a higher body.

It should be emphasized that the impossibility of dissolving the National Assembly as the body of the representation of the will of the people is primarily given as a theoretical concept and is not a question of accommodating the written constitution to the real state of affairs. Certainly even this element during the preparation of the constitution played its own role, but what is decisive is the ideological concept whose result was the transformation from a formal parliamentary form of government to an assembly government.

From a practical point of view this change and the absence of the possibility to dissolve the National Assembly, given the dominating political conditions, could not cause any problems. Insofar as some political tensions occurred, especially at the end of the 60s, this led afterwards to the reorganization of the legislature. In individual cases, where it was possible, by way of resigning, naturally not always voluntarily, and by initiating the so-called process of normalization¹⁰, through the passage of a special constitutional law, on the basis of which it was possible to remove a representative of his seat under certain circumstances and if need be co-opt new representatives. In this period co-option did not occur.

Practical experience confirmed in this way that in case of necessity the question of further configuration of the legislative body will be resolved on its own ground by internal forces, without regard to the fact that the sovereign authority, here the people, should be called on for deciding. This decision was rendered consciously with the goal of protecting the current distribution of political forces. In a slightly different form it appears during the period of the preparation of the Constitution of the Czech Republic.

3.5. Federalization of Czechoslovakia – 1968-1989

The federalization of the state brought a slight change in the concept of the non-dissolvability of the legislative body. The constitutional law of the Czechoslovak Federation established the possibility of dissolution of the Federal Assembly by the President of the Republic in the event that the negotiative apparatus foundered and both chambers persevered in separate views pertaining to the deliberated bill. The decision of the President of the Republic did not solicit a counter-signature, and this was conceived as a possibility, not an obligation. In practice dissolution never occurred.

10 This concerns a change in relationships above all with the Soviet Union and other socialist countries after the August invasion of the armies of the Warsaw Agreement, by which the liberalizing process of the so-called Prague Spring was suppressed. Normalization in the political sense of the word means doing away with the liberalizing social tendencies.

As reason for introducing these small changes there was the urgency to pay attention to the reality that with the federalizing of the state and creation of a two chamber legislative body instead of the single chamber existing to now, there arose a potential area of friction and the possibility of blocking the work of the chamber, which was not a threat, even in theory, in the earlier arrangement.

Two actual situations bear witness to the fact that it never came to a change in the existing concept of assembly government with all the results flowing from this. First is simply a minimalistic implementation of the possibility of dissolution of the legislature, which just solves a problem which can arise internally to the assembly and which it is not possible to resolve on its own. The purpose is not to strengthen another component of power. The legislature is open to the influence of the head of state only because there is no other way out. The second testimonial to the practical inalterability of the concept is the preservation of the non-dissolvability of the national councils in each of the Republics. With regard to the fact that the representative bodies of the Republics were single chambered, the possibility of internal conflict in them could not arise and so there was no given reason for involvement of another constitutional body as arbitrator.

3.6. Renewal of Democracy in Czechoslovakia – 1989–1992

The rule for dissolution of the legislature remained preserved in this form until the end of the existence of the Czechoslovak Federation. The dissolution of the Chamber of Deputies did not occur even at the turning point between the years 1989-1990, and this from practical reasons, because it would not be possible in the given situation to organize general elections. Therefore a solution in the form of special constitutional laws making it possible to recall representatives and co-opt new ones in freed seats, thus on the same principle again from the conceptual viewpoint as resolving a parliamentary crisis with the legislature's own forces, of course this time under the pressure of the public and with its partial implicit participation. This same mechanism of recall and co-option was almost identical to that used in the years 1969 – 1971.

3.7. Czechoslovak Evolution – Summary

In conclusion to this section it is possible to summarize that Czechoslovak constitutional development showed two variants in the matter of dissolution of the Chamber of Deputies. The first was the possibility of dissolution during the time of political plurality almost without any limitation of any kind, when it was a matter of an instrument serving as an appeal by the government to the people in a conflict with Parliament, for the people to make a decision in the matter from a position as sovereign. The dissolution of Parliament also could serve for its renewal if there was a break-up of the existing coalition and other variations of building a government showed themselves to be impossible. Besides being a solution for political splits between the executive and law making powers, or powers within the legislature, dissolution could also serve as a sanction in the case of a Parliament, which was not able to fulfil, its constitutional obligations. A second variant was the opposite approach, when the legislative body, as the highest constitutional organ

from which the remaining organs of state power derived their legitimacy and to whom they rendered an account of their work, could not be dissolved at all. In this arrangement the truth always stood on the side of the representative body, and it must eventually resolve internal conflicts on its own because from a conceptual viewpoint it was not acceptable for a subordinate body to make a decision for it.

The second variation given above signified an extraordinary strengthening and stabilization of the representative body. This could not appear practically at all during a period of a single political party, but its influence on later constitutional arrangements in multiparty conditions was considerable.

4. Dissolution of Parliament in Proposals for a New Constitution for the Czech Republic

In order to pass judgement on today's law on dissolving the Chamber of Deputies and on the influence of the preceding constitutional development on it, it is also very useful to assess further proposals for the new constitution, which were submitted to the Czech National Committee for deliberation during the course of Fall 1992. Only in this way will it be possible to assess the contemporary form in the broader intellectual context of the period of the time and determine if it was the only possible solution, or even ultimately the best of the possible ones.

4.1. Government Proposal for the Constitution of the Czech Republic

The government proposal for a constitution for the independent Czech Republic, which was submitted to the chairman of the Czech National Council for discussion, was documented as Parliament publication No. 152.¹¹ Regarding its content it is possible to mention that it does not differ in any substantial way from the existing form of Art. 35 of the Constitution. The only significant difference can be seen in that for the possibility to dissolve a Chamber of Deputies which is not able to make a quorum during a specified period of time the government submitted a proposal for a length of time of only two months, not three. The committees of the Czech National Council (further only ČNR) proposed a change with this content in its joint report, which was submitted for discussion. Their point of view is stated in Parliament publication No. 154.¹²

With respect to the government bill, specifically its slightly modified form, as it emerged from the discussion of the appropriate committees of the ČNR, it is not possible to state anything new in comparison with that which has already been mentioned above in the detailed explanation of the contemporary constitutional legislation. It is possible only to draw attention to the reality that the report providing justification for

11 Parliament publication No. 152 [interactive]. 1992 [accessed 2009-09-08]. <http://www.psp.cz/eknih/1992cnr/tisky/t0152_01.htm>.

12 Parliament publication No. 154 [interactive]. 1992 [accessed 2009-09-08]. <http://www.psp.cz/eknih/1992cnr/tisky/t0154_01.htm>.

the proposal is very cursory and does not say anything about the reasons, which led the lawmakers to vote for just this solution and not one of a different form. At the same time it is necessary to say that this problem is of a general character and it is necessary to deal with it in all further proposals for the constitution in which the justification is also very brief or even not intelligible at all.

The government bill here, as has been said, conceives the Chamber of Deputies with respect to the possibility of its dissolution as very strong, when dissolution is taken as an extreme means of a sanctioning character, eventually a means by which it is possible to replace a completely non-functioning Chamber. According to the government concept dissolution should not serve as an instrument through which the government can turn to the people with a request for a decision in a matter of fundamental importance, in which the Chamber differs in opinion.

A partial reason can be experience with the sovereign position of the Chamber of Deputies in the period of the Czechoslovak Federation, which the representatives, naturally and taking into consideration the endurance of their positions and mandate, did not have an interest in weakening in any way. The alluded to extension of time, which was, by the way, implemented at the will of the representatives, during which the Chamber of Deputies is not allowed to be capable of passing a resolution in order for its dissolution to take place, corresponds to this same logic.

A further reason may be even the interest of the government itself for the stability of the chamber, which legitimised its establishment. The new constitution was prepared and received in the period of the transformation of the whole society, when there was a fundamental conflict about the form of the concept of these changes, but also the manner and speed of their implementation. At that time the government was an advocate of one of the solutions and did not have an interest in worsening its actualisation. Therefore for the government a stable Chamber of Deputies also meant stable support and a means for the realization of their plans for transformation. At the time when the government was preparing its constitution bill it was doing it from the moment when the idea that a new representation, for its own sake, should be elected for the new state was rejected.

It is possible to see in the government bill how both the influence of the habit of more than thirty years of experience and short term calculation in the framework of which the government sacrificed its own long term interest, consisting in the possible stronger (due to the system) position for short term interest in protecting the Chamber of Deputies from dissolution, and also at the price of the authority of the organs of executive power, whether their own or of the President of the Republic.

