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Changing Investiture Rules in the Czech Republic

Robert Zbiral

11.1. INTRODUCTION

This chapter provides an account of the form and impact of the investiture vote in the Czech Republic. The vote of investiture follows the framework of positive parliamentarism (Bergman 1993). Despite this, the Czech Republic has experienced a wide variety of government types, including minority and caretaker governments. In order to form a government, politicians ‘invented’ numerous instruments that modified or broadened the constitutional rules that otherwise remain unchanged. Description of these mechanisms and analysis of their impact illuminate not only the role of parliament in the Czech situation, but also serve as a comparative reference point for other polities’ procedures and practice.

11.2. THE PARLIAMENT AND POLITICAL SYSTEM

The Czech Republic is a unitary state with a classic parliamentary political system. Legislative power is vested in a bicameral parliament. While both chambers are selected by direct vote, the lower chamber (the Chamber of Deputies) serves as the real powerhouse. The Chamber of Deputies is elected by a proportional system with modified D’Hondt formula, with the threshold set at 5 per cent of votes. The upper chamber (the Senate) is elected by majoritarian system, but holds only a moderating function. Asymmetry between chambers is confirmed by the legislature–executive relations, as the constitution proclaims that government is responsible only to the Chamber of Deputies. In light of this, in contrast to general hypothesis of Druckman et al. (2005), the composition of the Senate has never been a factor during the

formation of the government, even in the case of a minority cabinet. The President was traditionally selected indirectly by the parliament. In 2012 the rules were changed and the first direct elections of the President were held in 2013, although his powers and roles remained the same. Traditionally the role of the president has been far from ceremonial (for an outline of the Czech political system see Cabada and Vodička 2007).

While there is nothing exceptional in this constitutional framework, the practical functioning of the system is unusual, as the system could be described as being simultaneously highly stable and unstable. The first pattern is represented by the stability of main actors. First, to date, the Czech Republic has had only three presidents: Václav Havel (1993–2003), Václav Klaus (2003–13) and Miloš Zeman (since 2013). Their position has been always stronger than the constitution would suggest. Among the political parties, the left-wing Social Democrats (ČSSD) and right-wing Civic Democrats (ODS) have consistently been by far the strongest political parties, followed by communists (KSČM) and several smaller centre-right parties (e.g. Christian Democrats: KDU–ČSL). Yet, owing to the proportional system, to date no party has ever gained an absolute majority of seats in the Chamber of Deputies, which means coalitions needed to be formed. ODS and ČSSD are fierce ideological rivals, and although there were moments when ‘big coalitions’ were considered, it never (openly) happened. In light of this and the fact that the communists were intentionally left out of any coalition negotiations by both main parties, the possible win set for majoritarian government was quite small, and in reality could be reached only with the aid of those few centre-right parties that sided either with ČSSD (2002–06) or ODS (1993–98, 2006–09, 2010–13). The winning coalition had usually been able to hold a minuscule majority in the Chamber of Deputies, sometimes only with the help of deputies who changed their party allegiance (so called ‘*přeběhlík*’ or crossrunners). After the resignation of the right-wing government in 2013 and early elections in October 2013, the strength of certain traditional political parties (ODS, ČSSD) has declined and new parties have gained significance, but the basic outline of the political system (so far) has not changed.

11.3. DESCRIPTION OF THE FORMATION RULES

The formal process of government formation in the Czech Republic is relatively straightforward. As noted above, it is a clear example of positively formulated formation rules, and if we use a more detailed classification of De Winter, then it belongs to the group of ‘weakest positive’ (De Winter 1995, 135), because a simple majority is sufficient to gain confirmation. The relevant

rules are given in Article 68 of the constitution (Act no. 1/1993 Coll.), which states:

- (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.*

Article 68 paragraph 2 to 4 is applicable to all government formations, both after general elections or in case the incumbent government resigns. The first step is entrusted to the president, who appoints the prime minister. It is the president's autonomous decision, and not dependent on any proposal. His free hand is strengthened by the fact that he is constitutionally unaccountable for his decisions (see Art. 54 para. 4 Const.) and there are no time limits set for the selection. Indeed, the only legal limits to his behaviour are a vague proclamation in the president's oath (Art. 59 para. 2 Const.: 'I shall perform my office in the interest of all the people...') and the respect for the pluralism of political parties (see Art. 5 Const.). In light of this, the president's decision is not entirely arbitrary (similarly Mikule 2007, 505–6), not to speak of the political dimension of the question.

