



ORIGINAL PAPER

Czech Bicameralism 1996-2016: Conflict or Cooperation?

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Abstract:

Article deals with the relations between two parliamentary chambers of the Parliament of the Czech Republic while exercising their legislative power. It asks a question, whether split majorities in each of the chamber in 1996-2016 resulted into more confrontational relations between the chambers and more frequent use of legislative tools such as Senate power to amend or veto the proposed legislative initiatives or Chamber's power to override Senate vetoes.

Keywords: *Czech Republic, parliament, bicameralism, Chamber of Deputies, Senate, legislative process, coalition majority*

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Introduction

The existence and functioning of bicameral parliaments brings many challenges that individual actors of the political and constitutional system have to cope with. One of the key issues that are being studied in the connection with the functioning of the bicameral parliaments is the strength and real role of the second chamber in the legislative process, and the resulting relationship between the two chambers. In addition to the rules and processes set by the legislative norms (Constitution, Rules of Procedure etc.), this is also very much dependent on the form of the party system, the relations between the political parties and the principles of formation of the parliamentary and government majority.

The party composition of chambers in bicameral parliaments is one of the most important factors that play key role in studying, analyzing and evaluating the role, influence, importance and effectiveness of the second chambers and bicameral parliaments in general. If confrontational style of governance and coalition vs. opposition relations prevails (unlike a more cooperative system) in the country's political environment, the existence of different majorities (incongruent situation) in each of the parliamentary chamber may in the extreme cases lead even to political or constitutional crises, blockage of the legislative process, or frequent changes and amendments of laws depending on the alternation of legislative majorities. Nevertheless, it cannot be automatically guaranteed that the existence of the same majorities (congruent situation) will lead to seamless relations between the parliamentary chambers. Even within the political parties there may be different opinion fractions; in the case of the second chambers established on a different legitimacy principle than the first chambers, the different attitude of the representatives of a single entity can be influenced by differences in legitimacy and origin or sources of mandate.

The aim of this article is to analyze whether the legislative process in the Parliament of the Czech Republic at times when the bicameral legislature functioned in the situation of split majorities (incongruence) had different features and results than the one held during consensual majorities. The article will focus on the comparison of the legislative process at the time of incongruence from three aspects. First: we will take into the account the shares of the legislative bills (proposals) that were approved in the Senate in the identical wording of the Chamber of Deputies (therefore without any changes or amendments from the Senate). Second: we will analyze the situations when legislative bills passed in Chamber of Deputies were vetoed (rejected) by the Senate. Third: we will look at the activity of the Senate when returning legislative bills back to the Chamber of Deputies with proposed amendments. Because our aim is to point out whether and how the different composition of the two parliamentary chambers influenced Czech Republic's legislative process, we will look closer at the second and third aspects of whether different party composition affected the fate of the legislative bills that were vetoed or that were returned to the Chamber of Deputies with amendments.

Main research question is formulated as follows: Did the legislative process in the bicameral Parliament of Czech Republic led to higher share of conflicts between parliamentary chambers and more frequent use of veto tools during legislative process in the periods of incongruence (split majorities) during 1996-2016?

At the end of the introduction, we will note that this paper will focus only on the issue of the ordinary legislative process. In view of the different majority required for the

approval of constitutional laws (three-fifths majority of all members of the Chamber of Deputies and three-fifths majority of present members of the Senate), these will not be taken into the account in the presented analysis.

Introductory methodological notes

At the beginning of the article, we should notify the readers of several methodological obstacles that this analysis is challenged by. The first one is the fact that the Czech Republic's political party system operates in a multiparty form. Such analysis would be more easily carried out in a system where only two relevant parties exist and therefore it is easy to assess the periods of consensual majorities (congruence) and periods of dissenting majorities (incongruence). The multipartism functioning in the Czech Republic's party system forces us look at the (in)congruent situations somewhat more difficult, however, it does not make it entirely impossible.