From the long term view the government in this way did not serve either itself nor the Czech Republic as such, because the chosen solution means the petrifying of conditions in the Chamber of Deputies, when each parliamentary crisis can be realistically solved only by combining together the forces within the closed system and with a certain amount of cooperation of the President of the Republic. The outcome is only internal tension, which in many cases made impossible and makes impossible constructive work in the Chamber.

4.2. Constitution Proposal Put Together by the Liberal Social Union (LSU)

Apart from the government bill for a new constitution of the Czech Republic several further bills were prepared and given to the presidium of the ČNR for deliberation by the opposition parties. One of these was a bill prepared by the representative of the LSU, which was the only one that appeared in the parliamentary publication under No. 205.¹³ A marked disadvantage also of this bill is its missing explanatory report, which would be able to clarify some of the unclear passages of the proposal. Specifically the bill's Art. 73, which governs the possibility of dissolving the Chamber of Deputies, is not clearly formulated; it is possible to deduce its actual meaning with a certain measure of uncertainty only by way of interpretation.

Beforehand it is vital to explain that the bill submitted by the LSU took into consideration a parliamentary form of government fundamentally corresponding to the current constitutional legislation. A bicameral National Assembly, composed of the Chamber of Deputies and the Senate, was supposed to exercise legislative power; however only the Chamber of Deputies could be dissolved by the President of the Republic under certain circumstances. The counter-signature of the Prime Minister should not be necessary for dissolution.

The specific provision dealing with the question of the dissolution of the Chamber of Deputies is Art. 73 of the bill. It is not however formulated sufficiently clearly. The fundamental question is whether para. 2 changes the conditions under which a dissolution can occur through the process defined in para. 1, or whether there are two completely different situations under which dissolution can occur. With regard to the structure of the entire Art. 73 it is necessary to lean to the second interpretation. This means that the LSU bill, on the one hand, assumed the establishment of the right of the President of the Republic to dissolve the Chamber at his own discretion if he gathers „really serious reasons“ (This idea is not defined anywhere further in the bill.) for it and, on the other hand, the right of the President of the Republic to dissolve the Chamber of Deputies in relatively precisely defined situations.

If we accept the above described explanation, then Art. 73, para. 1 of the bill gives the President the right to dissolve the Chamber of Deputies basically at his discretion. The condition is that his decision can be substantiated in reality by serious reasons and he obtained the consent of the chairpersons of both chambers of the National Assembly. The President should have the possibility to make use of his right at most once a year, and not in the last six months of its term. As far as this last limit is concerned it is evident that the inspiration for it was the Constitutional Document of 1920.

At first glance the bill awakens the impression of a considerable strengthening of the President of the Republic in relation to the Chamber of Deputies. On more detailed consideration of the introduced construct it is possible to come to the conclusion that at issue is the power of the president, which would be, in greatest probability, difficult to

13 Parliament publication No. 205 [interactive]. 1992 [accessed 2009-09-08]. <http://www.psp.cz/eknih/1992cnr/tisky/t0205_01.htm>.

implement should the President want to promote his own exclusive will. Effective protection against misuse would be the concept of a deciding “triumvirate”, where the idea of dissolution, which would also bring the loss of his office, apparently would not find support in the chairman of the Chamber of Deputies. On the other hand, however, it is not impossible that this conceived possibility of dissolution might be functional should the conditions in the Chamber of Deputies make its functioning completely impossible. What is not clear is only the reason, which led the creator of the bill to bring the chairman of the Senate into the decision about the dissolution of the Chamber of Deputies.

The right of the President to dissolve the Chamber of Deputies according to circumstances specified beforehand in the constitution is stated in the second paragraph of the Constitution. This does not in essence differ from contemporary constitutional legislation. It is necessary to state up front that the LSU proposal counted on the right, not the obligation of the head of state to dissolve the Chamber of Deputies, should one of the foreseen situations occur. Not even this proposal avoided the potential difficulty which arises also from the contemporary Constitution and which was described in detail above. The proposal moreover only took into consideration three possible situations, which could lead to dissolution. In contrast to the contemporary state of affairs, dissolution could not take place when a session of the Chamber of Deputies was recessed for a longer period of time than was acceptable.

An interesting modification in contrast to today’s legal legislation was the specification of the conditions for possible dissolution on the basis of non-deliberation of a government bill to which the government attached the question of confidence. The constitutional proposal demanded that in this case the Chamber of Deputies be able to form a quorum during the period time specified for deliberation. By using this reason, that it was not able to form a quorum for the whole period, the bill elegantly avoided the possibility that gives today’s Art. 35, according to which in a case where the Chamber of Deputies does not pass a government bill with which the government has linked the question of confidence within a period of three months, where in the end *two* reasons are given for dissolving the Chamber. In the case of the proposal submitted by LSU it is really talking more about an interest without wider practical meaning; or, respectively, the effect to which Art. 35 of the Constitution can lead under certain circumstances does not have any practical meaning.

The proposal for the constitution of the Czech Republic submitted by LSU for deliberation in the Czech National Council, in comparison to the government bill and even to today’s situation, did not bring any basic difference with respect to dissolving the Chamber of Deputies. It is possible to assess it as comparable, except for the mentioned Art. 73, para. 1, which, for certain circumstances, conceived of dissolving the Chamber of Deputies as a right of the President of the Republic – however not without problem; but it is a small sign of a possible way out of a situation where the Chamber of Deputies is not capable of functioning, or even able to resolve a crisis on its own.

4.3. Proposal for the Constitution of the Czech Republic Prepared by the Left Block (LB)

Another of the political parties represented in the ČNR in 1992, which submitted its own proposal for the new constitution of the Czech Republic, was the Left Block. This proposal, although it was properly submitted to the presidium of the ČNR for deliberation, never appeared as a parliamentary publication.¹⁴ Unlike several other proposals it did contain an explanatory report.

The proposal of the Left Block was conceptually in many ways very interesting. The text was very complete, without lack of clarity in language and phrasing, and its designers were also able to avoid internal contradictions. With regard to the implementation of state power it took into account a form on the border between a parliamentary form of government and the form of an assembly government. Parliament was supposed to be a unicameral Czech National Council, whose position, in comparison with today, with respect to the other constitutional organs was to be strengthened in several ways; it thus should correspond rather to the concept at the time of the Czech National Council in the framework of the federation; but at the same time the proposition took into account the forming of a government in a way essentially corresponding to a parliamentary form. The Czech National Council was conceived of as being able to be dissolved.

This question was resolved in Art. 120, which allowed dissolution of the ČNR only in one case, and that being if the ČNR three times within six months of its election did not vote confidence in the government named by the President of the Republic.¹⁵ In this proposal the President of the Republic was given the right, not the obligation, to dissolve the ČNR.

The dissolution of the ČNR was conceived as a sanction against Parliament, which three times in a row within a period of six months after elections did not vote confidence in the government. The proposal assumed that the President would be actively engaged and would not prolong the process. For this reason the possibility of sanction was given to him to use against a non-constructively acting ČNR. In this the position of the President of the Republic as relatively strengthened. If he, however, prolonged performing his activities and naming the Prime Minister and the government itself, and he exceeded the period of six months, the ČNR could not be dissolved even in the case of its three times rejecting the proposed government.

The question arises as to how the ČNR could guarantee that the President would not propose a government three times in a row, which would be unacceptable for the ČNR. This problem is solved by Art. 112, para. 1 of the proposal, according to which the President was not only voted in by the ČNR but could also be recalled.¹⁶ In the case of the President of the Republic prolonging deliberation, the ČNR had an instrument in

14 The proposal was published in unmodified form in the daily *Haló noviny*, 26 October, 1992.

15 According to the proposal the Prime Minister should always be chosen by the President of the Republic.

16 According to Art. 121 of the proposal at least one third of the representatives was needed to submit a proposal for recall and for the recall three fifths of all the representatives in the Czech National Council must give their consent.

its hand through which it could protect itself and use against the President in the event of inaction or non-constructive action.

The proposal submitted by the Left Block solved the question of the dissolution of the ČNR in the case described very well. The issue still remains of how to answer the question of how to solve other cases of a non-functioning Parliament, when the proposal does not recognize the possibility of dissolution in the case of non-performance, recessing the session for a longer period than allowed, and it does not recognize the possibility of dissolution in the case of inaction on the matter of a bill the government considers to be of fundamental importance.

As far as the recessing of a session for a longer period than allowed by law is concerned, the constitutional proposal would not have to conceptually solve this matter, because in the recess period the function of the ČNR is fulfilled by the Permanent Committee, to which the legal power of the chamber is transferred. Even in the case that the session would be recessed in a given year for a longer than acceptable period, which was four months, the problem would rather be one of rules of order than of a material character, because the activity of the ČNR would be carried out even in this period. Dissolution thus would not be necessary.

