



## ORIGINAL PAPER

# Constructive Motion of No Confidence as a Tool for Parliamentary Control of Government: the Czech Republic in a European Comparison

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### Abstract

This study presents constructive censure as an element used to strengthen the stability of Governments in parliamentary regimes. It analyses its strengths and weaknesses and use in the political systems of European countries. An analysis of the draft amendment to the Constitution of the Czech Republic, presented by the Czech Government in the spring of 2012, is then put to this framework. Although the Chamber of Deputies had been dissolved in the meantime and the discussion of the draft had not been completed, it was the first and so far only legislative proposal to address the instability of Governments.

**Keywords:** *parliamentary control, Czech Republic, government, stability*

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In parliamentary regimes, with the Czech Republic being an example, the political stability and the stability of Governments is largely dependent on the stability of parliament, respectively on the chamber of parliament that performs powers of creation and control in relation to Government and that the Government is constitutionally and politically accountable to. Much has been written about the fact that one of the key factors that can bring stability to the legislative assembly (and thus to the Government which is based on it) is for example an electoral system with all its implications for the party system, its structure and fragmentation. However, the functionality of parliamentary systems is also dependent on the behaviour of individual participants and institutions and their mutual relations which, in addition to political culture and traditions, are also affected by the tools that individual components of power have against the other components, and governing procedural rules.

If we look at what tools legislatures have against Governments in parliamentary systems, then it is particularly a contribution to creating the Government, mostly in the form of a vote of confidence, as in the Czech Republic, or a choice of the Prime Minister or Chancellor, which is the case in Hungary and Germany. During the term of the Government, the legislature performs a supervisory role mainly through interpellations. An important element that affects governance is the approval of the Government's draft state budget. Last but not least, the legislature in a parliamentary system has the right to express no confidence in the Government, which is an element to be addressed in the following article. The threat of no confidence motion is above every Government and even the Governments established as majority are not spared the opposition attempts, although the Government should not feel threatened if its deputies are disciplined. However, the situation is changed at the moment when the Government relations change, there is a collapse of the coalition or an internal crisis, a number of conflicts or indiscipline of individual Government parties appears.

Paradoxically, we can say that of all the Czech Governments established after 1993, the Government that could be worried about a no confidence motion the least was the minority Government of the Czech Social Democratic Party (ČSSD) led by Miloš Zeman in 1998–2002, which was based on the so-called Opposition Agreement concluded together with the Civic Democratic Party (ODS) which came second in the elections. The Opposition Agreement in its article VI talks about the fact that *'the above-mentioned parties (ČSSD and ODS – author's note) agree that during the parliamentary term of the Chamber of Deputies, none of them will cause the vote of no confidence in the Government or avail themselves of the constitutional possibilities leading to the dissolution of the Chamber of Deputies, and should such proposals be submitted by another political entity, they will not support them by voting'* (Opposition Agreement 1998). In Article IX, the above-mentioned parties *'undertake to, within the duration of this agreement, not enter into a coalition or an agreement with a third political party, which would mean the entry of this party into the Government, or that would lead to the redeployment of some of the functions specified in this contract. They also undertake to not conclude a lasting agreement on voting in the Parliament of the Czech Republic with a third party and furthermore, to not suggest an independent as a member of the Government without prior consultations'* (Opposition Agreement 1998). If the stability of the Government is approached pursuant to the likelihood of no confidence motion, then Zeman's Government was the most stable one.

Back to the problems with no confidence motion by the Parliament themselves. When the Government of Prime Minister Mirek Topolánek was expressed no confidence

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at the end of March 2009, it was for the first time in the history of the Czech Republic and Czechoslovakia. For this reason, the situation was discussed and analysed many times in the media and in political science and constitutional law studies and commentaries. The situation resulting from the no confidence vote to Topolánek's Government also revived and dusted off the idea of introducing a so-called constructive motion of no confidence not only with political scientists and constitutional lawyers, but also with some politicians. Those who had initiated the motion and succeeded were criticized not only for the inappropriate timing (to the middle of the Czech presidency in the Council of the European Union), but also for offering no alternatives. The Czech constitutional system actually had not demanded and still does not require to immediately present an alternative within the no confidence vote in the Government. However, that does not mean that politicians cannot have it ready.