After the appointment, the prime minister forms his government. The text of the constitution does not (nor does any other law) put any limit on the number of ministers or their qualification, apart from the obvious ones.¹ Important is the time frame of the appointment process. Although the constitution does not prohibit the simultaneous appointment of the prime minister and his government, a two-step procedure is more likely. This empowers the prime minister by giving him time to negotiate his team and prepare for

¹ For example, age and sanity (see Art. 70 Const.). Strangely, there is no requirement for Czech citizenship, and there has already been a case of an appointed minister with only German citizenship.

the investiture vote in the Chamber of Deputies. The question is for how long this time should be. Theoretically it is unlimited, and the prime minister could even artificially prolong it when the bulk of government is already formed.² On the other hand, he is at this point not a ‘proper’ prime minister: the actual executive powers are still held by the previous (departing) government. The Czech Constitution thus does not preclude a period with two legitimate prime ministers, no matter how undesirable this state of affairs is.

With the official appointment of the government starts a thirty day deadline, during which the government has to ask for the vote of investiture. However the situation is more complicated than the constitution would suggest. According to the Chamber of Deputies Rules of Procedure (Act no. 90 RP/1995 Coll.), the first session following an election is the ‘Constitutive Meeting’ with a fixed programme, including the selection of Chamber’s leadership and committees (Arts. 22–8 RP). The vote of investiture could be placed on the agenda of a regular session only, which might not start sooner than the Constitutive Meeting is closed. It is therefore not inconceivable that the government will be appointed before the founding session, but it would be a risky step because the thirty day deadline could expire (details in Syllová and Kolář 2006, 6–9).

If the government is appointed by the president (and the Constitutive Meeting concluded), the chairman of the Chamber of Deputies has a duty to place the vote of investiture on the agenda in order to meet the thirty day deadline (Art. 82 para. 2 RP). As already noted, a simple majority of deputies present suffices. Because the lowest quorum is set to one-third of the full house, which consists of 200 deputies (Art. 70 para. 1 RP), theoretically the government could win the investiture with the active support of only thirty-four deputies. Voting is taken by names, when each deputy has to stand up and clearly express himself. ‘For proposal’ means support for the government; ‘against proposal’ means opposition to the government; everything else is taken as abstention (Art. 85 para. 1 RP). If the government survives the investiture vote, it is said to have gained confidence and proceeds to perform its task as a ‘fully legitimate’ executive.

Article 68 paragraph 4 of the constitution deals with situation when the appointed government fails to win the investiture vote. First, it must resign (Art. 73 para. 2 Const.). If the government hesitates, the president will dismiss it himself (Art. 75 Const.). The whole process described above is then repeated, with the hope that the president will be more sensitive in his second choice and the Chamber of Deputies will be more agreeable to the president’s new nomination. If the expectations are not fulfilled, a third prime minister is appointed by the president, but this time on the proposal from the chairman

² One of the Czech Acts (No. 2/1969 Coll.) contains a list of obligatory ministries. The term ‘appointment of government’ indicates there must be a whole government, so the prime minister might not, for example, nominate the minister of finance and the whole process be blocked.

of the Chamber of Deputies.³ The logic of this solution is based on the assumption that the chairman should be more knowledgeable regarding the situation in the Chamber of Deputies than the president, and his choice will have a greater likelihood of success. Numerous objections against this reasoning can be raised; namely that the chairman's decision is based simply on his personal wishes and therefore does not have to be based on the opinion of the chamber's majority. If even the third attempt fails the president has a right to dissolve the Chamber of Deputies (Art. 35 para. 1a Const.), which might serve as a motivation to deputies to be more accommodating in the latter rounds of investiture votes.