The submitted bill recognized the possibility of dissolution of the ČNR for the reason that it did not make a decision on time on a bill that the government attached the question of confidence to. The reason is in the fact that according to the proposal the government did not have such a possibility. Its position towards the ČNR was weaker; it was accountable to Parliament for its actions. It would contradict the concept of the proposal if it were able to stand in opposition to its „governing“ organ and could influence its activity.

In contrast to the government bill the proposal of the Left Block differed significantly in its conception, but in the framework of its own system model it was of very similar character, and in the matter of dissolution of the Czech National Council successful and tied in nicely with later provisions. It proceeded from the conception of established way of organization and continued to develop it further.

4.4. Proposal for the Constitution of the Czech Republic Prepared by ČSSD¹⁷

ČSSD also submitted its own proposal for the constitution of the Czech Republic to the chairman of the Czech National Council for deliberation. This took place on 19 November 1992. Similarly to the other cases, the presidium of the Czech National Council refused to put this on their list of action. The proposal as such never became part of the official publication of Parliament.¹⁸ An explanatory report was joined to this proposal, even

17 Until the end of 1992 this abbreviation meant Czechoslovak Social Democracy (Československá sociální demokracie); after the split of the Czechoslovak Federation it was changed to the name of a party, Czech Social Democratic party (Česká strana sociálně demokratická).

18 A succinct extract of the proposal was published in *Rudé právo* on 2. November 1992. The full text was published in: *Právněhistorické studie*, No. 37. Prague: Karolinum pub., Univerzita Karlova, 2005, p. 225–272.

though in today's terms it was rather included in its more general part. Its extent and detail was very similar to the justifying explanation attached to the government bill.

The bill put forward by the representatives of the ČSSD is marked by its very careful and clear formulation; fundamentally it does not contain unclear or contradictory provisions. Conceptually the proposed provision was built on the foundations of the parliamentary system of government. The mutual relations of Parliament, the government and President of the Republic did not fundamentally differ from today's valid constitution. Thanks to the fact that the proposal was formulated fairly precisely, in its entirety it did not lead to problems of unclearness or interpretation, which we are encountering in the current Constitution.

The law making power should have been given to the unicameral National Assembly, the President should be elected directly by the people.¹⁹ The president's legal authority, in spite of the direct legitimisation by the people, should not be strengthened, but rather the opposite; in order for almost all the presidential activities to be validated it was necessary to have a countersignature by an appropriate member of the government, if need be by its chairman. A significant exception strengthening the position of the President as arbitrator stepping into moments of crisis was the legal power linked to the naming of a new government after elections. With respect to the fact that the non-expression of confidence in the newly named government was one of the reasons for possible dissolution of the National Assembly, and also with respect to the fact that the proposed mechanism differed substantially not only from the contemporary system but also from the remaining proposals prepared, it is necessary to briefly describe the proposed method of putting the government together.

The proposal for the constitution took fore granted that the President of the Republic would name the Prime Minister after consultation with the leaders of the political parties represented in the National Assembly. In this way the government should have been named twice after the elections. Should the government named in this way not obtain the confidence of the National Assembly even the second time, the President of the Republic should have the possibility to dissolve the National Assembly.

The proposal assumed only two failed attempts to name a government. On one hand the position of the National Assembly, compared to the president, was partially weakened by this. On the other hand, it was significantly strengthened, since the naming of the Prime Minister should have taken place after consultation in the National Assembly. That should have, in comparison with contemporary system at that time, had significant influence on the selection of the Prime Minister.

The President of the Republic, after two failed attempts at building a government, did not have to dissolve the National Assembly. If he did not do this, he had the possibility during a period of six months at most, to name and recall the government at his discretion, even though the named government would have to ask for a vote of confidence from the National Assembly within 15 days from its being named. If during the

19 In this point of the proposal ČSSD markedly departs from the ranks of the other proposals, because it was the only one to submit this manner of choosing the head of state in 1992.

course of the six-month period the National Assembly voted non-confidence in some of the governments named independently by the president, this would be a reason for the possible dissolution of the National Assembly. If none of the governments named in the mentioned six month period obtained confidence, then after the completion of that period the President of the Republic would have the obligation to dissolve the National Assembly.

In the described method the positioning of the President was significantly strengthened to the extent that it was possible to consider that this was an issue of one of the legal powers, which pushed the system of government in the direction of a half-presidential arrangement. The sense of this proposition should be considered in its entire complexity in the process of naming the government. It is vital to emphasize that the strengthening of the position of the President in the process of building a government corresponds to and balances the position of the National Assembly during the selection of the first two candidates for Prime Minister. It is necessary to understand the special powers of the President of the Republic to build a government without considering the period of time for attaining the confidence of the National Assembly as an instrument serving to overcome crises in the National Assembly, which could grow into a governmental crisis, and also as a sanctioning instrument threatening the non-adaptability of the National Assembly by the ending of its electoral term as a sanction for the fact that it did not support the government in the Prime Minister, whose naming was recommended by way of consultation.

Apart from dissolution of the National Assembly for the reason of its non-constructive stance in the building of a government, the proposal recognized the further possibility of dissolution in the case where the National Assembly did not make a decision within three months on a government bill with which the government linked the question of confidence. In this matter the proposal of ČSSD did not in any way differ from the valid constitutional legislation, nor even from the majority of the other proposals.

On the other hand, the proposal did not contain the possibility of dissolving the National Assembly due to an unacceptably long recess, nor for the reason of an unacceptably long inability to make a quorum. The reason was the existence of the Permanent Committee, which eliminated the negative consequences of the non-functioning National Assembly, whose power to a marked extent carried over to the Permanent Committee.

The third reason for the eventual dissolution of the National Assembly was the non-approval of the state census within six months of the time of its being submitted by the government. As can be seen from this arrangement, the position of the government was strengthened in opposition to Parliament in the case of a conflict over the census, because it was the government, which prepares the proposal for the state census and with knowledge in the matter designs the financial politics of the state. Both components of state power however are motivated by their sanctioning character to find a compromise within the six-month period of time.

For all cases of possible dissolution of the National Assembly a limitation applied excluding the application of this presidential power in the last 6 months of its life.

The creators of the ČSSD proposal were inspired by the Constitutional Document of 1920.²⁰

In conclusion it is possible to say that in the matter of the dissolution of the National Assembly the proposal presented by ČSSD differed significantly from the government bill and the contemporary system. Characteristic was the balance of the position of law making and executive powers in this matter, its rational assessment of the circumstances in which dissolution could come into consideration, and above all the constructiveness of the proposed solutions for a potential crisis. The position of the National Assembly should not be petrified so that it would damage the function of the constitutional system, as it threatens in some situations today. The position of the president as arbitrator and „crisis agent“ was, on the one hand, strong, offering effective solution, and, on the other hand, was placed into the wider framework of constitutional relations, which prevented misuse of the position of head of state. Whether this theoretically interesting construct would completely work in practice is difficult to guess.

4.5. Proposal for the Constitution of the Czech Republic Prepared by the Czech Crown (KČ)²¹

Among the parties which, on the dusk of the existence of Czechoslovakia, submitted their own proposal for the constitution of the new Czech state (This term is used considering its further context and is more appropriate here.) for deliberation, was also the Czech Crown party (further only KČ). This is a matter of the only monarchist party both at that time and also in today's political scene. The character of the proposal was predestined by its orientation. The proposal was directed towards abandoning of the established republican form of state and the announcement of a constitutional monarchy. With respect to the text of the proposal, it is not possible without saying anything further to state that it should be a matter of a pure parliamentary monarchy, because some of the powers of the ruler, especially in relation to the government during its building and recalling, were so strong that it would mean the introduction, at the very least, of elements of a dual monarchy.

The proposal is very thoroughly worked out in several parts; in some other passages it suffers an unclear formulation and certain internal contradictions. This direction is due to the fact that the KČ did not have any specialist comparable to those of the other parties, which put forward their own proposals for the constitution. Like other proposals it was submitted for deliberation, which however was not approved by the presidium of the ČNR. Therefore it also did not appear as a parliamentary publication.²²

The proposal for the constitution of the Czech state came from the principle of the separation of powers. The head of state should be a hereditary ruler, among whose po-

20 For precision it is necessary to state that this was only a formal inspiration, because the President of the Republic is supposed to be selected by direct vote and not by Parliament.