Constructive motion of no confidence – as the term itself suggests – is to prevent possible political crises to be further deepened. The aim is to approach a Government or Prime Minister's removal constructively, that is to immediately offer an alternative that has the support of the legislature, and therefore has the legitimacy necessary for the Government in a parliamentary system. Simultaneously with the removal of a Prime Minister, a new Prime Minister must be elected or endorsed (or candidate for a Prime Minister) in the parliament, who already has the legitimacy of the legislature at that point. The introduction of this element to the constitutional systems is motivated by the simple thesis that consensus on the removal of something / someone (negative approach) is easily found, while finding consensus on some alternative (positive approach) may be a superhuman task. Returning to March 2009, then 101 deputies standing behind the removal of Mirek Topolánek's Government (parliamentary groups of ČSSD and KSČM, as well as MPs V. Tlustý and J. Schwippel of ODS and V. Jakubková and O. Zubová of the Green Party) were so incongruous and the motives of the various groups and individuals to take this step so diverse that the same 101 basically could not even be able to find an alternative positive solution.

After all, the initiator of that vote himself, a former ČSSD chairman Jiří Paroubek, refused the participation of ČSSD in a Government that would replace the just deposed Government in an interview for *Hospodářské noviny* dated 27 March 2009. *'No, I am not currently rushing to it (the Government – author's note). Following the elections to the Chamber of Deputies, ČSSD is interested to form the Government. But now, let the coalition Government direct it and let us bring the country to early elections as quickly as possible,'* Paroubek said, among other statements (Němeček, 2009). This situation could not arise if the constructive no confidence vote had been in force. The initiator of vote of no confidence would have to officially submit a candidate's name for a new Prime Minister in that case. Therefore, the vote of no confidence in the Government / Prime Minister would also be a vote on a new prime minister. Although I am speaking of the Prime Minister, it concerns the Government as a whole through him.

The state where this feature was first introduced directly into the constitutional text was the Federal Republic of Germany. The constructive vote of no confidence was already incorporated into the Basic Law during its creation in 1948–1949. The merit lies with a representative of the Social Democratic Party of Germany (SPD) in the Parliamentary Council (the body preparing the text of the Basic Law), jurist Carl Schmitt, who is considered the spiritual father of the constitutionally-political instrument. The entire constitutional structure is very simple. According to the Article 67 of the Basic Law, the *'Bundestag [can] express no confidence in the Chancellor only by selecting his*

*successor and doing so by an absolute majority of all members*' (Grundgesetz, 1949). Thus, the German Chancellors are dismissed indirectly to a certain degree because the actual voting is voting for a new Chancellor. If the vote on the new Chancellor is successful, the Bundestag *'will ask the Federal President to remove the Federal Chancellor from office*' (Grundgesetz, 1949). The Chancellor is newly elected and from that moment has legitimacy in office and is just formally acknowledged by the Federal President. The Basic Law expressly obliges the President *'to comply with this request and appoint the newly elected Chancellor*' (Grundgesetz, 1949). Thus the Basic Law directly obliges the President to follow the proposal of the Bundestag, although it does not provide any time frame within which it must be done. Voting on the new Chancellor must take place within 48 hours of the proposal expressing no confidence to the current Chancellor. During almost 70 years of the Federal Republic of Germany, the request for a constructive vote of no confidence in the Chancellor has been initiated only twice. First on 27 April 1972, the then opposition Christian Democratic Union (CDU) initiated the removal of the Social Democratic Chancellor Willy Brandt. The alternative candidate for the Chancellor was the then head of the CDU in the Bundestag, Rainer Barzel. However, the proposal failed by two votes. Yet the attempt to overthrow another Social-Democratic Chancellor, Helmut Schmidt, was a success a decade later, on 1 October 1982. The then chairman of the CDU, Helmut Kohl, became the new Chancellor.

The German model of no confidence motion inspired several post-communist countries after 1989. For example, Hungary introduced it within an extensive amendment to the Constitution from 1989-1990 and protected this element by Article 39A. The constructive no confidence motion has been retained even in the new Hungarian Constitution, adopted in 2011, effective from 1 January 2012. Hungarian development after 1990 witnessed a single process of the constructive vote of no confidence, which was actually "managed" by the Prime Minister to be dismissed. In spring 2009, the then Prime Minister for the Hungarian Socialist Party (MSZP), Ferenc Gyurcsany, decided to resign through his party proposing a constructive vote of no confidence associated with the election of the then Economy Minister Gordon Bajnai to be next Prime Minister. The former main opposition party, the Federation of Young Democrats (FIDESZ), which at that time had 2/3 support according to polls and an almost certain election victory, criticized this fact, even called it illegitimate. Doubts about a democracy of this step were expressed by the then President Laszlo Solyom, otherwise the former Chief Justice of the Constitutional Court.