Another relatively significant limit is the fact that minority or quasi-majority governments were often formed in the Czech Republic. Establishment and subsequent existence of such cabinets has often been dependent on the support or tolerance of the actor (or actors) standing outside the structures of the coalition parliamentary clubs. It is also necessary to deal with differences in the internal party-political organization of both chambers. The twenty-year experience with the internal structure of the senatorial clubs shows that they cannot be automatically mirrored and compared to the structure of the clubs established in the Chamber of Deputies. In the Senate, clubs that are often not composed entirely of senators elected for one political party or movement, but they often represent mixture of senators elected on the ballots of different electoral bodies. In addition, it is necessary to add that the senators elected initially as independent, may or may not become part of any senatorial club.

Last, but not least, we find the limits in the form of non-correspondent electoral terms between the Chamber of Deputies and the Senate. As long as the elections were held at least in the same (even) years,¹ albeit with a four-month delay, these terms could be more or less synchronized with some minor tolerance. However, the premature dissolution of the Chamber of Deputies and the subsequent elections in the odd year of 2013 have made the matter somewhat more complicated. I therefore kindly ask your dear readers to take note of the limits mentioned above when reading and understanding the analysis.

Czech Senate as the actor of legislative process

Before we proceed to the analysis of 20 years of legislative activities of the Czech Senate, let us introduce briefly the Senate's position in the Czech political system, and particularly in the legislative process. The Constitution of the Czech Republic, passed in December 1992 and effective since January 1993, created the Parliament as the bicameral one (Constitutional Act n. 1/1993: art. 15, section 2). The terminology used in the 1993 Constitution reflected the tradition of Czechoslovak parliament from the interwar period.² The houses were named the Chamber of Deputies (lower house) and the Senate (upper house), same as during interwar period. Authors of the 1993 Constitution, however, tried to balance the positives of Czechoslovak constitutional and parliamentary traditions with avoiding weaknesses and negatives of the practical functioning of interwar Parliament.

Interwar Czechoslovak bicameralism was not an effective one, as both parliamentary chambers were elected by the same electoral system and in fact also in the same time and for the same electoral period. Although 1920 Constitution arranged for different length of the term of office for each of the chamber: six years for the Chamber

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of Deputies, eight years for the Senate (Act. n. 121/1920: § 11 and 16). In the same time the Constitution also allowed that both parliamentary chambers could be prematurely dissolved (Act. n. 121/1920: § 31, section 1). And in fact, they always were dissolved in the same time during the interwar Czechoslovakia (Kysela 2004: 384-385; Cabada 2011: 40). Therefore, composition of both parliamentary chambers was always identical, as election to both chambers were held in one time and reflected same political, social and economic conditions and mood among voters. We can argue that bicameral parliament with two identically composed chambers is not able to exercise its powers effectively.

Authors of the Constitution passed in 1992 learned this lesson and provided for more effective functioning of bicameralism in independent Czech Republic. Each of the chambers is now elected by different electoral system (Chamber of Deputies by proportional electoral system, Senate by majority electoral system; Constitutional Act n. 1/1993: art. 18, sections 1 and 2; Charvát 2012: 109 and 119), for different length of term of office (Chamber of Deputies for four years, Senate for six years; Constitutional Act n. 1/1993: art. 16, sections 1 and 2), with Chamber of Deputies being dissolvable under certain circumstances set in Constitution (Constitutional Act n. 1/1993: art. 35), while Senate cannot be dissolved under any circumstances. All 200 deputies are elected at one time, while the Senate is always renewed only partly as every two years one third of senators is elected (Constitutional Act n. 1/1993: art. 16, sections 1 and 2).