Two issues require closer inspection. First is the problem of what would happen if the appointed government misses the thirty day deadline and has not asked for the vote of investiture. The constitution does not anticipate this and the situation is not specifically mentioned as a reason for obligatory government resignation in the constitution.⁴ Some experts (Bárta 2007, 140–5) infer, from the text's silence, the presence of negative parliamentarism in the Czech Republic and that the appointed government may fully perform its duties unless the Chamber of Deputies forces it to resign by a vote of no confidence. It must be said that such views are not widely shared, and despite the fact that the deadline is only formal, all notable lawyers in the Czech Republic argue that failure to ask for investiture represents a grave constitutional offence which was simply not contemplated by the drafters of the constitution.

Second is the issue concerning the exact circumstances in which a government has to undergo a vote of investiture.⁵ Clearly it concerns the formation of governments after elections and the successors of governments forced to resign after the vote of no confidence. But what of other occasions, such as a mid-parliament reconstruction of the government? Although the constitution provides little detail, the question revolves around the position of the prime minister. One group of scholars (Filip 2001, 324; Pavlíček 2001, 358) argues the prime minister is the central element of any government—if he resigns, a new government must be appointed and must ask for an investiture vote. Conversely, if the prime minister remains in office, he is able to replace all ministers or change the parties in the coalition. This position is based on the

³ This mechanism is somewhat similar to standard procedure in Sweden.

⁴ Therefore the President is also not entitled to dismiss the government.

⁵ Apart from the obligatory vote of investiture faced by new governments discussed in this text, there is also a possibility of the voluntary ones (vote of confidence) that the ruling governments sometimes decide to endure in order to show unity (this happened in 1997, 2003, and 2012), the required majority remains the same (simple majority). A third possibility is a vote of no confidence initiated by the opposition; there have been about twenty attempts made. As in this case the absolute majority of deputies is required, only one such attempt was successful (2009).

notion that there could hardly exist a government without a head and on the interpretation of Article 68 of the constitution, which seems not to allow the appointment of a new prime minister by means other than those described above. Opponents (Šimíček 2002, 166; Molek 2010, 870) claim that total dependence of the government on the prime minister is dangerous and unfair. Is it not sufficient, if, for example, the prime minister died, to simply appoint a new prime minister rather than undergo the cumbersome process of government resignation and new government formation? Theoretically this opinion is based on the notion that the Czech government is a collective body (see Art. 76 para. 1 Const.) and the prime minister is only *primus inter pares*—there is no tradition of a chancellor system as in Germany. Practice, it should be noted, has evolved towards the first position.

11.4. ORIGIN AND INSTITUTIONAL EVOLUTION

The reasons for the adoption of the rules in the current constitution are hard to decipher. Its text is largely inspired by the legacy of the First Czechoslovak Republic (1918–38) and the 1920 Constitution. However, it is noteworthy that in designing the government formation process, the tradition was breached. The 1920 Constitution prescribed negative formation rules: the government was appointed by the president with no vote of investiture; it had to resign if the Chamber of Deputies agreed on a vote of no confidence by simple majority (see Arts. 70–8 of Act no. 121/1920 Coll.). This framework was often exploited for the formation of non-political caretaker governments (details of the government formation experience from this period are provided by Broklová 1992). The investiture vote was introduced by the first communist constitution from 1948 (Art. 82 of Act no. 150/1948 Coll.), and the 1960 Constitution dismissed any notion of the division of powers and established the dominance of the National Assembly, so the duty for the government to undergo an investiture vote was implicitly present (compare Art. 44 para. 1 of Act no 100/1960 Coll.). Of course, it was the Communist Party that held all the power, and therefore in practice the investitures were mere formalities. After the Velvet Revolution in 1989 numerous parts of the 1960 Constitution were changed, but the vote of investiture procedure remained. During the drafting of the constitution of the new Czech Republic, there was no real discussion on the issue. Returning to the negative rule of the First Republic was likely rejected on the basis of the undesirable effects of negative parliamentarism, which arguably led to periods of instability.