Poland allowed the no confidence motion in Government of both the constructive and classical (nonconstructive) manner until the adoption of the so-called Great Constitution in 1997. But if there was a nonconstructive censure (i.e. without a co-nominated candidate for a new Prime minister), the President could dissolve the Sejm (the Senate would automatically fall as well with the dissolution of the Sejm according to the Polish Constitution) and call early elections. That is what happened in 1993 when the Sejm nonconstructively expressed no confidence in the minority Government of Prime Minister Hanna Suchocka. After 1997, the no confidence motion can be expressed only in a constructive manner while the procedure itself is similar to the Hungarian application. Since the above case of vote of no confidence in the Government of Prime Minister Suchocka, any other similar act against the Government by the Sejm has not occurred. As reported by Kubát (2009: 136), the need to observe the procedure of a constructive vote of no confidence has meant that even the coalition conflicts and the collapses of the governing coalitions led to the preservation of minority Governments and Prime Ministers

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in power if they themselves sooner or later have not resigned (Jerzy Buzek in 2000, Leszek Miller in 2003).

As the third from the post-communist countries, we can mention Slovenia where using the procedure of a constructive vote of no confidence, the Prime Ministers Alojz Peterle (1992) and Janez Drnovsek (2000) were removed from their office. The German model of a constructive vote of no confidence was taken into its Constitution even by Spain in 1978 (Just, 2009: 9). Belgium has also been using this element since a constitutional amendment in the mid-1990s. In case of the latter country, however, it is a combination of constructive and nonconstructive vote of confidence when the Chamber of Representatives faces dissolution if it does not provide the name of a successor. Therefore, it is a Polish adaptation valid until 1997.

There are currently six member states, which have this element in their constitutional systems in the European Union. With the exception of Belgium, these are the countries where the modern political and constitutional system has been basically newly created after the transition from non-democratic systems towards democracy. Introducing the constructive no confidence motion should lead to stabilization, which in most instances has been the case. Poland – as mentioned above – has experienced much less political turmoil since 1997 than it had before. Also, all Hungarian Governments since 1990 have been – despite occasional turbulence – relatively stable, certainly the most stable of all post-communist countries. There is no doubt that the constructive censure has its share in this, although it is certainly not the only factor. The above-mentioned fact that only two attempts to censure the Government have taken place in Germany since 1949 is also meaningful.

Though each of the above examples of countries benefiting from this constitutional element differ in minor details, they have three things in common which the general framework of this instrument could be derived from: (1) the name of a new Prime Minister is known at the moment of the vote of no-confidence; (2) to make the change, the absolute majority of all deputies of relevant parliamentary chambers is necessary and finally, (3) President (Sovereign in case of monarchies) is required to accept this result and appoint a Prime Minister who has been put in a proposal to censure if the vote is successful (Just, 2009: 9). It is clear that a possible introduction of the constructive vote of no confidence would require changes also in other articles of the Constitution of the Czech Republic. At least, the section dedicated to the President would have to be modified. One impact of the introduction of this feature is a certain weakening of the President limiting his space to manoeuvre and transferring the responsibility for resolving the political crisis to the parties represented in the Parliament, or transferring the crisis solution to the axis of Parliament – Cabinet, as the logic of parliamentary regime functioning assumes. For that matter, all the above-mentioned countries have a parliamentary form of Government and – with the exception of Poland – relatively weak heads of state.

So far, more positives of this change have been mentioned; however, it is impossible to not notice certain risks that come with this constitutional element. Even a dysfunctional Government could thus be kept in power only because there would have not been enough votes for the nomination of a new Prime Minister although enough votes for its dismissal would. This could complicate governance, block Government action and in theory, it could have a negative impact on political and economic development in a situation continuing over a long period. Within this situation, minority Governments could be held in power, which could lead to a disruption of one of the main principles of a

parliamentary form of Government where the loss of majority support in the relevant parliamentary chamber is a reason for termination of the Government mandate (Vastagh, 2009: 2).

