

Scenarios for Disintegration

Jiri Pehe

The disintegration of Czechoslovakia into two states appears virtually inevitable. There are several scenarios for the possible split, all widely discussed in the Czechoslovak press. They range from solutions that are seen as constitutional to solutions that would bypass the current constitution. While some of the country's leading politicians argue that the future of the country must be decided in a referendum, others have suggested that the breakup of Czechoslovakia could occur without one.

The parliamentary elections in Czechoslovakia on 5 and 6 June set into motion a series of developments that are likely to result in the disintegration of the seventy-four-year-old state. The Czech and Slovak Republics, which currently form the Czechoslovak Federation, are each governed by political forces that pursue widely disparate political and economic agendas. The new Slovak government has insisted on making Slovakia into a subject of international law—a state with its own political and economic sovereignty. Slovakia's ruling Movement for a Democratic Slovakia has made it clear that the federative arrangement is no longer acceptable to Slovakia; instead, it would prefer a confederation or a loose monetary and military union. Leading political forces in the Czech Republic have rejected such proposals, arguing that Czechoslovakia should either be a federation or split into two independent states.¹

The political agreements reached on 20 June between the Movement for a Democratic Slovakia and the Civic Democratic Movement, the

strongest party in the Czech Republic, contained a provision stating that the Czech and Slovak republican parliaments (the National Councils) would attempt to reach an agreement on the future of Czechoslovakia by 30 September. Even before the National Councils could start negotiating, however, the federation was further undermined by new developments. On 3 July Slovak deputies in the Federal Assembly blocked the reelection of Vaclav Havel as president of Czechoslovakia, triggering a new wave of anti-Slovak resentment in the Czech Republic, where Havel is tremendously popular. On 13 July the Czech National Council approved a government program that anticipated the breakup of the country. The program said that "the Czech government must take all measures needed for the republic to be able to exist as an independent state."² The Slovak government's program, approved by the Slovak National Council on 15 July, also anticipates the breakup of the federation. On 17 July the Slovak National Council adopted a declaration of sovereignty for Slovakia; several minutes later President Havel announced his resignation. On 23 July Czech and Slovak Prime Ministers

Vaclav Klaus and Vladimir Meciar agreed to propose a draft constitutional law to the Federal Assembly on the basis of which Czechoslovakia would be divided into two states.

Clearly, besides adopting such a law, the Federal Assembly can currently contribute very little to solving the constitutional impasse, as the initiative is now with the republican legislatures. Both National Councils are likely to adopt new republican constitutions before the end of the summer and subsequently elect republican presidents. Such steps would make redundant the post of the federal president and most federal agencies; in fact, they would cast doubt on the need for the continuing existence of the federation itself.³

In many respects, the most important political question in Czechoslovakia is no longer whether Czechoslovakia will disintegrate but in what way it will disintegrate. This question is currently a subject of intense theoretical and political debate in the country. For example, on 15 July the Czechoslovak Helsinki Committee made public its survey of the opinions of Czechoslovak and foreign constitutional experts on possible modes of Czechoslovakia's breakup. Most of these experts argued that the future of the country should be decided in a referendum, but they did not exclude other possibilities.⁴ In fact, although the holding of a referendum appears to be the most desirable way of deciding the future of the country, some experts have acknowledged that, given the pace of developments in the country,

³ *Ibid.*

⁴ *Ibid.*, 15 July 1992.

² CSTK, 13 July 1992.

¹ See Jan Obrman, "Czechoslovakia: Stage Set for Disintegration?" *RFE/RL Research Report*, no. 28, 10 July 1992.

other scenarios appear more likely. The scenarios for the disintegration of Czechoslovakia can be divided roughly into two groups: constitutional solutions (meaning ones that respect the current federal constitution) and solutions that bypass the constitution.

Constitutional Solutions

At the moment, the only constitutional solution to the crisis in Czechoslovakia is a referendum. The referendum law, which was adopted by the Federal Assembly in the form of a constitutional amendment in July 1992, says that a referendum must be called by the president of the country if either the Federal Assembly or one of the National Councils vote to request a referendum. The president must call the referendum within fifteen days of receiving the request. The referendum itself must be held within ninety days of the day on which the request for the referendum was received by the president. If a referendum is requested by the Federal Assembly, it must be held simultaneously in both republics; however, it can determine only the form of the future constitutional setup of a common state, which means that the country cannot be divided on the basis of a referendum held nationwide.

If a referendum were held in one of the two republics at the request of its National Council, only the question of the republic's secession from the federation could be decided. If more than 50% of the eligible voters in the republic voted to secede, the Czechoslovak federation would cease to exist one year from the date of the referendum. Therefore, the holding of a referendum in one of the republics at the request of its National Council is the only constitutional way of dissolving the federation under existing law. This option does not seem to be favored by either of the two ruling parties in the republics, however, as it raises the question of successor

rights. Obviously, the republic that unilaterally seceded from the federation would find it difficult to claim that it was the legal successor to the Czechoslovak federation. Such a solution could prove to be costly both politically and economically.

