

Method of elections, powers of authority and the role of the president of the republic: public opinion versus constitutional practice

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In every democratic system, the position of the head of state has a specific meaning and various administrative and constitutional embedment. It is an institutional as well as symbolic expression of the state's sovereignty, of its "unity in diversity" in the context of pluralistic democracy. Conceptual arrangements are very diverse within modern democratic constitutionality: in some states, the head of state is only a symbol of constitutionality and his/her powers are either entirely formal (Great Britain) or very restricted (Federal Republic of Germany, Austria). In such a situation, another authority (prime minister, chancellor) usually becomes the constitutional power representative of the state. In other countries, symbolic as well as constitutional and administrative expression of the constitutionality is merged – a typical model, where the head of state serves as a symbol of the state's unity and at the same time is a constitutionally and administratively a strong institution is the presidential system of the United States (Blahož, Balaš, Klíma: 91-104). In the constitutional and political practice of modern democracies there is a varied and variable range of constitutional schemes oscillating between the head of state functioning as head of executive (presidential system) on one side and head of state with ceremonial roles without any arbitrary functions on the other side.

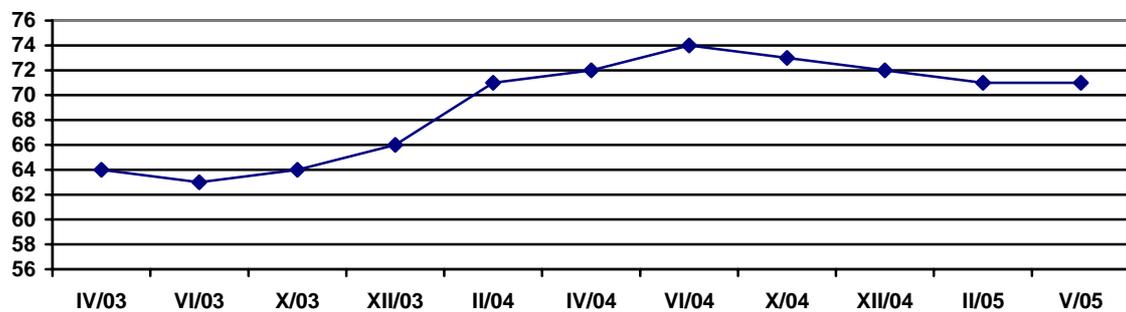
Even though the Czech Republic is a classical parliamentary democracy from a constitutional and legislative point of view, and not a presidential (or so-called partially presidential democracy), at the same time it grants the president vast immunity and significant powers (particularly strong powers of appointment) in relation to practically all constituents of the executive system. The president is certainly not only a formal head of state or its formal representative. Therefore, the Czech Republic is a parliamentary republic, but with a significant role of the president of the republic, who is an indirectly elected (by parliament) constitutional agent with very specific position and function. The role of the president is based on the model of parliamentary republic, which determines the systematical categorization of the president as a part of the executive power¹. However, he is also a *sui genesis* authority, that is, a sort of a mediator between powers and an assistant in solving critical situations (Gerloch, Hřebejk, Zoubek: 305 - 306).

The method of presidential election and president's role corresponds with the construction of the Czech parliamentary system. President of the republic (article 54 – article 66) is the head of state elected by parliament. He is not amenable to the parliament and the parliament cannot dismiss him from the office. His non-accountability stipulated by the constitution, is related to the fact that his decisions must be countersigned (by the prime minister or an authorized government member). The relatively strong constitutional position of the Czech head of state also follows from certain "autocratic" principles embedded in the constitution. In certain areas he is not bound by another politician, e.g. he doesn't need counter-signature for his decisions (appointing officials of Czech National Bank²). The irrevocability of the president combined with certain significant powers (power to appoint the government and - under certain circumstances - dismiss the lower chamber of the parliament) is a key for understanding the meaning of his particular constitutional and political role: the president should serve as a mediator or guarantor of the continuity of the state's

power and therefore also as a representative of the state's identity and integrity, hence a certain constant of the constitutional and political system.

We should note that in our constitutional tradition, the president as a head of state is a conventional institute based on a strong Masaryk tradition, which is directly linked to the foundation of an independent state of the Czechs and the Slovaks in 1918. The role of the president is still held in high regard and there is no doubt that the person should be, and to a certain measure is, reflected by the public as a natural keystone of the society. In this context it is not surprising that the president of the republic is in a long term the most trustworthy constitutional institution in the post-November history (let me remind you, by way of illustration, that during the past year and a half nearly three quarters of the questioned have expressed their trust in the head of state; Diagram 1).