21 The full name of the party is: Czech Crown (Monarchist Party of Bohemia, Moravia and Silesia).

22 The full text of the proposal can be obtained on request from the Archiv KORUNY CESKE. Information about whether this was the proposal or a part of it, or at least a report on its preparation published in communications media is not available.

wers should belong the naming and recall of the head of government and this without further limiting conditions. The law making power should be vested in a bicameral Chamber, composed from an a Lower Chamber and an Upper Chamber. The Lower Chamber should be elected on the basis of a general, equal, direct voting right, by secret ballot, without a voting system according to whose rules elections should proceed specified by the constitution. The Upper Chamber should have half of its members named by the ruler and half voted by the Lower Chamber from deserving personalities of the state. Membership in the Upper Chamber should be for life. In order for the government to perform its activities according to Art 86 needed the confidence of the *Assembly*.

At this point it is necessary to draw attention to a rather basic, internal conflict in the text, since it gives the head of state the power to dissolve the Assembly in the case of repeated non-expression of confidence in the government, but at the same time, in Art. 71 of the proposal, it states that membership in the Upper Chamber is for life. With regard to the reality that the whole proposal for the constitution works with the reality that the Assembly is formed from both chambers, which work together on all matters under the direction of the chairman of the Assembly.²³ In interpreting it is necessary to draw further from this that it is only the Lower Chamber that can be dissolved, with the resulting necessity of a new formation by way of elections. At the same time it is, however, possible to accept the consideration that the dissolution and renewal of one part of the whole, while the second part is kept untouched, is a dissolution and rebuilding again of the whole.

The power of the head of state to dissolve the Assembly is established in Art. 61 of the proposal. The ruler had the possibility to act in three cases. The first of these was the situation when the Assembly, three times in a row, refused to vote confidence in the government, or voted non-confidence in it three times in the course of six months. This mechanism is very similar to the contemporary constitutional legislation. In the overall context of the proposal of the KČ it means, however, a very strong positioning of the ruler, since he was not formally bound by anything during the naming of the head of the government. Dissolution thus can potentially be a sanction against rejecting the will of the ruler, as far as the form of the new government is concerned. The possibility to dissolve the Assembly in the case where it votes non-confidence three times, one after the other, in six months, is rather theoretical since the constitutional proposal does not recognize the naming of a government, in which confidence would be presumed.

A second circumstance under which it was possible for the Assembly to be dissolved is non-deliberation on a government proposal with which the government linked the question of confidence, and this for a period of five months. This condition does not differ essentially from the other proposals, even from the contemporary constitutional legislation, with the exception of almost a doubly long period of time for deliberating the appropriate proposal. In this case it is a question of a quite common possibility, even typical, for all proposals compared.

23 Apart from the presidium of the Assembly the proposal also refers to the presidium of the Lower Chamber. In the matter of the internal structure of the Assembly the proposal is not very clear, which however does not prevent review of legislation on dissolving the Assembly, or respectively its Lower Chamber.

The third case that could lead to the dissolution of the government was submittal of an appropriate bill to the Lower Chamber or the Higher Chamber. The proposal of KČ is the only one that works with the possibility where the head of state might dissolve the law making body at its own proposal. This possibility could theoretically be used in a case when the Assembly was so divided or blocked that it was not able to fulfil its function in an orderly fashion and could come to the conclusion that renewing by means of vote would be the only possible way out.

From the spirit of the whole proposal it comes out that the possibility of blocking would threaten the Lower Chamber. If we proceed from the conviction of the people who made the proposal, then the proposal of the constitution very elegantly solves also the problem of in what manner to relatively quickly renew a Lower Chamber which has come to such a state of breakdown, that it would not be able to agree even on its own possible dissolution. As is evident, this initiative could come out of the Upper Chamber, which is presumed to be a stable assembly in which similar problems do not threaten and cannot threaten in essential matters.

Evidently from this same reason the proposal for the constitution does not establish the possibility of dissolution in the case when it comes to a recess for a longer period than is acceptable,²⁴ if need be in a situation where the Lower Chamber is not able to form a quorum for a certain period of time. At the same time the proposal of the Upper Chamber might help.

The proposal does not contain any limits as far as period of time, for example before elections, during which it is not possible to dissolve the Assembly.

On the whole it is possible to assess the value of the proposal in the framework of the concept from which it comes as successful. So its merit deserves praise namely for the possibility to dissolve the Assembly on the initiative of its chambers, which can be useful in the case of a broader crisis which it is not possible to solve by reshuffling its internal forces. In the remainder the proposal basically does not depart from the common solutions, which are contained in the other proposals; as far as any significant difference exists, it is fundamentally a monarchist concept, which to a marked degree makes the proposal very difficult to compare with the others, and at the same time puts it outside the common schemes. Its worth consists in that it tried to propose different than the long term traditionally established constitutional arrangement, by which it contributes practical thinking about the orientation of constitutional and state matters in the Czech Republic.

4.6. Comparing the Mechanism for Dissolution in Alternative Proposals for the Constitution

It is possible to assess the alternative proposals for the constitution that were submitted by individual political parties in 1992 from two points of view. First it is pos-

24 In this matter the legislation contained in the proposal is very successful. Two periods of time are distinguished. On one hand it states that the period of an individual recess of the session is not allowed to be longer than 20 days, and at the same time it forbids the whole being more than four months in a year.

sible to stress the complexity of the proposal and the connection of the possibilities for dissolution of the Parliament or of one of its chambers in connection with the remaining rules of the organization of state power at the highest level. A brief assessment of each of the proposals from this point of view is contained at the end of this section, which is devoted to it. In the second case it is possible to assess each of the proposals with respect to reality whether it contains a solution for a potentially non-functioning Parliament or chamber which would be generally useful, especially such one which might be used without great difficulty in the original government bill and which might in the face of the present, in a fundamentally unsuitable situation, improve it. Evaluation in this second case must be according to its own criteria strictly limited, because, with respect to the fact that each of the proposals presumes a different system of order of the highest state bodies, which makes all the proposals essentially incompatible, it is not possible to conduct a wider evaluation based on individual criteria through which it might be possible to state that some proposal is basically better than the others.

The government bill by itself, and the valid Constitution, has one basic insufficiency in the matter of the dissolution of the Chamber of Deputies. The appropriate provision anchors the possibility of dissolution in situations, which are either extremely unusual or rather unreal, and in this way it excludes the solution from practical use. What is essentially absent is a provision making dissolution of the Chamber of Deputies possible if it itself comes to the conclusion that it is not in its power to fulfil the function stated by the constitution, and if another agent, such as the President of the Republic, further supports this conclusion. In the contemporary order of things the Chamber of Deputies, and also along with it the whole government, is in the captivity of an existing, non-functioning dispersal of power should it come to such a critical situation. The way out is a non-standard step, either by way of an indirect updating of the Constitution based on a one-time shortening of the electoral term of the Chamber of Deputies, or a substantial rearranging of forces inside the chamber, which will however distance it from the results of the election.

It is possible to praise the proposal of the LSU from this point of view that alongside the provisions corresponding in essence to the government bill it also contains the possibility of dissolving the Chamber of Deputies if the President of the Republic finds some “actual serious reasons” for this purpose and his decision could be supported by the chairmen of both chambers. As a fault of this concept it is necessary to consider the linking of the chairman of the Senate to this process. From the system point of view and also from the point of view of functionality it would be more suitable for only the chairman of the Chamber of Deputies to give agreement. Although it would be worth it to consider whether it might be more appropriate to tie the dissolution to a deliberation of the whole chamber, this proposal is a worthwhile contribution to the discussion of this problem, as long as it would take place however during the period of the passing of the Constitution of the Czech Republic.

The Left Block conceived its proposal in a basically different way, which also pre-determines the specificity to which the proposed laws on the dissolution of the Czech National Council. By itself the proposal for the constitution is conceptually very well

worked out, especially as far as it is concerned with the process of building the government after elections. Because its point of departure however is rather more a system of assembly government than like a parliamentary form of government, the proposed solution is almost unusable for today's law. Especially, however, because given its differing conception it almost does not have to do so, it does not solve the question of a more simple dissolution of Parliament in the case of its fundamental, internal conflicts. For minor filling in of contemporary constitutional legislation it is not usable.

The evaluation of the proposal prepared by ČSSD is similar; it also offers an interesting solution for the period of time immediately after the elections for forming of a government. Although it stands rather on the concept of a parliamentary form of government, it is usable as an inspiration for modification of today's constitutional legislation.