In theory, it is also possible that the Federal Assembly could modify the referendum law so that a referendum at the federal level (held in both republics simultaneously) could decide whether Czechoslovakia should break up. This option is not very practical, however, as the votes would have to be counted separately in each republic to ensure that the populations of both republics (Slovakia being the smaller) had an equal say. This means that such a referendum would be just a variation of a vote held in one of the republics.

Another constitutional solution, as some experts have pointed out⁵ and as Klaus and Meciar proposed on 23 July, would be the adoption by the Federal Assembly of a constitutional law that would effectively dissolve Czechoslovakia. Such a law would presumably be based on an agreement reached by the National Councils and would also regulate the division of the federation's assets between the republics. This option—which could, moreover, be put to the test in a referendum—has the advantage of sticking to the basic principles of the rule of law and would probably also help avoid unnecessary political tension between the two republics.

Unconstitutional Solutions

There appear to be three ways of dissolving Czechoslovakia unconstitutionally. It is, for example, possible that the National Councils could agree on the dissolution of Czechoslovakia but fail to secure the approval of the Federal Assembly. One reason why

⁵ See the interview with Ernest Valko, the chairman of Czechoslovakia's Constitutional Court, on Radio Czechoslovakia, 14 July 1992.

such a scenario is not unthinkable is that the voting procedures in the Federal Assembly, which is divided along Czech-Slovak lines and where the position of left-of-center parties opposed to the breakup of the country is stronger than in the National Councils, are much more complicated than in the republics' parliaments. The Federal Assembly consists of three bodies—the House of the People, the Czech chamber of the House of Nations, and the Slovak chamber of the House of Nations—all of which must approve new constitutional laws by a three-fifths majority. Both National Councils, on the other hand, are one-chamber bodies that are not divided along Czech-Slovak lines.

This solution would probably cause legal, political, and economic chaos, since federal bodies would continue to play a certain role for a period of time and interfere with the internal affairs of the republics. Moreover, a degree of involvement by the federal bodies in the dissolution of the country would be crucial for the orderly division of the federal assets between the republics and the transfer of various successor rights to the republics.

Another scenario for an unconstitutional breakup of the country could be a unilateral declaration of full independence, without holding a referendum, by one of the republics. From the republics' point of view, such a step could be taken only by the appropriate National Council. Although this would be the fastest road toward separation, it would put the republic taking such a step at a disadvantage. The seceding republic would almost certainly be deprived of any successor rights and would find it more difficult to gain international recognition. Moreover, this solution would cause economic, political, and legal chaos in both republics and would considerably increase political tension between them.

Yet another possibility is a protracted constitutional crisis at the

KLAUS AND MECIAR AGREE ON THE DIVISION OF CZECHOSLOVAKIA

Czech Prime Minister Vaclav Klaus and Slovak Prime Minister Vladimir Meciar, meeting in Bratislava on 22 July and the morning of 23 July, agreed on ending the Czechoslovak federation and the steps they intend to take to achieve this goal. They also tentatively agreed on areas of subsequent cooperation and policy coordination between the two states. Both men emphasized that they had arrived at these decisions as representatives of their respective political parties and that the agreements would have to be approved by the two National Councils and the Federal Assembly.

A Draft Law on the End of the Federation

The two leaders' most important decision was to submit to the Federal Assembly a draft constitutional law that would dissolve Czechoslovakia and regulate the division of the federation's assets between the two republics. The draft law would first be discussed by the National Councils. Speaking at a press conference given by the two leaders (CSTK, 23 July 1992), Klaus admitted, however, that such a law might not be approved by the Federal Assembly. Any law on the constitution must be approved by a three-fifths majority in all three chambers that constitute the Federal Assembly. Klaus suggested that there were other ways to end the federation, including a declaration by the Federal Assembly (which would require a simple majority of votes), an agreement between the two National Councils, secession by one of the republics, or a referendum. Klaus said that the draft law on the end of the federation could be submitted to the Federal Assembly before the end August.

Other Agreements

It was also decided that Klaus's and Meciar's parties would propose agreements on cooperation between the two new states in a number of areas. First, they would try to find a solution whereby the rights of citizens of either republic would be equally protected in the other. Above all, both sides wanted to guarantee the free movement of people. Second, the two new states, both being separate entities under international law, wanted to coordinate their foreign policies. For example, some of the current Czechoslovak embassies would continue to represent both states. The two states would also like to be represented jointly at the European Community. Both states would respect international treaties and agreements concluded by

Czechoslovakia and would try to solve the question of so-called successor rights as quickly as possible. Third, Meciar and Klaus also discussed the possible division of the Czechoslovak armed forces, although they agreed that the two states would continue for some time to have a joint defense system. The division of Czechoslovakia, it was agreed, should not be allowed to result in any large, disruptive movement of troops from one republic to another. Fourth, both sides recommended the abolition of a number of federal bodies. They agreed that federal broadcasting and press institutions should be transformed into joint-stock companies to which both republics could be a party. They also agreed that the Federal Security and Intelligence Service should be divided between the republics and that the Czechoslovak Academy of Sciences should be abolished.

