"Analysis of the Policy Making Process in Slovakia"
Final Research Paper
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I. Introduction

In the past, the policy formation and arbitration function of the central state apparatus was weakly developed, at the same time, the state bureaucracy was comprehensively politicized. Against this background, the key challenge of post-communist transformation has been to 'governmentalize' the executive, i.e. to enforce the **rule of law** and to professionalize the staff. Public sector reform has, accordingly, centered on attempts to concentrate law making and enforcement.

At the same time, the new global standards of governance are emerging. Citizens of developed countries are demanding better performance on the part of their governments, and they are increasingly aware of the costs of poor management and corruption. The concern was raised by the inability of governments to take a long-term view, being instead absorbed in dealing with day-to-day problems and current political difficulties. Thus, the **problem of governance** became central to the concerns of many national and international bodies, including the World Bank, OECD and EU.

The Central European countries, including Slovakia, face a double challenge: there is not only a need for urgent action to adapt the rule of law and law enforcement, but also good governance principles that became a subject to broad debate on the future of public administration in the world. The ultimate goal is the ability to tackle its concerns and problems more effectively and thus increase its policy-making capacity.

This paper seeks to provide a practical approach to helping the government to provide high quality public policies by taking into consideration both challenges. It does so from the conviction that professional policy making and effective policy management is essential to a successful development of the country. The World Bank acknowledges that it should "*continue to shift our focus from the content of public policy to the way policy is made and implemented*", and "*rather than focus primarily on providing policy prescriptions, the World Bank needs to focus more on helping countries develop the processes and incentives to design good policies themselves*."[1]

II. Conceptual Framework

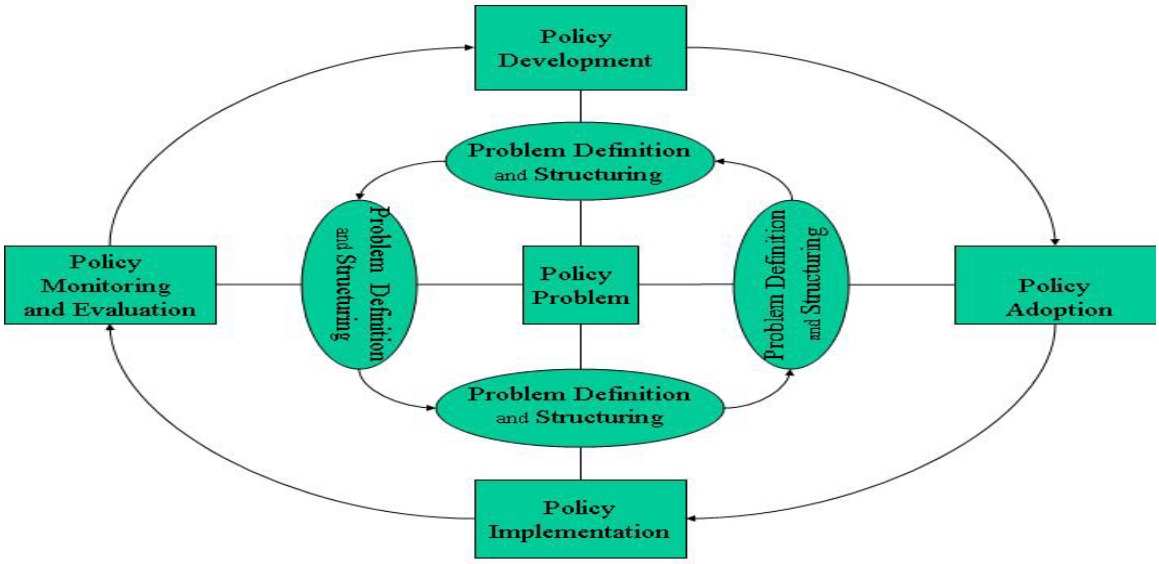
The paper employs an interdisciplinary methodological scheme, bringing together various approaches and setting the guidelines for the subsequent empirical investigation. Thus, the paper approaches the problem of the analysis of the policy making processes from two perspectives: descriptive and normative; which became the principles for the operationalization of the research. The descriptive approach takes the processes as the basis for investigation and relies on the rational model of policy cycle. The normative approach goes beyond the rationality of the policy cycle and takes into consideration the philosophical dimension of policy making: good governance.