The rules dealing with the process of government formation has remained the same since the adoption of the current constitution. But there were several proposals concerning how to reform the mechanisms. The first important one

was submitted in 1999 by ODS and ČSSD. Its main objective was officially to streamline the procedure by setting deadlines and establishing rules about who would be appointed as the prime minister by the president—the suggestion being that the leader of the largest parliamentary party has to be appointed first. Practically, the proposed amendment aimed to reduce the scope of the president's discretion and pass control over the whole process into the hands of the strongest political parties. The proposal was successfully adopted by the Chamber of Deputies, but failed to obtain the necessary constitutional majority in the Senate. At the time the amendment was considered opportunistic by experts and criticized with historic, logical, and comparative arguments (in detail, Šimíček 1999, 125–8, for example).

Secondly, the constant instability in the Chamber of Deputies led to numerous efforts to introduce a constructive vote of no confidence into the constitution. The most promising proposal was submitted by the government in 2012 (*Sněmovní tisk 668* [Chamber of Deputies Print 668]). Any tabled proposal for no confidence will have to contain the name of the candidate for prime minister. If the proposal succeeds, the president shall name the person from the proposal, but the government formed by the new prime minister will have to subsequently undergo the vote of investiture. Yet there was an insufficient majority to adopt the amendment both in the Chamber of Deputies and in the Senate, and the proposal was dropped with the dissolution of the Chamber of Deputies in 2013.

11.5. INVESTITURE RULES IN PRACTICE

The first Czech government came to office on 1 January 1993. The constitution directly declared (Art. 108 Const.) that it did not have to undergo the regular appointment process, because it was the successor of the government of the Czech Republic (as part of Czechoslovakia). Because this government ruled for the rest of the full parliamentary term, it was not until after the 1996 elections that the first government formation process took place. Between then and 2013, eleven governments have undergone the vote of investiture, five of them following new elections. Out of the eleven, there were four minority governments and three caretaker administrations (with one overlap).

The informal negotiations among parties typically start the minute the first predictions of results are made public, but the first official move must be made by the president. Despite the opportunity to appoint whoever they want, a president's course of action was traditionally careful and reflected the electoral results. It means that in almost all cases it was the leader of the strongest party in the Chamber of Deputies who was entrusted. Several times the prospective prime minister was not directly appointed, but asked formally or informally to

start coalition negotiations. The role of *informateur* is not constitutionally sanctioned, and sometimes it is criticized because it prolongs the procedure (see, for example, Doležal 2004). The president could also present conditions to the *informateur*. Quite popular was a demand to provide the president with a list of ‘at least 101 signatures’ for the prospective government. While this requirement may seem logical given the future investiture vote, constitutionally it does not make sense, because it changes the required simple majority to an absolute one, and legislators have a free mandate and are not legally bound to vote in a certain way. In spite of the doubtful practices, an *informateur* phase is generally accepted and has slowly become a constitutional custom (Rychetský 2008, 152). Generally all presidents have been heavily involved in coalition negotiations.

After the successful conclusion of these informal negotiations by the *informateur*, something which could take many months, the president appoints the prime minister. One might think that the president has more room for manoeuvre during the formation of caretaker governments, which during the First Republic were essentially selected solely by the Head of State. But as the constitution requires a similar vote of investiture for any government, even in these cases there must be an agreement of political parties and in the past they have typically, if informally, made it known whom the acceptable candidate for the caretaker prime minister was. After the prime minister is appointed, the role of the president diminishes.

Once the role of the president concludes, the responsibility turns to Parliament and the thirty day deadline for the investiture vote commences. The chairman of the Chamber of Deputies sets the date of the investiture vote within this time frame; usually it is the only agenda for the day. Formally the task of the Chamber is to proclaim in its resolution that the ‘government gained confidence’. As the new administration has not had much time to govern, the deputies are not able to assess its real activities, such as in the case of no-confidence votes. But in a political system based on the competition of political parties, confidence is best expressed as the support for a political programme representing the compromise agreed among the coalition parties and the composition of the cabinet (similarly Mlsna 2009, 530).