Constitutional lawyer Zdeněk Koudelka warns that *'in any variant of a parliamentary republic, including the chancellor's, a stable parliamentary majority determines the stability of a Government'* (Dostál 2011). After all, lawyer Vernon Bogdanor warns that the introduction of the institute of constructive censure *'increases the danger of weak Governments'* (Bogdanor, 2010: 2). Koudelka documents it by referring to the above mentioned situation before the fall of Topolánek's Government: *'Constructive no confidence vote would probably prevent the fall of Topolánek's Government during the EU Presidency, but it would not prevent the disruption of Green Party, the split of TOP 09 from the KDU-ČSL and the departure of some ODS deputies'* (Dostál 2011). According to Koudelka, Topolánek's Government would have been just watching the new majority in the Chamber of Deputies rejecting its proposals and passing the proposals with which it disagreed. Finally, critics say the procedure limits Parliament's supervisory role and thus the sovereign power of opposition to provoke the vote of no confidence.

All this and other factors that will be mentioned later are reflected in the debate on introducing this element into the Czech constitutional system. However, the attitudes of individual parties are often influenced by special-interest momentary factors. So far, the parties reflected on the adoption of this regulation only at the moment when they were in a Government and faced a possible no confidence vote or the no confidence motion actually was made. Opposition parties are unanimously against it.

The idea to introduce a constructive censure into our system appeared for the first time during the preparation of the Constitution of the Czech Republic in the second half of 1992. The proposal was mentioned several times in 2005 (discussed in more detail below) but began to be spoken of intensely after the aforesaid fall of Topolánek's Government, especially by the ODS and the KDU-ČSL, two of the three ruling parties at that time. Later, this theme was embraced even by TOP09. In its policy statement of June 2010, the Government coalition of the ODS, TOP09 and Public Affairs, which emerged from the general election, committed itself to enforce this element in the Constitution of the Czech Republic. The Government actually sent the relevant amendment to the Constitution (The Government's draft 2012) to the Chamber of Deputies in April 2012. It was discussed in the first reading in the Chamber of Deputies in the spring of 2013; yet the proposal went off due to the dissolution of the Chamber in the second half of 2013.

Nevertheless, the article presents this proposal because it has so far been the only paragraphed proposal to introduce this element into the Czech constitutional system.

The Government proposed new wording of article 72, section 2 of the Constitution: *'The proposal to censure the Government must be submitted in writing by at least fifty deputies, and it shall indicate the person to be appointed Prime Minister'* (The Government's draft, 2012: 1). The following articles 73 to 75 dealt with additional follow-up steps. The proposal should be voted no sooner than 48 hours after its submission and the adoption of the resolution would require an absolute majority of all deputies. In case of a successful vote, the President would appoint a new Prime Minister on a proposal from the Chamber of Deputies; in case of failure, it would be possible to vote of no confidence again after six months – it would have been possible sooner only if the proposal was filed by 80 deputies (The Government's draft, 2012: 1). The duty of a newly appointed Government (headed by the Prime Minister emerged from the constructive vote

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of no confidence) to appear within 30 days of its appointment before the Chamber of Deputies with the request of a vote of confidence would not be perished with this adjustment (The Government's draft, 2012: 6). The original Government's draft did not require doing so; but it got there within an interdepartmental reflection process (Jelínek, 2012). It could therefore be that the Prime Minister established within the framework of constructive no confidence vote in his predecessor, could not eventually gain the confidence in his Government. Germany cannot experience this situation because, even under normal circumstances, the confidence of the Bundestag is bound only to the Chancellor, rather than the Government as a whole. Parliament does not in any way endorse the Government as a collective body.

The Czech proposal of 2012 contained several bottlenecks. Somewhat surprising was that the amendment did not interfere in the articles of the Constitution that govern the powers of the President. It is questionable whether the current constitutional wording on the President's right to appoint the Prime Minister could or should remain in its current form with the change of the above-mentioned articles 72–75. In addition to the formulation aspects of the texts of the Constitution, the President's obligatory role of appointing a Prime Minister legitimized in this way should be – especially in the Czech context – probably emphasized more. At the same time, the question is how much time the President has or what would happen in the event of the President's refusal or delay.

Given that this is a change in the Constitution, 3/5 of all deputies and 3/5 of senators present would be needed for approval. And this is where a problem would probably appear because no Czech Government after 1993 has so far had the relevant majority and the opposition whose votes would be needed has never consented to this change. Therefore, even if the Chamber of Deputies was not dissolved in 2013, the chance to enforce this law would apparently be slight. The largest opposition party active at the time of submission of the proposal – the Social Democrats – declined the introduction of a constructive vote of no confidence several times through its chairman, Bohuslav Sobotka. In response to this proposal, Sobotka repeatedly argued that *'the country needs to deal with 10 thousand other things other than the constructive no confidence motion. (...) We have clearly said that we as social democrats would not support similar constitutional experiments at the moment. (...) In my opinion, the constructive no confidence motion is not a key issue for the country. I can see far more important issues'* (ČT24, 2012).