The Economy

Klaus and Meciar agreed that the two new states should form a customs union and establish a zone for the free movement of goods, services, labor, and capital. Klaus acknowledged that he and Meciar had not been able to agree fully on how the two states would coordinate their monetary and taxation policies. They had also been unable to agree on whether the new states should have a common currency.

What It All Means

The agreements between Klaus and Meciar basically mean that any doubts about the possibility of Czechoslovakia's survival as a common state have been dispelled. Both Klaus's and Meciar's parties have enough support in their respective National Councils to force their agreements through these bodies. The most important question, therefore, is not whether Czechoslovakia will disintegrate but whether it will split in a constitutional way. The solution proposed by Klaus and Meciar is clearly the most dignified and orderly way of dividing the country. The cooperation of the Federal Assembly and the federal government in this division, as well as the federation's assets, would greatly diminish the possibility of legal, economic, and political chaos; it would also reduce the possibility of political tension between the two republics. However, even if the Federal Assembly refuses to cooperate, the split is virtually inevitable. The National Councils would then act on their own to establish two independent states.

federal level, accompanied by the gradual demise of federal bodies. As mentioned above, both republics are

currently drafting their own constitutions and are planning to elect their own presidents. It is likely that both

constitutions (but definitely the Slovak one) will be so-called full constitutions, meaning that they will

disregard the contents of the federal constitution. The federal constitution also does not recognize the institution of republican presidents. If such steps were indeed taken, both republics would de facto establish their own independence. It is possible that faced with this *fait accompli*, the Federal Assembly would attempt to adjust the federal constitution to the new republican constitutions or adopt a constitutional law that would establish a new type of union between the two states, such as the confederation proposed by the Slovak side. The latter would require transforming the still numerous federal bodies into confederal ones that would merely coordinate the defense, foreign, and monetary policies of the two new states.

Most of the Czech leaders are opposed to such a solution, however, and member parties of the Czech governing coalition are likely to block any such solution in the Federal Assembly. Both the Slovak and Czech government parties would also almost certainly block any action of the Federal Assembly aimed at reversing the course of events in the republics. Under such circumstances, the Federal Assembly and the federal government are likely to become nonfunctional. Even if the Federal Assembly refused to dissolve the federation and thus terminate its own existence, it would be reduced to a superfluous, powerless agency unable to exercise any direct influence in the republics. The federal president is also unlikely to be able to break the stalemate. In fact, the probability that a new federal president will be elected again is very small. In this case, the role of the federation would become increasingly smaller.

It would probably cease to exist altogether once the republics assumed responsibility for their own defense, foreign, and monetary policies.

Rating the Plausibility of Various Scenarios

There appears to be a growing gap in Czechoslovakia today between what is desirable and what is realistic. While most observers suggest that the country's future be decided in a referendum, the speed of developments in both republics is making this option less and less probable. Although leading politicians in Slovakia say that they plan to hold a referendum, they would like to do so only after they have taken steps that would establish Slovakia's independence in the de facto sense: namely, the adoption of the declaration of sovereignty for Slovakia, the adoption of a Slovak Constitution, and the election of a Slovak president. Czech leaders argue that the Slovaks are merely trying to buy time. If a split is inevitable, they say, it should be effected as quickly as possible so that its economic and political costs do not become excessive. On 16 July Federal Assembly deputies representing the leading parties in the Czech Republic and Slovakia banded together to defeat a proposal merely to discuss the holding of a referendum. In practice, this means that a referendum will not be held in the next few months, and by then the republics' march toward independence is likely to have reached the point of no return. It also means that although opinion polls indicate that most people in both the Czech Republic and Slovakia are against a split, the populations in both republics may never get a chance to vote on such an important issue as the division of

their country. The fate of Czechoslovakia appears to be in the hands of the political parties that the people elected on 5 and 6 June.

The adoption by the Federal Assembly of a constitutional law that would dissolve Czechoslovakia is also unlikely. Smaller Czech and Slovak parties opposed to the dissolution of Czechoslovakia may not have enough influence in the National Councils to prevent the ruling parties from agreeing to dissolve the federation; but owing to the complicated voting system in the Federal Assembly, they may be able to block the passage of a constitutional law on the federation's dissolution. This means that an agreement between the National Councils, if reached, might never become a constitutional law. Realizing this possibility, Klaus suggested after the talks on 23 July that the existence of Czechoslovakia could be ended by a simple declaration adopted by the Federal Assembly rather than by a constitutional law. Such a declaration could be passed by a simple majority of votes. It seems, however, that no matter what the Federal Assembly eventually does, the National Councils will probably go ahead with steps that result in the republics' independence. Thus, although the unilateral secession of one of the two republics cannot be completely excluded (especially if frustration over the lack of progress in solving the stalemate increases significantly), the de facto dissolution of the federation (with or without an agreement between the National Councils) appears to be the most probable course of events leading to the breakup of Czechoslovakia.