Even before the government is appointed, its member parties often conclude a coalition agreement which is endorsed by the parties’ structure. The coalition agreement, however, usually dedicates a large part of space to internal working mechanisms of the coalition and allocation of mega-seats in the executive rather than programmatic aims. The intentions of future government are thus described in detail in its programme. According to the 1960 Constitution, the vote of investiture was taken by a vote on the government’s programme, which was therefore an obligatory part of the investiture vote. The 1993 Constitution dropped the requirement, yet all governments continue to prepare the programme and it arguably holds the status of

constitutional custom. The thirty day window between the appointment and vote of investiture might also be viewed as time for preparation of the programme. During Czechoslovak times, the programme was first read by the prime minister during the investiture vote. In 1996 the coalition wished to continue the tradition and tried to reject the demand of ČSSD to provide it in advance, but had to yield and submitted it to all parties several hours before the vote. Subsequent governments did not establish any pattern; again, some of them even tried to keep it secret until the vote. This attitude could be explained by the fact that if the government counts on tacit support of any party, revealing the programme might lead to another round of concession requests, while presentation during the vote leaves no time for manoeuvre. But if (tacit or direct) external support is really needed, the programme might reflect the agreements with groups outside the government. An example is the Opposition Agreement signed between the ODS and ČSSD in 1998.

The presentation of the programme (if it is read) is followed by a debate. Although it is unlikely to ever change the result of the vote, the debate is traditionally a high point of the chamber's life, not least because it is broadcast live on television. Usually dozens of deputies speak and the debate continues for many hours. Data confirms that generally the length of debates has slightly decreased over time, and the more controversial the formation of the government was the longer the debate. The bulk of time is consumed by the parties' leaders. Obviously opposition is more active, but usually coalition deputies are involved as well.

After the conclusion of the debate a vote is taken. In light of the narrow majorities in the Chamber in the past, the likely behaviour of each deputy was important. That sometimes caused problems as not all deputies were in sufficiently good health to participate. Traditionally this situation is solved (not only during the vote of investiture, but for any vote) by the so-called pairing system, an informal process in which the excused deputy of the opposition is counterbalanced by a deputy from the ruling parties (or vice versa) who intentionally does not vote. This system is convenient for both sides, as it is impossible to maintain full participation throughout the whole parliamentary term. But sometimes the atmosphere during the investiture votes has been so partisan that the opposition has rejected pairing, arguing that the expected tragic consequences of the new government prevailed over courtesy and customary agreements. Therefore, spectators had to experience disturbing pictures of seriously ill deputies taken from hospital at great risk to their health just to vote.

The results of the investiture votes, as reported in Table 11.1, confirm the divided structure of the Czech political system. Politicians traditionally aim to increase their share of power against all others, including ideological counterparts. Before the elections, political parties prefer to stress with whom they will never form a government. Often the mutual incompatibility among parties is

Table 11.1 Investiture Votes in the Czech Republic (1993–2013)

Date of investiture vote	Outcome	Government formed	Vote caused by	Parties in government	Number of YES votes	Number of NO votes	Percent YES votes	Notes
2.7.1992	Confirmed	Václav Klaus I.	General election	ODS, ODA, KDU-ČSL	106	94	53	Govt of the CR from 1.1.1993
25.7.1996	Confirmed	Václav Klaus II.	General election	ODS, ODA, KDU-ČSL	98	40	71	Minority govt
28.1.1998	Confirmed	Josef Tošovský	New composition of govt	US, ODS, ODA, KDU-ČSL	123	71	63,4	Caretaker government
18.8.1998	Confirmed	Miloš Zeman	General election	ČSSD	73	39	65,2	Minority govt
8.8.2002	Confirmed	Vladimír Špidla	General election	ČSSD, KDU-ČSL, US	101	98	50,8	
24.8.2004	Confirmed	Stanislav Gross	New nominee for PM	ČSSD, KDU-ČSL, US	101	99	50,5	
13.5.2005	Confirmed	Jiří Paroubek	New nominee for PM	ČSSD, KDU-ČSL, US	101	99	50,5	
3.10.2006	Failed	Mirek Topolánek I.	General election	ODS	96	99	49,2	Minority govt
19.1.2007	Confirmed	Mirek Topolánek II.	New composition of govt	ODS, KDU-ČSL, SZ	100	97	50,8	
7.6.2009	Confirmed	Jan Fischer	New composition of govt	ODS, ČSSD	156	1	99,4	Caretaker govt
10.8.2010	Confirmed	Petr Nečas	General election	ODS, TOP09, VV	118	82	59	
7.8.2013	Failed	Jiří Rusnok	New composition of govt	None	93	100	48,2	Caretaker govt, Minority govt
18.2.2014	Confirmed	Bohuslav Sobotka	General election	ČSSD, ANO, KDU-ČSL	110	38	74,3	