The legislative process in current bicameral parliament involves both chambers of parliament, with exception of the Act on the State Budget and Act on the State Final Account. These is the only two laws that are passed by the Chamber of Deputies only. All other legislative bills (proposals) are first discussed in the Chamber of Deputies, and if passed they are send to the Senate. The upper chamber has basically five ways how to deal with the legislative bill submitted by the lower chamber. First Senate can pass the legislative bill without any changes in the identical wording as the Chamber of Deputies (Act 90/1995: § 97, section 2; Act 107/1999: § 108). Second option Senate has is to veto the legislative bill (Act 90/1995: § 97, section 3; Act 107/1999: § 108). Another way Senate can contribute to the legislative process is to propose amendments (Act 90/1995: § 97, section 4; Act 107/1999: § 110). Fourth type of reaction is to “express the will not to deal with the bill” (Act 107/1999: § 107), which has same consequences as if the Senate passed it. Fifth option is that Senate does not pass any resolution related to the bill within 30-day limit, which again has same consequences as if the Senate passed the bill (Act 90/1995: § 97, section 2). If the legislative bill was vetoed or amended by the Senate, it is returned to the Chamber of Deputies. The Chamber of Deputies can override the Senate veto with majority of all deputies (at least 101 votes out of 200). If it fails to gain this majority, the Senate veto is not overridden and the bill is killed (Act 90/1995: § 97, section 3). If the Senate proposed some amendments, the Chamber votes first on the bill in the wording as amended by the Senate. If the Chamber of Deputies confirms Senate amended wording, the bill is adopted in Senate version. If it does not confirm Senate amended version, deputies vote on their original wording before it was amended by the Senate. In case majority of all deputies vote for the original bill, then the Chamber wording is adopted (Act 90/1995: § 97, sections 4 and 5). Different procedure applies for adopting or amending the Constitution, constitutional acts and electoral laws. However, our analysis will deal with the normal legislative process only, therefore it is not necessary to introduce this special procedure (see Kysela 2004).

Determination of the incongruent periods³

The Senate has existed for more than 20 years. Since its establishment in 1996 it has completed 10 two-year terms of office. Out of these 10 two-year terms, five times the ruling majority or majority backing ruling party /parties had majority in both houses of Parliament, therefore creating congruent situation. In the remaining five situations the majorities were split, therefore government backed by majority (quasi-majority) in the Chamber of Deputies did not maintain majority status in the Senate. Below is a basic overview broken down by the Senate terms. These were the incongruent situation that we will analyze in our article.

Table: Governmental majorities (based on Chamber of Deputies status) and their position in the Senate in 1996-2016

Senate term of office		Governmental majority in Chamber of Deputies	Position of the government in the Senate	Situation
1.	1996-1998	ODS, KDU-ČSL, ODA (99/200) <i>½ of 1998 – caretaker Cabinet</i>	majority (53/81)	congruence
2.	1998-2000	ČSSD (+ ODS as result of the “Opposition Accord”) (74+63=138/200)	majority (49/81)	congruence
3.	2000-2002	ČSSD (+ ODS as result of the “Opposition Accord”) (74+63=138/200)	minority (37/81)	incongruence
4.	2002-2004	ČSSD, KDU-ČSL, US-DEU (101/200)	minority (26/81)	incongruence
5.	2004-2006	ČSSD, KDU-ČSL, US-DEU (101/200)	minority (34/81)	incongruence
6.	2006-2008	ODS, KDU-ČSL, SZ (100/200)	majority (52/81)	congruence
7.	2008-2010	ODS, KDU-ČSL, SZ (100/200) <i>since 2009 – caretaker Cabinet</i>	majority (43/81)	congruence
8.	2010-2012	ODS, TOP 09, VV (118/200)	minority (30/81)	incongruence
9.	2012-2014	ODS, TOP 09, VV (118/200) <i>since 2013 – caretaker Cabinet</i>	minority (20/81)	incongruence
10.	2014-2016	ČSSD, ANO 2011, KDU-ČSL (111/200)	majority (49/81)	congruence

Source: Just 2016; Zabořilová 2016

That five incongruent terms can be divided into three logical stages. First stage includes the second half of the ruling period of minority Cabinet formed by Czech Social Democratic Party (ČSSD) backed by formally opposition Civic Democratic Party (ODS) via so called “Opposition Accord” signed after 1998 elections. Second stage includes two consecutive incongruent terms during which the ruling center-left majority led by the Czech Social Democratic Party (ČSSD) faced strengthening opposition led by right-wing Civic Democratic Party (ODS). And, finally, third stage includes two consecutive incongruent terms during center-right cabinets led by Civic Democratic Party (ODS) and facing majority in the Senate formed by opposition Czech Social Democratic Party (ČSSD).