Sobotka spoke against constructive censure as such in several speeches. In his text of 14 April 2012, Sobotka says that after the fall of the Government, it would not be the voters deciding on the new one in new elections, but again the 'majority Government' (Sobotka, 2012). Sobotka adds that the opposition is put aside and its power of control is weakened in this way. He also considers it incomprehensible *'to force the President to appoint a Prime Minister whom the Chamber of Deputies agrees on,'* arguing, among other things, with the direct election of the President (Sobotka, 2012). It is necessary to say that Sobotka's warning against imposing the Prime Minister who is agreed on by the Chamber of Deputies would be a much more systematic element fitting into a parliamentary nature of Government than e.g. a direct presidential election which the Social Democrats did not mind. *'It is equally illogical to make the Prime Minister appointed on the proposal of Deputies to come again before the Chamber of Deputies for the vote of confidence'* (Sobotka, 2012). As I mentioned above, the Government initially did not request this and it has changed it based on the outcome of interdepartmental reflection process.

Last but not least, the ČSSD chairman states that *‘the institute of “constructive no confidence motion” is strange to our constitutional tradition; it is not found in the democratic constitutions of the First Republic’* (Sobotka, 2012). Although it is true, it is hardly sufficient as an argument for rejecting. Tradition reflects to the present not only through the following of ‘good’ examples from the past but also through the effort to avoid the mistakes of the past. Germany in 1949 did not have a tradition of constructive no confidence motion but a relatively rich tradition of unstable Governments from the period of the Weimar Republic which they did not want to repeat. In forming the Czech Constitution in late 1992, some traditions were reflected in a new arrangement, e.g. in the structure of a bicameral parliament. However, it was based also on the fact that not all elements and relations within the then bicameralism were functioning, and thus, they were adjusted in 1992. After all, the traditions of the functioning of Governments rather show that the system of constructive censure could be possibly applied during the interwar period because a total of 18 cabinets had been replaced within 4 parliamentary elections in 20 years. It is true that the Government did not fall because of the vote of no confidence in Parliament and in many cases, new Governments had been pre-negotiated as a first step before a subsequent fall, resignation, abdication or removal of the current Government. Marek Ženíšek, a political scientist and vice-chairman of TOP09, refers to the *‘removal and destruction without presenting alternatives’* as the Czech political tradition (Ženíšek, 2011).

The Communists were opposed to the proposal as well and Jiří Paroubek spoke very loudly against the law because, among other things, this proposal was unofficially called ‘Lex Paroubek’ as it was inspired by the vote of no confidence in Topolánek’s Government in 2009 when Jiří Paroubek was the head of the ČSSD. But it is not without interest that prior to the ODS, it was ČSSD that strove for the introduction of a constructive vote of no confidence. In the spring of 2005, when the then party chairman and former Prime Minister Stanislav Gross faced the attempt to no confidence vote as a result of his affairs, the Social Democrats used exactly the same arguments that were proclaimed by the leaders of the just dissolved Government of Mirek Topolánek in 2009. News server iHned.cz reported about it on 24 April 2005 as follows: *‘The Speaker of the Chamber of Deputies Lubomír Zaorálek (ČSSD) would like to introduce the principle of the so-called constructive no confidence motion into the Constitution. This means that the opposition would need to present its “shadow” Prime Minister within the vote of no confidence in Government. He should get a majority and prove that he is capable to govern. Zaorálek has presented the idea in today’s Sedmička discussion programme on TV Nova. At the same time, he has described the proposal of ODS to simplify the dissolution of the Chamber of Deputies in case of a protracted Government crisis as “defective”. The adoption of the proposal of the strongest opposition party would lead to the formation of unstable Governments according to Zaorálek. The head of the Chamber of Deputies thinks that the parliamentary parties should instead support the winner of elections, so that they are able to lead the country throughout the election period’* (ČTK, 2004).

This disagreement between the relevant parties in the Czech Republic ultimately prevented the change to be a part of an amendment to the Constitution introducing direct presidential election. The question is whether it would be preferable that this change is initiated rather by the Chamber of Deputies and not by the Government. *‘It would be fairer and the opposition would not have obtained the impression that it is confronted with a fait accompli’* (Jelínek, 2012). In connection with any change of the process of no confidence



motion, they talk about other elements that could rationalize parliamentary activities, such as an expansion of options under which it is possible to dissolve the Chamber of Deputies. However, this would have been a different topic.

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