The descriptive approach, the analysis of the policy making processes, will follow a simplified model that has divided the process into a series of discrete stages and sub-stages. The resulting sequence of stages is often referred to as the „policy cycle". Various

[1] World Bank, 2000.

scholars have identified a different number and names for the individual stages.[2] However, the common logic of their theoretical and rational models is applied problem solving. The stages represent ongoing activities that occur through time in order to solve a problem in the society. The basic model has usually been presented much as shown in Figure 1. According to this model of policy making, achieving good results – that is well thought out and well implemented policies that deliver desired outcomes – depend on thorough, competent performance of each stage in the sequence.

Figure 1: Policy Cycle: a simplified model of policy making processes.



Source: adapted from *Public Policy Analysis: An Introduction* by W. N. Dunn, p.15-17.

In this model the individual stages are characterized by the following activities:[3]

Policy development: Once the appointed and elected officials placed the problem on the agenda, the civil servants start to formulate a policy to deal with a problem. Desired outcomes are defined and on the basis of policy analysis alternative policies are developed and various policy tools examined. The information is provided about the benefits and costs of alternatives, the future consequences that have been estimated and criteria for making choices. Solutions are developed. Potential tensions with other stakeholders are being identified.

Policy adoption: A concrete policy alternative is chosen and adopted with the support of the parliament, consensus among top civil servants, or by a decision of the politician. A formal legislative or administrative procedure is in place.

Policy implementation: An adopted policy is carried out by administrative units which mobilize financial and human resources to comply with the policy. Social, public, economic, technological, and political support is addressed and policy communicated. If possible, different options are tested.

[2] The first scholar to break down the policy making process into a number of discrete stages was Harold Lasswell who identified seven categories. In contrast to Lasswell, Jones and Brewer have used a simple framework of five stages. Usually, the stages range from three to seven.

[3] This section draws from Dunn, pp. 14-29.

Policy monitoring and evaluation: Assessment of the policy whether it is achieving its objectives and solving the problem in the society. Monitoring reveals information about the consequences of the adopted and implemented policy and helps in better implementation. Evaluation reveals discrepancies between expected and actual policy performance, thus assisting policymakers for the future agenda setting. It may lead to adjustments or reformulation of policies and establish a basis for restructuring a problem.

The above mentioned aspects of policy making are neutral terms that do not carry a positive or negative 'loading'. They regard the process through which societies take and implement decisions on the allocation of public resources to address societal needs. This is not sufficient on its own; the policy making if not based on broad participation of all groups in society is not accountable and at the same time if it is not well managed it can be highly ineffective and lead to a waste of public resources. Therefore, the normative approach, **good governance,** wants to address these issues and implies that the policy making processes should be organized based on certain democratic and efficiency principles. *Democratic governance* generally considers the transparency and openness of the process to societal participation that take full account of inputs from society. *Effective governance* is based on democratic principles and respect the principles of effectiveness and efficiency so that societal problems are addressed timely and with a minimum use of available resources.

Currently, such international institutions as the World Bank, OECD, EU and UNDP are also shifting their approach to reform of the public administration systems all around the world and trying to develop and measure good governance. This latest development and new interest in measuring the performance of governments, using indicators of governance and institutional quality is a reaction to previous lack of attention for capacity building in administrative systems that would reflect democratic and effective principles.

The European Commission, for example, identified the reform of European governance as one of its four strategic objectives in early 2000. Political developments since then have highlighted the need for the Union to start adapting its institutions and establishing more coherence in its policies so that it is easier to see what it does and what it stands for. The White Paper on European Governance concerns the way in which the policy-making process is undertaken and it promotes greater openness, accountability and responsibility for all involved. The White Paper proposes five principles of good governance: *openness, participation, accountability, effectiveness and coherence.* The World Bank Strategy identifies where the policy-making process needs to change if policy makers are to be confident of delivering the sort of policy a government wants to see. Those changes are: designing policy around outcomes, making sure policies are inclusive and evidence based, involving others in policy making, becoming more forward- and outward-looking and learning from experience.

The ideas set out in the White Paper of the EU, the World Bank Strategy and OECD report provide high level objectives for change in policy making and have formed the basis for the thinking. This paper will analyze each stage of the policy cycle with the

perspective of the above mentioned principles. Each principle stands for the following qualities[4]:

Public consultation and coordination: The quality and relevance of the policies depend on ensuring wide participation throughout the policy cycle, from initiation to implementation and monitoring. Improved participation creates more confidence in the end result and in the institutions that deliver the policy. Policies are also inclusive, i.e. fair and take into account the interests of all.

Openness and transparency: The institutions should work in a more open manner. Active communication about what government does and the decisions it takes. Government should use language that is accessible and understandable for the general public.