Diagram 1: Trust in president (in %)



Source: CVVM

The president's role in creating and maintaining political stability, in communicating among parliamentary political parties or in creating civil society is irreplaceable and unique at the same time. In some areas it matches his constitutional powers. His position therefore doesn't depend only and solely on constitutional articles (or on the method of his election). Even in the conditions of parliamentary regime the president can, on the basis of the political situation in the country (party system, division of political powers in the parliament), historical and social context, but also on the basis of his personality and charisma, political talent, etc. significantly affect his own position. In certain constellation, the president can play a more significant role in the Czech political system than that stipulated by the letter of the Constitutional articles.

What ideas do Czech citizens have about the meaning and parameters of the constitutional and political role of the president? And how do these ideas concur with the letter of the constitution? The Centre for Public Opinion Research (CVVM) of the Institute of Sociology of the Science Academy of the Czech Republic tried to find answers to these questions, among others. They repeatedly research public opinion on the president's position in the political system of the Czech Republic. The last survey on this theme was executed within a continuous research called Our Society 2005 (Naše společnost 2005) in April of this year.³

There is a never-ending discussion not only among professionals about the appropriateness of current legal procedure of presidential election (the president is, according to article 58 of the Constitution, elected by both chambers of the parliament) and about a potential shift to a direct election. There are also

never-ending debates about specifying the position of the president of the republic as to his relation to other constitutional authorities, especially to the government. The first (frequently publically discussed) theme under survey was the most appropriate method of presidential election in the Czech republic (Table 1).⁴

Table 1: Who should elect the president? (in %)

	April 2002	February 2004	April 2005
Parliament	20	16	23
Wider electorate	12	11	11
Popular vote	57	68	57

Percentage in column; the sum of 100 % is completed by answers "doesn't know"

Source: CVVM

The data suggest that the Czech public opinion considerably collides with current legal procedure of presidential election. The public as a whole as well as all significantly represented socio-demographic groups most frequently believe that the president of the republic should be elected by popular vote. Altogether 57 % of the questioned favoured direct election. Less than a quarter of respondents (23 %) regard the current method of electing the president by parliament as a suitable one; 11 % regard a wider electorate as an optimum solution. In comparison with last year's survey there are currently less supporters of direct election (in February 2004 it was 68 % of respondents). On the contrary, the number of those who opted for constitutionally codified election by parliament increased (from last year's 16 % to current 23 %).

The research further surveyed what type of a person would be, according to the public, the most suitable for the role of the president of the republic (Table 2)⁵.

Table 2: Person suitable for fulfilling presidential role (in %)

	April 2002	February 2004	April 2005
Person not involved in politics	19	12	19
Person non-aligned to a party	37	35	41
Party member	4	6	5
Party leader	2	1	1
Doesn't matter	32	41	30

Percentage in column; the sum of 100 % is completed by answers "doesn't know"

Source: CVVM

The results show that the majority of population (41 %) believe that a person not aligned to any political party would be most suitable for the presidential role, while about one fifth (19 %) favours a person, who has never been politically active. 6 % believe that a party candidate would be an optimal choice, including 1 % of those, who believe that the most suitable person would be a party leader. According to approximately one third (30 %) of the questioned

it doesn't matter whether the presidential candidate is or isn't connected with any political party.

The following part of the survey focused on general attitudes of the public towards the extent of powers of the president of the republic (Table 3)⁶.

Table 3: Powers of the president of the republic should be... (in %)

	April 2002	February 2004	April 2005
Extended	11	32	25
Maintained	41	52	56
Reduced	35	9	11

Percentage in column; the sum of 100 % is completed by answers "doesn't know"

Source: CVVM

From the outline in the Table it is obvious that more than a half of the questioned (56 %) opt for maintaining the presidential powers within the current limits. Exactly one quarter of the respondents favoured extension of presidential powers. On the contrary, approximately one tenth (11 %) of the questioned believe that they should be reduced. It is interesting to compare these results with the last year's survey: number of those supporting widening of the president's powers slightly decreased (last year almost one third of respondents maintained such a position, nowadays it is one quarter).

We further asked the public, whether the president should deal with specific problems or rather with more general issues⁷ (Table 4).