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First incongruent period: “Opposition Accord” signatories lost the Senate majority

The first period, when the two parliamentary chambers were in an incongruent relationship, began in the middle of the term of office of the minority Cabinet formed by the Czech Social Democratic Party (ČSSD), which governed thanks to the contractual arrangement with the major opposition party, the Civic Democratic Party (ODS), the so-called “Opposition Accord”.⁴ This alliance succeeded in imposing a new electoral law in the Senate in June 2000 (see Charvát 2013: 101-120), which according to the Constitution of the Czech Republic requires the consent of both chambers, i.e. without the possibility of overturning of the Senate decision by a majority in the Chamber of Deputies. Four months later, however, as a result of the elections to the one-third of the Senate, the two parties lost majority in the upper chamber, mainly thanks to the success of the alliance of four center-right parties, so called Four-Coalition. This alliance was formed as a reaction to the “Opposition Accord”. The four member parties of Four-Coalition were Christian and Democratic Union – Czechoslovak Peoples Party (KDU-ČSL), Union of Freedom (US), Civic Democratic Alliance (ODA) and Democratic Union (DEU).

The period of 2000-2002 therefore represents the first incongruent situation, although the majority in the Chamber of Deputies we are comparing with the Senate is reached on the basis of contractual relationship between the ruling party forming a single party minority Cabinet and the formally opposition party. From the Senate point of view it was its third term of office in the years 2000-2002. The overall course of the legislative process during this period was not marked by any major or revolutionary reversals. The proportion of legislative bills that were passed by the Senate in the identical version as in the Chamber of Deputies (65 %), bills that were returned by the Senate back to the Chamber of Deputies with amendments (25.3 %) and bills that were vetoed by the Senate (6.2 %), basically corresponded with the average for the entire twenty-year existence of the second chamber. While it is true that in the case of vetoed bills, it was upward in comparison with the previous two electoral terms. In the first and second Senate terms the proportion of vetoed bills was 4.5 % resp. 4.1 % (however, the overall average is 6.5 %).

Incongruence has also failed to address the disputes between the two parliamentary chambers on the question of subsequent deliberations on vetoed bills and bills that were returned to the Chamber of Deputies with amendments. In both cases, the proportion of the Chamber of Deputies' defiance was therefore below-average. Significant under-average was recorded especially in case of vetoed bills. While the average proportion of the Senate vetoes overridden by the Chamber of Deputies over the twenty years of the Senate's existence was 59.1 %, the Senate was overridden in only in 37.5 % of cases in the period of 2000-2002. Also, the success of the Chamber of Deputies in promoting its versions of the bills as compared to the Senate's amendments was minor and slightly below average (31 % in 2000-2002 versus the twenty-year average of 35.7 %).

A certain explanation for this situation can be found in the fact that the contractual alliance of the ruling Czech Social Democratic Party (ČSSD) and opposition Civic Democratic Party (ODS) did not apply absolutely and automatically to all the legislation initiated by the ruling party. Some bills passed through by ruling Social Democrats with the help of votes of the other political parties represented in the Chamber of Deputies at that time. That is why the voting majorities also frequently changed ad hoc. Anyway, despite the relatively confrontational relations between political parties at the time of the so-called “Opposition Accord” in general, it is obvious that the legislative process did not

suffer from these disputes. At least not so that there is a significant bias compared to the average.

Second incongruent period: coalition Cabinets led by the Czech Social Democratic Party facing strengthening opposition of the Civic Democratic Party in Senate (2002-2006)

The second incongruent period can be time-bound by the years 2002-2006, which corresponds to the fourth and fifth term of office of the Senate. During this period, Cabinets led by the Czech Social Democratic Party (ČSSD) and accompanied by two junior coalition partners Christian and Democratic Union – Czechoslovak Peoples' Party (KDU-ČSL) and Union of Freedom – Democratic Union (US-DEU) were at power. Although three Cabinets gradually served in this period, they were all composed and supported by the same political parties, and with the same majority.⁵ This coalition alliance held the minimal possible majority in the Chamber of Deputies (101 of 200 seats), however, its position in the Senate was minority from the very beginning, and this minority has been even more diminishing over the repeated successes of the opposition Civic Democratic Party (ODS) in 2002 and 2004 elections to the one third of the Senate.