Paradoxically the proposal for the Constitution worked out by the CZECH CROWN is such a source of inspiration for improving the government bill, or even today's Constitution of the Czech Republic. Paradoxical because it is a proposal whose concept is wholly incompatible with the contemporary constitutional arrangement. Its monarchist orientation almost disposes of mutual, at least relatively simple comparison. It is however a modification of one of the reasons for dissolving the Chamber, respectively its Lower Chamber, which, as far as it is evidently founded on a different philosophy and goals, would be quite usable even for today's constitutional legislation. This is concerned with the possibility of dissolving a chamber of Parliament at its specific request. With this provision the proposal of KČ solved the problem of a non-functioning Lower Chamber, and it did not lead to a situation where it is necessary to form a new functional coalition and government in a situation of fundamental breakdown and instability, which is a non-standard task, leading automatically to a non-standard solution.

With regard to the above it is possible to find inspiration in the proposal of LSU and KČ for modification of Art. 35 of the Constitution, in so far as it should give a way out of a situation of serious crises, which we would want to solve by methods that are standard, transparent and known beforehand. In case we would like to consider more extensive reform of relations between the law making and executive powers, then a worthy source for our considerations would be the proposals of the Left Block and ČSSD.

5. Proposals for Constitutional Changes Related to Art. 35 of the Constitution

Notwithstanding the fact that the dissolution of the Chamber of Deputies is relatively interesting for the specialized and lay public, and in spite of the fact that the contemporary legislation contained in Art. 35 of the Constitution is relatively unsuitably conceived, relatively few proposals for changing this have appeared. The reality that the dissolution of one of the chambers of Parliament necessarily means also new powers, or how they are exercised, for other constitutional bodies noticeably plays its share in this state. As will be shown below, in some cases it was supposed to occur together with resolving the question of the dissolution of the Chamber of Deputies also the partial strengthening of other constitutional bodies, and this beyond the necessary framework.

5.1. Constitutional Law No. 69/1998 Coll.

The first interference with constitutional legislation was made by the constitutional law²⁵ No. 69/1998 Coll. about the shortening of the electoral term of the Chamber of Deputies, dated 19 March 1998.²⁶ It took approximately only 5 years before experience confirmed that the provision Art. 35 of the Constitution does not allow a viable solution of a situation where the Chamber of Deputies would be internally so disunited or blocked that it could not fulfil its constitutional function.

The governmental crisis, together with a crisis within the ruling ODS (Civic Democratic Party), which led into its splitting apart and basic changes in the distribution of powers within the Chamber of Deputies, lead in the end to the general conviction, that the only way out of the given situation could be only an election ahead of time. In deliberating the possibilities which the Constitution offered, it was shown that the path of elections would be highly problematic and if some of the constitutional procedures would be used, this would mean both an unnecessary loss of time and a necessity to artificially and expediently use some of the means that were not at all conceived of for the given situation.

In order for dissolution of the Chamber of Deputies to occur, the process of naming a new government and a vote of no confidence would have to be initiated, or a government bill must be submitted with which the question of confidence was connected but on which the Chamber of Deputies could not form a quorum within three months. If need be there would have to be a session recess for more than 120 days, or the Chamber of Deputies would have to disperse and the representatives would have to ignore calls to meeting for a period of three months.

As is evident, a procedure that is in accord with the Constitution, would require that, in an obvious situation and generally confirmed crisis, a formal crisis would also develop, corresponding in its features to some of the situations implied by the Constitution. The necessity for such a procedure can be labelled not only as absurd, but in some serious critical situations even as destructive.

There were two values standing in opposition to each other. On one hand the interest to proceed according to the procedures specified by the Constitution, which would be, therefore, legitimate, but absurd. On the other there would be the possibility to choose a non-standard solution, which, however, would be rational and viable. In such a

25 By constitutional laws are understood rules adopted by the same process as the Constitution itself, which change, add to or dismiss their individual provisions.

26 The proposal was submitted by the representative of the Czech Social Democratic Party and was deliberated on as publication PS No. 351 in the II. electoral term. Its text is accessible, for instance, here: PS No. 351 [interactive]. Constitutional law No. 69/1998. [accessed 2009-09-08]. <<http://www.psp.cz/sqw/historie.sqw?o=2&T=351>>. For completeness it is appropriate to add that it is not just a single proposal. Almost the same proposal was submitted by the representative of the Communist Party of Bohemia and Moravia KSČM and was deliberated as publication PS No. 350 [interactive]. [accessed 2009-09-08]. <<http://www.psp.cz/sqw/historie.sqw?o=2&T=350>>. Both drafts differ in substance only in the manner of determining the day for the end of the electoral term. Meanwhile the proposal submitted by the representative of the ČSSD linked the end of the electoral term to the day on which elections to the Chamber of Deputies would be called by the president, the KSČM proposal set the day for the end of the electoral term as the last day.

situation when no realistic way existed as to how to form a new constructive majority for the support of the new government in the process of expressing confidence, the overwhelming majority of the deputies of the parliamentary parties agreed upon the fact that the way out of the situation could only be the shortening of the electoral term.

Even though the acceptance of a one time constitutional law on shortening the electoral term of the Chamber of Deputies was surely a non-system step and, as far as the basis of future practice is concerned, also an unwanted step, the accepted measures cannot be rationally criticized only for its character without regard to the context, both constitutional and political, under which this happened. By the complex assessment of this non-standard constitutional law it is necessary to emphasize that all solutions which were anticipated by the Constitution for different situations, would under the given situation then mean that it was necessary to form conditions for the dissolution of the Chamber of Deputies, by way of not implementing the Constitution. Non-implementing happened in the form of the Chamber of Deputies not meeting, the conscious recessing of a session for an unacceptable period of time, forming of a government with the only purpose being to express non-confidence in it, submitting draft bills nobody wants but treating them as if they were of government priority. In summary, the alternative was action consisting of circumvention and not implementing the Constitution, this paradoxically so that the Constitution could be eventually in its final result formally fulfilled. Under this situation it was constitutionally more conforming to accept a special constitutional law, with the content and even the reality that the solution is exceptional and should not be repeated. All the highest constitutional bodies expressed their agreement to it.

5.2. Complex Proposal for Change of the Constitution Prepared by the Czech Social Democratic Party and the Civic Democratic Party

The not long past experience with the government crisis at the end of 1997 led the deputies of the two largest Czech political parties, the *Czech Social Democratic Party* (ČSSD) and the *Civic Democratic Party* (ODS), in 1999 to draft a complex proposal of changes and additions to the Czech Constitution.²⁷ The provisions concerning the rules for dissolving the Chamber of Deputies was also part of this proposal

Art. 35 of the Constitution should be considerably changed, in connection with further rules that mainly concern the procedure for putting a government together. First of all it should be important to separate the duty of the President of the Republic to dissolve the Chamber of Deputies from his authority to make his own decision in certain cases.

The process of forming a government should be made more precise constitutionally in such a way that the President of the Republic would not have the possibility of freely choosing who he entrusts to put the government together, but should strictly proceed

27 This is publication PS No. 359, from the III electoral term. PS No. 359 [interactive]. [accessed 2009-09-08]. <<http://www.psp.cz/sqw/historie.sqw?o=3&T=359>>. Here the proposal will be described in the sense in which it was passed by the Chamber of Deputies and later by the Senate, because it is possible to consider this form as corresponding the closest to what the Chamber of Deputies imagined on solving the problems of the Constitution. Moreover the difference between submitted version and that passed by the Chamber of Deputies as far as the problem of dissolution of the Chamber of Deputies is concerned is very little.

in accord with the results of the elections. The first forming of the government should be entrusted to the representatives of that political party which during the election received the most seats in the Chamber of Deputies. If this proposed government did not receive any confidence, the President of the Republic should ask the representatives of the second largest party in the Chamber of Deputies. The potential third forming a government should run its course under the initiative of the chairman of the Chamber of Deputies, who should appoint a citizen who would propose the composition of the government to the President of the Republic. Contrary to the valid legislation it should be clearly stated who and in what order would be asked to put the government together. A similar approach should be used also during the electoral term whenever non-confidence in the government was voted.

In the event of the failure of these three attempts to form a government and of a vote of confidence in it, the President of the Republic should have the obligation to dissolve the Chamber of Deputies. In this way the sanctioning character of the institution of dissolving the Chamber of Deputies in the event of non-constructive action especially of the Chamber of Deputies in forming a government would be strengthened. In this case the proposal would not strengthen the position of the head of state, but rather the contrary. It would prescribe exact steps that would have to be taken when putting a government together, and at the same time it would limit the position of the President during the dissolution itself. There should be no discretion whether it should be done or not. This likewise got rid of the basic problem as to how to proceed further, if the President would not dissolve the Chamber of Deputies after a third unsuccessful attempt of putting a government together. The proposal presented was successful in this point, because it got rid of one of the loopholes, which gave and still gives chances under certain conditions to completely step beyond the frame of the given rules.