Source: Author's calculations, based on website of the Czech Government (<<http://www.vlada.cz>>) and minutes from Chamber of Deputies (<<http://www.psp.cz>>).

so complex it would seem there is mathematically no chance of any government. When we add the relatively high representation of anti-system parties (namely communists), the investiture vote has an enormous impact. Despite the considerable number of parties in the Chamber of Deputies, in practice there have been very few possible combinations to form a majority government. The result is that usually the coalition holds only a minimal majority that is ‘structurally induced’ by the need to pass the investiture vote. This hypothesis is confirmed by the data in the table: if the partisan governments formed after elections resign prematurely, the options run out (no political party has so far switched support for/against government within the parliamentary term) and the only solution is to form caretaker administrations. If it is impossible to form the minimal majority after elections, politicians attempt to overcome the hurdle of investiture vote by other means, which we will discuss in the next section.

11.6. EXPLAINING MINORITY GOVERNMENTS

The investiture rule should preclude any minority governments, yet such administrations do form in the Czech Republic. Furthermore, given the complicated situation in the Chamber of Deputies resulting from the above-mentioned conditions, such governments should be innately unstable. Yet again, this is not entirely the case. How were politicians able to surmount the investiture hurdle and confirm in office minority administrations? A brief historical sketch will help to answer the question.

Sometimes circumstances predestined the results. In 1996, the right-wing parties received only ninety-eight votes; the remaining 102 were divided among ČSSD, KSCM, and extreme right-wing Republicans. Both the latter parties were too anti-system to enter any coalition and the right-wing parties refused to govern with Social Democrats. ČSSD assessed its options and, rather than risk new elections, it preferred to act as a ‘constructive’ opposition, which meant its deputies left the chamber during the vote of investiture and lowered the voting threshold. For this indirect support, the government agreed to offer Social Democrats important posts within the committees and leadership of the Chamber of Deputies, including the position of chairman of the chamber to the leader of ČSSD. Soon after it survived the investiture vote, the minority administration persuaded two Social Democratic deputies to switch parties and join a majority government.

Elections in 1998 were won by ČSSD, which proposed a coalition with two centre-right parties (KDU–ČSL, Union of Freedom) and even offered the post of prime minister to the leader of the latter. Both parties rejected the idea, and the coalition between them and ODS was impossible owing to personal

animosity among their leaders. Despite ideological rivalry, surprisingly ODS and ČSSD were able to close the so-called ‘Opposition agreement’, and according to its text ODS tolerated a Social Democratic government and promised not to initiate or vote for a vote of no confidence. In return it received the position of presiding officer in the Chamber of Deputies for ODS’s leader, and together both parties planned to amend the constitution and change the electoral system to the majoritarian formula.⁶ Although the ČSSD had only seventy-three of the 200 deputies, owing to the agreement the government was able to rule undisturbed for the whole period. While many Czech intellectuals criticized the arrangement as an unscrupulous division of power that breached any democratic standards (e.g. Tabery 2008), foreign commentators evaluated it through more pragmatic lenses (Roberts 2003).