Table 4: What issues should the president pursue? (in %)

	February 2004	April 2004
He should permanently deal with specific issues	42	41
He should deal with specific issues, but only in exceptional cases	34	36
He should deal with more general moral issues etc.	21	21

Percentage in column; the sum of 100 % is completed by answers "doesn't know"

Source: CVVM

Most respondents (41 %) believe that the Czech president should deal with specific problems. One third of the citizens think that he should deal with such problems only in exceptional cases. Almost one fifth of the questioned expressed their opinion that the president should deal mainly with general issues of political culture, ethics, etc.

Second part of the survey reflected more specifically Czech public opinion about individual constitutional powers of the president. It surveyed opinions about the President's position towards the government (see Table 5) and his role in its appointment (Table 6), about the possibility of dismissing the lower chamber of the Parliament and announcing new elections (Table 7), about the existence and form of veto (Table 8), about the role of president in appointing judges of the Constitutional court (Table 9) and about the position of the president in the country's foreign policy (Table 10). All tables contain comparisons with the results of previous surveys.

Table 5: Position of the president of the republic towards the government⁸ (in %)

	April 2002	February 2004	April 2005
He should not interfere with the government's activities	35	23	28
He should interfere with the government's activities to a certain extent	49	61	56
He should preside over the government as a chairman	6	11	9

Percentage in column; the sum of 100 % is completed by answers "doesn't know"

Source: CVVM

Table 6: The president's role in appointing the government⁹ (in %)

	April 2002	April 2005
Appointing ministers at his own discretion	9	15
Appointing ministers on prime minister's recommendation	64	61
Should not appoint ministers	13	13

Percentage in column; the sum of 100 % is completed by answers "doesn't know"

Source: CVVM

Table 7: President's power to dismiss lower chamber of the parliament and to announce new elections¹⁰ (in %)

	April 2002	April 2005
Never	7	8
In exceptional cases specified by constitution	72	63
Whenever he believes the situation calls for it	7	18

Percentage in column; the sum of 100 % is completed by answers "doesn't know"

Source: CVVM

Table 8: Right to veto a law passed by the parliament¹¹ (in %)

	April 2002	April 2005
Yes, with final effect	15	27
Yes, with the possibility of being outvoted by parliament	50	43
No	14	17

Percentage in column; the sum of 100 % is completed by answers "doesn't know"

Source: CVVM

Table 9: **Role of president in appointing Constitutional Court judges¹² (in %)**

	April 2002	April 2005
All judges by himself	10	19
All judges with approval of another constitutional authority	44	36
Some judges, while others to be appointed by other authorities	17	22
Shouldn't appoint judges of Constitutional Court	8	8

Percentage in column; the sum of 100 % is completed by answers "doesn't know"

Source: CVVM

Table 10: **Position of the president in the country's foreign policy¹³ (in %)**

	April 2002	April 2005
Should not be involved	6	6
May be involved but should follow the direction set by the government and the Ministry of Foreign Affairs	65	54
Should act independently of the government	15	26
Should determine the foreign policy	6	9

Percentage in column; the sum of 100 % is completed by answers "doesn't know"

Source: CVVM

Detailed analysis showed that specific presidential rights have - in all cases under research - relatively higher support among the questioned, who generally wish for their enlargement, and among respondents, who have confidence in the current president. From the point of view of political preferences they are more frequently ODS supporters.

Apart from some of the rights mentioned, which are connected with functioning and character of Czech political system, we also asked the citizens (most recently in February last year) about the president's powers that are connected with granting pardon or proclaiming amnesties, mitigation of sentences imposed or prohibition of legal proceedings against the accused. In this context we should note that the president has a right (according to article 62 of the Constitution) - without countersignature - to grant pardon or to mitigate sentences imposed by a court either in individual cases (agratiation) or to grant pardon and mitigate sentences granted by court in a blanket manner, e.g. to a certain group of offenders (amnesty). Last but not least the president has a right to obliterate the sentence and a right to prohibit criminal prosecution, or to interrupt criminal prosecution in case it was already started (abolition)¹⁴.

Table 11: "Do you think that the president of the Czech Republic should have a right to..."

	To grant amnesty/pardon to convicted people?"		To stop legal proceeding against the accused?"	
	April 2002	February 2004	April 2002	February 2004
Yes, independently	25	46	12	22
Yes, but only with an approval	57	43	36	33
No	14	9	43	38

Percentage in column; the sum of 100 % is completed by answers "doesn't know"

Source: CVVM

Majority of people (89 %) favoured the right of president to grant pardon to the convicted, although almost half of them (43 %) wanted these rights to be to be conditioned by an agreement of another constitutional authority. There were rather stronger reservations against the president's power to stop legal proceeding. Still, the number of those who agreed at least with a conditioned form of this right (55 %) overweighed those, who completely reject it (38 %).