As far as the right of the President of the Republic to dissolve the Chamber of Deputies is concerned, this remained protected in cases when the Parliament was not able to make a quorum for a given period of time, or, in such case, when the session was recessed for a longer period of time than allowed. In neither case, however, should there be a change in the existing state of affairs.

The proposal, on the contrary, brought a change in the last reasons existing today for the dissolution of the Chamber of Deputies; and this in the case of not deliberating within the limit of three months a government bill with which the government has linked the question of confidence.

The submitters of the proposal did not expressly say in their explanatory report that the existing provision Art. 35 subpt. b) of the Constitution was left out due to further related changes touching especially on questions of a vote of confidence or non-confidence in the government and their consequences. In this direction, a basic change was supposed to come: deliberating or not deliberating a government bill with which the question of confidence was linked should have influence on the government only. In this way the basic change as to consideration or non-consideration of the government bill, with which the question of confidence was connected, should have influence *only on government*. According to the new statutes of the Constitution the passing of the

government bill would mean further continuation of government in office; its rejection should explicitly equal a vote of non-confidence. However, the lack of deliberation within the given time limit *should not have further any consequences on the Chamber of Deputies*.

As has been stated, the proposal interfered rather strongly with the concept of possible dissolving of the Chamber of Deputies. As a positive feature the transfer of one of the circumstances from being a right of the President to being an obligation should be noted. On the other hand, it is necessary to consider as rather negative the complete exclusion of the possibility to dissolve the Chamber of Deputies when it does not deliberate a qualified government bill within the fixed time. The non-deliberation would have the same consequence for the government as its rejection. From the conceptual point of view such a change would mean the strengthening of the position of the Chamber of Deputies against the government. Such change is surely possible, but it is questionable whether it is wanted. It namely means that the government would not have the chance to appeal directly in matters of utmost importance to the highest arbiter, the people. It also means the further strengthening of the position of the Chamber of Deputies between elections.

A basic change was supposed to be an amended Art. 17 of the Constitution, according to whose new paragraphs 3 and 4 the Chamber of Deputies should have the possibility to have a quorum of a three-fifths majority, with respect to the early ending of its electoral term, with the exception of the last three months before the election. This change was an immediate reaction to the experience of the crisis on the threshold between 1997 and 1998.

The submitters of the proposal came from the reasoning that without the additional change the shortening of the electoral term a constitutional law would be necessary. With this however the Senate would have to express its consent as well, and it would be a matter of a solution that is non-conceptual yet purposeful. The maximum possibility was therefore adopted by which a decision about the shortening of the electoral term could in character and legitimacy be brought close to passing a resolution on a Constitutional law. This was the reason why it was decided that in order to pass such a resolution a three-fifths majority was needed. The majority provides, on the one hand, sufficient evidence as far as being proof of support for a decision and, on the other hand, also is sufficiently high that it effectively prevents a self-dissolution of the Chamber of Deputies that was not well thought out. One can suppose that three-fifths of the deputies would only agree on the ending of their mandate when a crisis would be of a general character and there would be no real chance to overcome the crisis other than by way of election.

The overall trend is again obvious from the draft bill: the strengthening of the Chamber of Deputies and the elimination of other actors from a decision on its dissolution. An early ending of the electoral term ahead of time should happen completely without the participation of the President of the Republic.

Overall it is possible to characterize the proposal for dissolving the Chamber of Deputies as successful. The submitters of the bill tried to eliminate some non-functioning

parts of Constitutional legislation through it. It is especially necessary to appreciate the reflection of the relatively recent crisis that appeared in the proposal. The strengthening of the position of the Chamber of Deputies opposite the government can evoke certain doubts, but this is rather concerned with doubts about the concept of the proposal and not its functionality.

5.3. Proposal Submitted by the Senate in 2001

A further attempt at change, and not just regarding constitutional legislation on the dissolution of the Chamber of Deputies, came out of the Senate in 2001.²⁸ This was a complex proposal of changes, which was supposed to touch on the entire configuration of the relationship between the highest constitutional bodies. The very breadth of the draft bill was the reason of its lack of success. The Chamber of Deputies rejected this proposal immediately on the first reading.

In the matter of dissolving the Chamber of Deputies the Senate's proposal sought to fill in further conditions under which the ending of the electoral term could happen. To quote the proposal, it should happen at that time when "the government has submitted its resignation and the Chamber of Deputies has agreed, by a simple majority of all the deputies, with the proposal of the President of the Republic for its dissolution." The proposal did not contain any further provision, which might relate to this modification of the legislation.

In their explanatory report the submitters of the draft bill argue in support of their intent by referring to the governmental and parliamentary crisis at the end of 1997 and beginning of 1998. They directly state current constitutional legislation is not appropriate because in similar cases it has been necessary to look for a way out of the crisis with the help of non-standard measures that are not previously recognized in the Constitution and may even lack legitimacy.

The argument given is correct. The manner in which one should proceed in the future, however, raises doubts. Above all its formulation, which tries to precisely identify the circumstances, which must be cumulatively satisfied, and this keeping in mind the mentioned government crisis, is extremely problematic; however, this effort paradoxically leads to (perhaps) unthought of consequences. From the formulation of the proposal it comes out that it would depend only on the discretion of the President of the Republic, which in the case of the resignation of the government he will give, or not give, a proposal for the dissolution of the Chamber of Deputies. At first glance the final word of the Chamber of Deputies in this matter seems to be a suitable counterargument. In reality however the chosen construct does not restrict the contingent free will of the

28 This deals with Senate publication No. 101 from the III term of office. Senate publication No. 101 [interactive]. [accessed 2009-09-08]. <<http://www.senat.cz/xqw/xervlet/pssenat/htmlhled?action=doc&value=1296>>. The proposal became publication PS in the III electoral term. PS No. 1134 [interactive]. 2001 [accessed 2009-09-08]. <<http://www.psp.cz/sqw/text/tiskt.sqw?O=3&CT=1134&CT1=0>>.

President of the Republic in a way that would be desirable and as (perhaps) the proposers intended.

A more detailed look at the whole problem shows that the bill would in fact strengthen the position of the president, acting in concert with the government. The bill would not in any way prevent the government, in cooperation with the head of state, from submitting its resignation at whatever moment it recognizes it as politically suitable and advantageous, and the President of the Republic from proposing to the Chamber of Deputies its dissolution. A government majority could approve such a proposal and with this call early elections, and this at a time that would be favourable for the government. In this way the proposal would make it possible that the moment of elections would not be fixed ahead of time by the Constitution in framing legislation, looking from the perspective of unforeseeable crises, but would make it possible for an existing government majority in cooperation with the head of state to decide about it in a real way.

A small modification, which could effectively avoid this potential misuse, would be to fix the needed majority at three fifths. It is reasonable to assume that few governments in the contemporary conditions of the Czech Republic achieve such strong support. Even if this should happen, afterwards the fact of the support of the government by a constitutional majority would predestine the force during decision-making even in these matters, even during making changes to the Constitution

A fundamental fault of the proposal is also the reality that it could potentially lead to the government submitting its resignation and dissolving of the Chamber of Deputies occurring at the same time. Rational consideration contributes to not destabilizing an system already weakened by further interference with it. It is not appropriate for the state not to have a government or even a Chamber of Deputies, which could legitimately express confidence in it. A mistake in the proposal is its insufficient precision in the formulation which should specify that dissolution of the Chamber of Deputies is able to occur only after there will be a vote of confidence in a new, even though temporary, government.

The submitted bill raises more questions than it offers answers for in the matter of dissolving the Chamber of Deputies. It is not clear of course whether the possibility of shortening the electoral term of the Chamber of Deputies under certain circumstances at the discretion of the government and the President of the Republic was only an unintended result of unclear formulations, or whether this was one of the intentions. In each case it would not be a matter of a larger levelling of relations between the Chamber of Deputies and the government, as the proposers stated in their explanatory report, but of a relatively fundamental bias in favour of the government. It is true that this would widen the possibility of dissolution of the Chamber of Deputies. It is not however certain that the widening would be in a desirable manner.

5.4. Further Proposals for Change of Art. 35 of the Constitution

The proposal described in the preceding section became a direct inspiration for the Senate for a further proposals, which were submitted in following years, specifically

in 2005²⁹ and 2006.³⁰ It is not possible to say anything new about even one of these in comparison with the just described proposal introduced in the Senate in 2001, because both literally transferred the passage concerned with the dissolving of the Chamber of Deputies. Because there was no conceptual change, this means that the fundamental inadequacies, already shown in detail, of the original proposal also remained.