Another interesting situation occurred after the 2006 elections. Parties positioned on the right of the spectrum immediately announced an agreement to form a coalition, but they had only 100 deputies. A deadlock loomed, with politicians unable to agree on the establishment of the chamber’s leadership, partly because any concession would be taken as a gesture of weakness, and secondly because of the role the chamber’s chairman plays during any third attempt to appoint the prime minister. As was explained above, if the Constitutive Meeting is not finished, no appointment of a new government could take place. In the end a relatively unknown deputy from ČSSD was elected as the chamber’s presiding officer based on a public promise he would step down before ever having an opportunity to nominate the prime minister. Still this did not solve the conundrum as to who should govern. Finally, the president appointed the leader of ODS as prime minister, but the right-wing coalition still commanded only 100 votes. The prime minister’s advisers invented an interpretation that a tie during the vote of investiture is actually sufficient, but this constitutionally controversial theory was rejected even by some ODS deputies. Finally the new prime minister gambled and formed an ODS minority government with a promise that new elections would be organized soon. The opposition rejected the offer and the minority administration did not pass the investiture vote. ČSSD hoped it would receive its chance to form a government in the second round, yet the president opted for the same leader from ODS and his second attempt to overcome investiture was successful, as he was able to support the 100 right-wing votes with two crossrunners from ČSSD.

We suggested that the investiture vote influenced also the selection of caretaker administrations in that the president has to listen to political parties’ position. This ‘rule’ was, however, not followed by President Miloš Zeman in 2013, who after the resignation of the right-wing Prime Minister appointed a

⁶ Electoral Act changes prepared by both parties were annulled by the Constitutional Court for their unconstitutionality; the amendment of Constitution was blocked by the Senate.

caretaker administration consisting of his favoured ‘experts’. At the time of appointment, there was no negotiated support for this government in the Chamber of Deputies. Indeed, the right-wing parties presented a list with 101 signatures supporting appointment of their candidate. In the end, the caretaker government failed to pass the investiture vote by a few votes, but as the president indicated he would not appoint a right-wing prime minister and the 101 majority broke down, the parties agreed to dissolve the Chamber of Deputies and new elections were called.

From the above, we can conclude that there are generally two situations where minority governments are formed in the Czech Republic. First, when the seats within the chamber are distributed in such a way that the programmatic and personal incompatibilities among the political parties are so grave that no majoritarian administrations were possible (1996, 1998). On both occasions, the main opposition parties opted for abstaining from the investiture vote in return for position within the Chamber of Deputies and other benefits. They also feared that an ‘unconstructive’ attitude would be punished by the voters in any early elections that would likely follow after the unsuccessful investiture vote. The second situation is represented by minority governments which had no prior certainty of gaining investiture (2006, 2013). Here the appointing president and the new prime minister risked that either the majority would be nonetheless achieved (e.g. other parties or single deputies feared early elections) or the failed investiture vote would be more advantageous to their cause than prolonged deadlock within the Chamber of Deputies.

11.7. CONCLUSION

If we employ the typology proposed by Strøm et al. (1994), the Czech Republic is an example of a state in which electoral results are important for government formation, but institutional constraints shape the final outcome. The need to pass the investiture vote forces political parties to form coalitions that would otherwise not have been required, and if the majority is not available, minority administrations are formed with indirect support from the opposition. Caretaker governments are also common in cases where both other options were unattainable.

In practice it is questionable whether the positive investiture rule has the desired impact. One of its main advantages is that it should contribute to effective administration of the state. The vote of investiture confirms the government is able to command enough deputies in the chamber in order to govern and ideally to fulfil the promises the coalition parties gave to the voters. But in the Czech case the minuscule majorities the governments usually

enjoyed mean that, while they are able to obtain just enough votes for the investiture, the same does not necessarily happen for the subsequent regular votes on legislative proposals or other issues.

Despite this objection, investiture rules are now deeply entrenched in Czech constitutional culture. One might speculate what impact the introduction of direct elections of the president in 2012 will have. The Czech Republic has been customarily and firmly a parliamentary system, and the current construction of the investiture vote is viewed as an integral part of the Chamber of Deputies' prerogatives. On the other hand, and with reference to his direct mandate and legitimacy, since its inauguration in March 2013 the president has tried to shape the political system even more than his predecessors.

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