In the fifth Senate term of office in the period of 2004-2006, we can register the most visible variation in the share of legislative bills adopted by the upper house in the identical wording of the Chamber of Deputies. One explanation may be the fact that at that time, in addition to the official coalition government of Social Democrats, Christian Democrats and Union of Freedom, a parallel coalition of the Czech Social Democratic Party (ČSSD) and the Communist Party of Bohemia and Moravia (KSČM) began to work more intensively. This unofficial parallel coalition had significant majority in the Chamber of Deputies – 111 votes (while the official coalition government held a close majority of 101 votes), but its position was significantly weaker in the Senate, mainly due to the low representation of the Communist senators. The use of the Social Democrat's parallel coalition with the Communists was criticized not only by other then-opposition parties but also by the official coalition partners of the Social Democrats.

While in the fourth Senate term of office in the period of 2002-2004, the share of Senate-approved acts in the wording passed in the Chamber of Deputies (65.8 %), did not exceed the average for the entire 20-year period of Senate existence (66.6 %), in the fifth Senate term of office in the period of 2004-2006, the share of approved laws dropped to only 37.8 %. Logically, the proportion of draft laws, which the Senate has returned to the Chamber of Deputies with amendments, increased to 42.7 % (while the average for the entire existence of the Senate is 24 %) in the fifth term of office. Also, the share of vetoed bills rose to 15.8 % (20-year average is 6.5 %). The shares of bills that were returned to the Chamber of Deputies with amendments corresponded to the average during fourth Senate term of office (26.1 %). The share of vetoed bills was even below the average during the fourth term (3.9 %).

However, we can register the opposite trend in case of fate of vetoed laws back in the Chamber of Deputies. In the fourth Senate term of office in the period 2002-2004, the Chamber of Deputies overrode the Senate vetoes in 70 % of cases; in the upcoming two-year period during fifth Senate term of office (2004-2006), it was only in 47.4 % of cases (the average for the period 1996-2016 was 59.1 %). However, if we analyze how Chamber of Deputies dealt with amendments coming from the Senate, we can see that the 2004-2006 period was more confrontational compared to 2002-2004. The Chamber of Deputies succeeded in passing their version of the legislative bill in 45.6 % cases in the

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period 2004-2006, while in the previous Senate term of office in the years 2002-2004 it was only 31.3 % (the average for the period 1996-2016 was 35.7 %).

Third incongruent period: coalition Cabinets led by the Civic Democratic Party facing strengthening opposition of the Czech Social Democratic Party in Senate (2010-2014)

After the Senate elections in 2010, the then opposition Czech Social Democratic Party (ČSSD) won the absolute majority of seats in the upper chamber, the position they maintained and even strengthened after the Senate elections in 2012. In the eighth and ninth Senate terms of office, the two then most powerful parties of the Czech party system alternated the positions in which they were in relation to the majority in the Chamber of Deputies and the Senate during the fourth and fifth term of office of the Senate (during the second incongruent period; see above).

The share of bills approved by the Senate in the identical version as in the Chamber of Deputies was 56.1 % in 2010-2012, which is relatively low and below average. However, in the following two years, it rose to above average 77.8 %. It means that the Senate used veto power more than was overall average in the first part of this incongruent period (12.7 %), it also returned bills back to the Chamber of Deputies with amendments more (28.1 %). The fate of the bills vetoed and returned by the Senate in 2010-2012 subsequently confirmed this legislative confrontation. The Chamber of Deputies has been greatly successful in overriding Senate vetoes when the proportion of overridden vetoes exceeded 93 %. Although this is a very high proportion, it is not a historical maximum. This was achieved in the (congruent) term in 2006-2008, when the Chamber of Deputies overrode both of two Senate vetoes and therefore succeeded in 100 % of cases. However, the Chamber of Deputies marked a "record" in the period 2010-2012, as it succeeded in reconfirming its versions of the proposed bills compared to those amended by the Senate. Still, the success rate of the lower chamber was minor, because it managed to reconfirm only 48.4 % of cases.