Special attention deserves to be drawn to the manner in which the Senate acted with a resolution of the Chamber of Deputies about the proposal from 2005, which was returned to it for completion. In the first place the Deputies criticized the strengthening of the position of the President without introducing here the disassembled reasons, further, that it would destabilize the Chamber of Deputies, and also that it is a non-complex proposal aspiring to reach standing in only one chamber of Parliament and not achieve status at the same time in the other chamber. In relation to the problem of dissolving the Chamber of Deputies, the first two objections have their own relevance, as it is possible to consider these as the main reason why the proposal was supposed to be at least substantially supplemented and reformulated, unless finally considered to be basically different.

If we compare both proposals which are contained in publication PS No. 1130 from the IV. electoral term and in PS No. 16 from the V. electoral term, then we determine that they differ only in their reciting already early submitted proposals on that theme which is presented in the explanatory report. The proposal submitted later, which should reflect the comments of the Chamber of Deputies, the Senate completely ignored and delivered it in the same form. There is a basic question of whether this manner of work reflects a chamber, which considers itself to be a stabilizing chamber, whose task is above all to improve the quality of the legislative process.

Both proposals, just as their model from 2001, would introduce rather unwanted changes into the constitutional system of the Czech Republic. The theoretical consideration that the government should call for elections to the Chamber of Deputies in concert with the President of the Republic essentially when it may suit it, was attested to essentially in the immediate post-election period of 2006, in which this bill was also repeatedly presented. Its passing and action within its limits would mean the elimination of the stabilizing function of provision No. 35, subpt. a), which would become in essence obsolete. If the government named as first in order was suitable; then it would also be the last government. The other two attempts at naming a government anticipated by the Constitution never occurred at all.

29 This concerns Senate publication No. 65 from the V functional term. Senate publication No. 65. [interactive]. 2005 [accessed 2009-09-08]. <<http://www.senat.cz/xqw/xervlet/pssenat/htmlhled?action=doc&value=32995>>.

The proposal became publication PS in the IV electoral term. PS No. 1130 [interactive]. 2005 [accessed 2009-09-08]. <<http://www.psp.cz/sqw/text/tiskt.sqw?o=4&ct=1130&ct1=0>>.

30 In the case of this proposal it is very likely that it concerns the above mentioned Senate publication No. 65 from the V functional term, which the Chamber of Deputies returned to the Senate for completion. The proposal became publication PS in the V electoral term. PS No. 16 [interactive]. 2006 [accessed 2009-09-08]. <<http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=16&CT1=0>>.

5.5. Dissolution of the Chamber of Deputies in the Aftermath of the Contemporary Political Crisis

The problem with the practical non-dissolvability of the Chamber of Deputies appeared again this year. On 24 March 2009 there was a vote of no confidence in the government of the Czech Republic.³¹ With this act the already long lasting reality was formally confirmed showing the breakdown of the government coalition of three parties supported by two originally opposing Deputies. With a view to the extraordinary balanced division of forces after the parliamentary elections in 2006, when both the contemporary government and the opposition camps obtained 100 seats each in a 200 member Chamber of Deputies, this meant the near exclusion of the possibility of forming a new government. The two strongest political parties declared that they are not for the emergence of a “great coalition” and at the same time discounted that they might enable the other party forming a minority government.

Under these circumstances it of course happened that in the framework of the emerging distribution of forces in the Chamber of Deputies it would not be possible to form a government which would obtain confidence and be able to function until the end of the electoral term. This should end at the beginning of June 2010. The main parliamentary parties were able to agree on the fact that the most suitable solution would be calling for early elections, which would allow an escape from the developing political impasse.

This political decision however in no time ran into a problematic concept in the current Constitution of the Czech Republic, specifically its Art. 35. As has already been described above, this provision does not make possible a quick dissolution of the Chamber of Deputies. Problematic of course is the situation where this chamber is so internally politically disrupted that it is unable to constructively support any government, but on the other hand is so unified that it is able to fulfil the tasks arising from its normal agenda.

There is a paradoxical situation here, where the Chamber of Deputies is capable of making a very strong strategic decision about its own dissolution, but not capable of making a strong but also strategic decision about the further direction of the country by means of support for a new government, and is capable of fulfilling its normal tasks. The Constitution of the Czech Republic does not give any possibility in this situation for how the Chamber of Deputies might be able to responsibly and relatively quickly renew its own ability to act.

Therefore an agreement was settled on among the major parliamentary political parties that it was necessary to choose a solution similar to that used for achieving a shortening of the electoral term in 1998. By this the adoption of a special one-time

31 This concerns the first similar case from the origin of Czechoslovakia to today. Of course in the pre-war period of political plurality the use of this institute did not occur, because the government as an organ developed on the basis of agreement of several political parties in the case of a breakdown of similar coalition ended in the form of resignation after the agreement of interested parties. In the post-war periods of limited democracy, a similar problem of a government under the dominance of the Communist party never occurred. After the renewal of democracy and political plurality in 1989 the circumstances never appeared under which the opposition would have enough power for overthrowing the government.

constitutional law, which only in an existing electoral term of the Chamber of Deputies leads to its shortening.³²

In terms of content this bill is very succinct because it only states that the electoral term of the Chamber of Deputies elected in 2006 will end on the day of elections, which will take place by 15 October 2009. As a consequence it shortens the period of time in a reasonable way for individual activities in the framework of preparation of the elections and announcement of the list of candidates.

Through its concept the proposal encroaches only minimally on the Constitution and on relations between the constitutional bodies. Following the same principle it only states the extreme dates of the period for elections but otherwise leaves it up to, for example the President of the Republic in cooperation with the government, to decide when the elections will take place within the frame of this interval and of the regulations of the election law.

The people proposing legislation are aware of the problems of a change of already given rules in the middle of a “game”, but they argue that to proceed strictly according to Art. 35 of the Constitution does not make much sense in the given situation. Adherence to them makes it possible to formally follow the already stated rules of the Constitution, but this will be a matter of only holding to the law for its own sake. Carried through to its effects, following the steps anticipated by Art. 35 of the Constitution, but in a way that they will not be able to be successful, is an ironic fulfilment of the old saying “*Fiat iustitia et pereat mundus*”.

Even though there are arguments justifying an extraordinary process majority approval, it is not quite absolutely so. There do exist some opponents of extraordinary shortening of the electoral term who desire a strict holding to the Constitution, without regard to time and political price.

There also appear individual considerations of the possible unconstitutionality of this new law of the Constitution and its review by the Constitutional court. Such an approach however opposes the current Constitution, which entrusts to the Constitutional court at a level of abstract control only examination of the correspondence of legal regulations with the Constitution and constitutional laws. It does not make it possible however for it to criticize the “constitutionality“ of additions and changes of the Constitution itself or it on a par with established constitutional laws.

The contemporary political situation again brings to mind one of the weak areas of the Constitution. It shows also that it should not come to a political joke, when political deliberations will be conducted with the goal that, in order to lead to *disagreement*, it is not possible to choose any solution but a non-standard one, which however be more rational than a non-realistically conceived constitutional process. Under these conditions it is also clearly obvious that it is necessary to add to the Constitution with respect to the possibility of a relatively easy dissolving of the Chamber of Deputies in the case of a serious political crisis.

32 This is concerned with publication PS No. 796 in the V electoral term. PS No. 796 [interactive]. 2009 [accessed 2009-09-08]. <<http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=796&CT1=0>>.

Conclusions

As already set out above, contemporary constitutional law gives relatively rather narrow possibilities for the eventual dissolution of the Chamber of Deputies. The alternatives that are set in Art. 35 of the Constitution limit themselves to cases, which are extremely unusual, or, with respect to existing practice, actually almost excluded. Along side this it does not establish any possibility for how to call early elections in the case of a generally accepted crisis in a manner that is known and transparent, so that there would not be any doubts as to the legitimacy not only of the chosen method but also of the process of evaluating the seriousness of a critical situation.

The contemporary constitution conceives the Chamber of Deputies as an organ in an almost unshakable position. The reason was an interest in guaranteeing the existing distribution of forces, which arose in the Czech National Council after the elections in 1992, and its transfer to an independent Czech Republic. So a stable Chamber of Deputies in this way should have become the foundation on which a similarly stable government could be built which gave itself the task of promoting its own vision of the transformation of Czech society and the state.

The chosen solution also automatically means that every eventual conflict, if it does not overstep an unacceptable limit, must necessarily be resolved in the framework of the Chamber of Deputies, within the given proportion of forces. It is possible to reshuffle forces inside this organ, but it is not possible to influence the given proportion from the outside. This method of stabilization also means a weakening of the role of the people as far as being the “highest decision maker”. The legitimacy of the relationships established as a result of regular elections is stronger than the legitimacy of an eventual demand for early elections, even though it would have been the more suitable solution within the framework of the given situation.