Policy coherence: Policies and actions must be coherent and easily understood. Coherence requires data collection and analysis, use of different policy instruments and more thought to be given to their selection. It also requires strong responsibility on the part of institutions to ensure a consistent approach within a complex system. The policies are joined up and work across organizational boundaries.

Strategic and management efficiency: Policies must be effective and timely, delivering what is needed on the basis of clear objectives, and evaluation of future impact and past experience. The policies look ahead and contribute to long term government goals. Also familiarity with project management discipline is extremely important.

Outcome focus: Policies aim to deliver desired changes in the real world. The policies are flexible and innovative and tackle the causes rather than symptoms. They work in practice from the start.

The conceptual framework that will be the base for the analysis of the policy making processes in Slovakia is a matrix of the simplified model of policy making process (four stages of the policy cycle) and of five principles of good governance. Table 1 represents this conceptual framework.

Table 1: Conceptual Framework for the Analysis of the Policy Making Process

Good governance principles / **Policy Cycle**	Democratic Governance		Effective Governance		
	Public Consultation and Participation	Openness and transparency	Policy Coherence	Strategic and Management Efficiency	Outcome focus
Policy Development					
Policy Adoption					
Policy Implementation					
Policy Monitoring and Evaluation					

This inter-disciplinary approach enables a richer and deeper understanding of the problem area raised. The review of the current practices at the central level of the government constitutes the core in any understanding of the policy making process. On

[4] Drawn from the *European Governance: A White Paper* (Commision of the European Communities), *The World Bank Strategy.*

the basis of such insight, it is possible to clarify the divergent paths of transformation in the region and put the dynamics of good governance and its implications into a more practical perspective. The analysis will take into consideration both institutional mechanism and good governance principles in policy making.

III. Analysis of the Policy Making Process in Slovakia

One common and important distinction can be made between **macroeconomic** and **social policies**. Macroeconomic policy comprises monetary, fiscal, tax, and trade policies. Social policy includes inter-sectoral budget allocations and individual sector policies aiming at labor market, health, education, social, justice and environment systems. The assumption goes that the transitional countries pay bigger attention to macroeconomic policies as they want to accomplish the changes as soon as possible. Therefore, this paper will examine the social policies on the case studies of the educational and justice policies. Thus, the interviewed civil servants come from the Ministry of Education and Ministry of Justice. Another important factor for the choice of these two particular ministries is a hypothesis that these two ministries are under the influence of their very particular group of policy consumers: teachers and judges, respectively.

The analysis used the conceptual framework presented in Table 1, showing sequential activities organized in cycle with good governance principles. It focused on the various aspects of processes, contents, and outcomes that are relevant to policy process. The First part (the Formal Policy Process and Practice) looks at public policy making in Slovakia through the prism of a policy cycle. It analyzes the current provisions of policy making in law, the consistency with it and the practices of the civil servants. This part is rather technical, however, the questions of internal consistency, both vertical and horizontal are taken under the scrutiny. This part relies heavily on empirical research.

The study of the practice in policy making in Slovakia is based on empirical data gained through structured interviews. The fieldwork for this project was carried out over a four month period in May – August 2002. Interviews were conducted among Slovak central government officials, aiming at professional employees at all levels of the Ministry units and targeted personnel in agencies that are subordinated to these departments (see appendix for a list of interviewees). Also representatives of interest groups, members of the committees and working groups and other experts involved in the policy making process have been interviewed. The collected information is from actual cases of policy making and examples are provided in italics. These cases range from large, high profile examples, such as the Penal Code Recodification or Act on Higher Education, to much smaller policy projects, such as extending the period of pre-trial detention. Another important source of empirical data were documents and material prepared by civil servants for the decision makers. The analysis focused on both substantive and formative side of the documents.