Generally it can be said that in the attributes under survey, public opinion corresponds in majority with constitutional arrangement of the position and the rights of the president (with a significant exception in the method of his election). Only a small number of people wish for a "strong" president, who would in fact be a decisive factor of executive power (he would appoint and rule the government according to his own discretion, he would determine the country's foreign policy) and who would have a strong position as well towards legislative power (he would have a right to dismiss at any time the lower chamber of the parliament or absolute right to veto laws passed by the parliament). The exclusive right of president to appoint judges of Constitutional Court has a relatively small support¹⁵.

Literature:

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¹ The systemic position of the post of the president within the executive administration indicates that the constitutional basis of this post is its relation to the government

² Public opinion on the right to appoint the governor and members of ČNB (Czech National Bank) Bank Board are developed in detail in Note n. 12.

³ Field research was executed from 18 to 25 April 2005. Number of respondents was 1060. The questioned were a representative sample of the inhabitants of the Czech Republic 15 years and older on the basis of quota selection.

⁴ Question: "Which of the commonly used methods of presidential elections is the most suitable according to you? Election by parliament, e.g. by both senators and representatives, election by a wider assembly of electors (for example by representatives, senators and regional representatives) or a popular vote?"

⁵ Question: "What type of person do you think is the most suitable for fulfilling the role of president? A person, who was never active in politics, politician, who is not a member of any political party, a member of a political party, political party leader or it doesn't matter?"

⁶ Question: "Do you think that the president's rights should be extended, limited or they should stay as they are?"

⁷ Question: "Do you think that the president of the republic should interfere in solving specific problems or do you think he should deal with more general issues of political culture, ethics, etc.? He should continually deal with specific problems as well, he should deal with them only in exceptional cases or he should deal with more general issues of ethics etc.?"

⁸ Question: "What should be the president's position towards the government? President shouldn't interfere in the government's activities, president should interfere with government's activities to a limited extent, or the president should lead government's activities and preside over the government instead of the prime minister?"

⁹ Question: "How do you think the president should appoint the government? Should he appoint all ministers at his own discretion, should he appoint all ministers at the discretion of the future prime minister or do you think he should not appoint government members?"

¹⁰ Question: "In what circumstances the president should have the right to dismiss the lower chamber of the parliament and call new elections? Never, only in exceptional cases determined by the Constitution, or whenever he decides the political situation calls for it?"

¹¹ Question: "Should the president have a right to reject a law passed by the parliament (the so-called veto)? Yes, with definite effect, yes, but the parliament should be able to overrule this veto by majority, or not?"

¹² Question: "How do you think the president should appoint judges of the Constitutional Court? Should he appoint all judges at his own discretion? Should he appoint all constitutional judges with the approval of some high constitutional authorities (for example Prime Minister or chairman of one of the parliament's chambers), should he appoint only some of the constitutional judges, for example one third, with the rest being appointed by other constitutional authorities, or shouldn't he appoint judges of the Constitutional Court?"

¹³ Question: "What should be the president's role in foreign policy? President should not be involved in foreign policy, president may be involved in foreign policy, but should not cross the official direction set by the government and ministry of foreign affairs, president should actively participate in foreign policy independently of the government or the president should direct Czech foreign policy?"

¹⁴ The power of abolition is often an object of criticism by laymen as well as professionals. Some legal theoreticians believe that this power has no place in democratic state and they regard it as a residue of absolute monarchies (see for example J. Barák, *K některým otázkám novelizace Ústavy České republiky*, in: J. Kysela (ed.), *Deset let Ústavy České republiky*, Praha 2003).

¹⁵ The April 2002 research analogically surveyed public opinion on powers of president to appoint members of ČNB Bank Board. Only 6 % of respondents thought that the president should have a right to appoint all members of the Bank Board by himself; 36 % preferred appointing of all members with the approval of the prime minister; 19 % thought that he should appoint only some members and the rest should be appointed by other politicians, 13 % didn't grant him such power. (Question: "How do you think the president should appoint members of ČNB Bank Board? Should he appoint all members including the chancellor at his own discretion, should he name all Bank Board members at his own discretion and the chancellor with the approval of the prime minister, should he appoint only some of the members, for example one third, with the rest being appointed by other politicians, or he should not appoint Bank Board members?")