The second half of this third incongruent period was no longer confrontational in the case the Senate vetoes. If we mentioned 93 % as the second highest proportion in the previous two years, the proportion of the Senate vetoes represented historical minimum (10 %) over the period 2012-2104. Part of it can be attributed to the fact that roughly one quarter of this Senate term has already covered the same majority of newly appointed governments.

Conclusion

The Czech political scene can often appear as a highly confrontational one from the ordinary and superficial media outlook. However, if we accept the confrontation vs. cooperation in course of legislative process in the periods of split majorities as a criterion, then this thesis would not be so unambiguous. The data do not suggest that split majorities have necessarily led to more confrontational attitudes, such as the more frequent use of vetoing of amending legislative bills by the Senate.

The available data show that the largest confrontation between the two chambers of the Czech Parliament in the legislative process took place during the fifth (2004-2006) and eighth (2010-2012) term of the Senate. In the remaining three periods of incongruence, the conflict between the chambers did not appear anyhow stronger than the average values for 20 years of the Senate's existence. At the same time, the analysis of

data showed that the congruence was not always a guarantee of a smooth running of the legislative process.

However, it remains the case that the presented analysis must take into the account the limits set forth at the beginning of this article.

Notes:

¹ The elections to the Chamber of Deputies took place in the spring of 1996, 1998, 2002, 2006 and 2010, before it was dissolved prematurely in fall 2013. The senators are elected for six years with one-third of them being elected every two years. Therefore, the Senate elections were held in fall 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010, 2012, 2014 and 2016. Only in case of senator's death or resignation, the by-elections are held in different terms during the year.

² Czechoslovakia had provisional and non-elected unicameral legislative assembly called Revolutionary National Assembly in 1918-1920. This assembly passed Constitutional Charter in February 1920 and thus created bicameral Parliament composed of the Chamber of Deputies and the Senate (Act. n. 121/1920: § 6, section 1). Both houses were dissolved after Nazis took-over Czechoslovakia in 1939.

³ If not stated otherwise, all legislative data in this and following sections come from the official annual reports of the Senate, accessed via webpages of the Senate at <http://www.senat.cz>. Also, all calculations by author of this text and by Pavlína Zabořilová work with data from official annual reports of the Senate.

⁴ The full name of the "Opposition Accord" was "Treaty establishing a stable political environment in the Czech Republic concluded between the Czech Social Democratic Party and the Civic Democratic Party" signed on 9 July 1998, following the 1998 elections to the Chambers of Deputies and deadlock in attempts to form a standard majority Cabinet. Treaty was later amended by "Tolerant Patent", signed in January 2000, and lasted until the next elections in 2002, when the new Social Democratic leader Vladimír Špidla withdrew his party from the treaty.

⁵ Cabinets led by the Social Democratic Prime Ministers Vladimír Špidla (2002-2004), Stanislav Gross (2004-2005) and Jiří Paroubek (2005-2006). Vladimír Špidla left Prime Minister position and party chairmanship after the party's failure in the first European Parliament elections in 2004. Also Špidla faced strong intra-party opposition that has been trying to weaken his position for several months before the European Parliament elections. Špidla was replaced by the 1st Vice-Chairman of the Czech Social Democratic Party and Minister of Interior in Špidla's Cabinet Stanislav Gross. Gross' tenure of office lasted only eight months due to his personal and financial affairs which negatively influenced the entire party and its results in the 2004 midterm regional and Senate elections. Third Prime Minister and party leader since 2002 came in spring 2005, when then relatively unknown Minister of Regional Development Jiří Paroubek replaced Gross following his resignation.

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