This arrangement in the final result does not testify to a full-bodied democracy because its result is that of being governed by the tendential shift of representatives or of whole clubs from the opposition to the side of the government, and the opposite. It also leads to the strengthening of the role of the political parties and the lowering of responsibility for their activities with regard to the public. If a crisis should occur, there is no threat of quickly organized early elections hanging above either the representatives nor above their political parties.

The contemporary system on the contrary supports the belief that elections will not take place and it is necessary that one take such action in the best way to ensure a share of power. This also means an extraordinary strengthening of the demand for the stability of the government. A change of government, or a more basic change in its composition is still seen as a thing that is not wanted, is inappropriate and even tragic. The idea is wholly neglected that the government should be capable of defending its steps in front of the public and, of course, also of explaining them. The approach to government as a body, which fulfils a certain historical mission, and to Parliament as one, which must create a reliable and uninterrupted background for this, is perhaps acceptable in interim periods after a change of the political regime. In stabilized democratic conditions, the

people should be given the possibility to make the decision where there is a basic dispute.

The contemporary Czech Constitution carries in itself the inheritance of the situation under which it was adopted. In the case of the dissolution of the Chamber of Deputies short term interest outweighed the finding of a solution, which could be successful in the longer term. At the time alternatives to the government bill for the constitution were available. Above all there were variants for the possible dissolution of the Chamber of Deputies at its own request, or, rather, if it formed a quorum for this.

The proposals for changes to Art 35 of the Constitution, which were submitted in the years 1999 and 2006, express an interest in a solution for non-functionality, but only the first of the proposals prepared by the two largest political parties can be considered successful. Its success is in the fact that it makes it possible to deal with cases of an internally broken down Chamber of Deputies without in any fundamental way reaching into the existing structure of the mutual relations between the highest constitutional bodies.

Although such an idea was not explained directly in the explanatory report, nevertheless from the formulation of the proposal, it is not possible to come to any other conclusions than that the three proposals put forth successively by the Senate could lead directly to a relatively significant interference with the constitutional system. Under certain circumstances it could lead to an advantage for a majority government, acting in agreement with the President of the Republic, against the opposition.

If we summarize the above conclusions, then from this it comes out that the first and, at the same time, last relatively successful attempt to achieve a more viable Art. 35 of the Constitution occurred in 1999. At the same time it was just this bill that could be the point of departure for further work in this matter.

If a change did not occur in the basic parameters of the constitutional system, then a bill allowing for a more flexible dissolution of the Chamber of Deputies should be based on the idea that the initiative for the dissolution can arise solely from the Chamber of Deputies itself, the resolution for which requires obtaining a quorum of three-fifths of all the representatives. This qualified majority, on the one hand, ensures that the decision will not be able to be misused by the government coalition against the opposition coalition to call for early elections with the purpose that this would be more suitable for it. And, on the other hand, it is the majority corresponding to the constitutional majority, which is, in the conditions of the Czech Republic, also declared as the amount sufficient for the legitimacy of a given provision. In the instance described the dissolution of the Chamber of Deputies should be a responsibility of the President of the Republic but not his right. Certainly it would be possible to introduce further criteria, which the proposal should fulfil. This would go beyond the scope of purpose here, which was to show just the minimum limits, which the proposal should keep.

A reasonable simplification of the dissolution of the Chamber of Deputies could be one of the elements, which would help the flexibility, and greater openness of the functioning of the Chamber of Deputies and of the government, which is dependent on it.

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ČEKIJOS RESPUBLIKOS ATSTOVŲ RŪMŲ PALEIDIMAS – TAIKYTINŲ KONSTITUCINIŲ AKTŲ KILMĖ IR ESMĖ

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Santrauka. *Čekijos Respublikos konstitucinėje sistemoje, sukurtoje vadovaujantis parlamentinio valdymo principais, numatyta galimybė paleisti Čekijos Respublikos Parlamento Atstovų rūmus. Atstovų rūmams atskaitinga vyriausybė ir suteikta didžioji Parlamento galių dalis.*

Parlamentinėse sistemose svarbu išlaikyti parlamento ir vyriausybės galių pusiausvyrą. Įprastas kiekvienos parlamentinės valdymo formos bruožas yra galimybė parlamentui balsuoti dėl nepasitikėjimo vyriausybe, t. y. vyriausybė yra priklausoma nuo parlamento valios. Kai kurios parlamentinės sistemos subalansuoja šį santykį suteikiant vyriausybei didesnes ar mažesnes galias paleisti tuos parlamento rūmus, kurie balsuoja dėl pasitikėjimo. Tai leidžia vyriausybei geriau atlikti politinio lyderio vaidmenį valstybėje; vyriausybė gali aktyviau inicijuoti ir formuoti politinę valstybę.

Šiuolaikinėje Čekijos konstitucinėje sistemoje parlamento pozicija vyriausybės atžvilgiu yra ypač stipri. Dabartinė Konstitucija nesuteikia vyriausybei jokios galimybės paleisti Atstovų rūmus. Be to, Konstitucijoje numatyta, kad Atstovų rūmus galima paleisti tik tuo atveju, jei jie nesugeba atlikti jiems priskirtų funkcijų.

Atstovų rūmus be galo sunku paleisti ir tuo atveju, kai jie balsuoja dėl nepasitikėjimo vyriausybe, bet negali surinkti daugumos. Negalėdami atlikti šios, parlamentinėje respublikoje pagrindinės, užduoties Atstovų rūmai negali veikti ir yra politinės fragmentacijos pavaldys. Jų gebėjimas atlikti kitas funkcijas, ypač įstatymų leidybos srityje, tam dažnai neturi įtakos. Konstitucijoje galimybė paleisti Atstovų rūmus (trim ar keturiais atvejais) siejama būtent su visišku negebėjimu funkcionuoti. Ketvirtuoju numatytu atveju, kuris siejamas su naujos vyriausybės formavimu, teisės normas sunku taikyti, kadangi politinis atstovavimas atskleidžia, kad ši procedūra (iš esmės teisės lygmeniu) tik laiko gaisimas, kai akivaizdu, jog naujoji vyriausybė atsižvelgiant į egzistuojančius santykius Atstovų rūmuose tiesiog negali būti suformuota, o jei ir galėtų būti suformuota – vėliau negalėtų dirbti.

Atsižvelgiant į istorines aplinkybes būtina nagrinėti priežastis, dėl kurių buvo priimta dabartinė Konstitucija. Prieš karą galiojusi Konstitucija Respublikos prezidentui, veikiančiam kartu su vyriausybe, suteikė galias paleisti abejus Nacionalinės asamblėjos rūmus. Tai buvo subalansuota ir iš esmės klasikinė sistema. Laikotarpiu po karo vadinamosios žmonių demokratijos sistemos kūrimas lėmė konceptuales pakeitimus, užkertant kelią parlamento viršenybei, kuri buvo kitų konstitucinių darinių galių pagrindas ir kuriam tie dariniai taip pat buvo atskaitingi. Žmonių ir jų asamblėjos valdymo sąlygomis buvo sunku išvaiduoti, kaip dariniai, kurių galios rėmėsi Asamblėja, galėtų inicijuoti jos paleidimą.

Vyraujanti Parlamento pozicija, palyginti su kitais konstituciniais dariniais, neabejotinai turėjo įtakos šiuolaikinės Čekijos Konstitucijos kūrėjams, kadangi naujoji Konstitucija buvo parengta Parlamente ir naujosios koncepcijos kūrėjai patys patyrė užkertančių kelių nuostatų įtaką. Antras svarbus veiksnys buvo tai, kad taikytina Konstitucija buvo parengta prasidėjus didelių pokyčių visuomenėje laikotarpiui. To meto vyriausybė, be kitų dalykų, pageidavo, kad ją palaikytų stabili parlamentinė sistema.

Vėlesniu penkiolikos metų laikotarpiu ne kartą buvo akivaizdu, kad dabartinė nelanksti Konstitucija netinkama visas funkcijas atliekančiai ir stabiliai valstybei. Keletą kartų jau buvo pateikti siūlymai atnaujinti Konstituciją, tačiau nė vienas iš jų nebuvo priimtas. Be to, Atstovų rūmų paleidimo klausimu jau du kartus buvo priimti tam tikri Konstitucijos pakeitimai, pavyzdžiui, buvo sutrumpintas Atstovų rūmų narių kadencijos laikotarpis.

Reikšminiai žodžiai: konstitucinė teisė, parlamento paleidimas, vyriausybės balsavimas dėl nepasitikėjimo, parlamentinė valdymo forma, konstitucinė sistema, Čekijos Respublika.

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