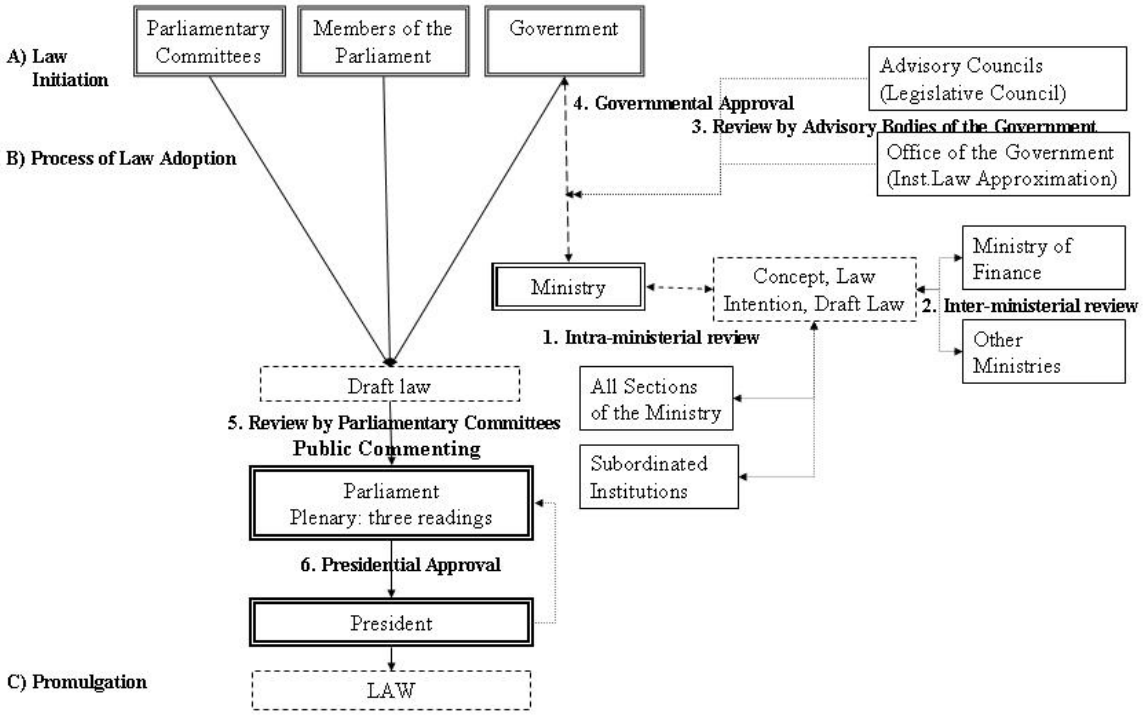
1. The Formal Policy Process, an Overview

The policy – making process in Slovakia is still rather legalistic. This legalistic tradition is the legacy of the Austro-Hungarian Monarchy, of which Slovakia was the part until 1918 and which anchored its legitimacy primarily in law. This period is characteristic by typical bureaucratic behavior. Undoubtedly, part of the today's bureaucratic behavior of the civil servants could be attributed to the political culture of the old Austro-Hungarian Monarchy. Several features of such behavior can be identified. First, respect for the established hierarchical authority influenced all subsequent public administration systems, including Masaryk bureaucracy during the first Czechoslovak republic,

communist bureaucracy and current administration. Second, observance of purely bureaucratic procedures is still dear to the hearts of the current civil servants. Third, bureaucracy as a profession enjoyed an honorable past as the tradition went back for several generations. These bureaucratic values managed to survive with relatively little damage. As a consequence, any proponents of the reforms met with resistance from the civil servants themselves.

The formal framework for policy making is set by the Constitution and laws that regulate the initiation of the new laws and amendments, the process of law adoption and its promulgation. All processes that are formally regulated are of legislative nature (see Figure 2), regulated by, in particular, the **Legislative Rules of the Government**, **Guidelines for Drafting and Presenting the Materials for Sessions of the Government** of Slovakia and **Act of the National Council on the Rules and Procedures of the National Council**. There exist **no formal rules or guidelines in regards to a broader policy process** that encompasses the formulation of problem, design of concepts, strategies and policy analyses or design of action plans, implementation, monitoring and evaluation.

Figure 2: Formal Legislative Process



A) Law Initiation

The Constitution of the Slovak republic stipulates that bills (draft laws) may be introduced by the Committees of the Parliament (National Council), members of the Parliament and the Government (Cabinet) of the Slovak Republic. In practice, most bills and other regulatory instruments are initiated and prepared by individual ministries (on the basis of the government program) where also the actual drafting work is carried out.

In 80% of the cases, the individual ministries follow the **Plan of legislative tasks** that is being prepared annually on the basis of the government program. Thus, although there is a general timetable set, in principle nothing happens if it is not followed. As a result, serious delays may be caused by the inability to deliver the inputs on time.

B) Law Adoption

The process of law adoption follows a very formal sequencing of concepts and legislation as stipulated in the **Legislative Rules of the Government**. In this process, the respective department of the ministry prepares and drafts a policy document or a piece of legislation, which then progresses through a review process in the following steps:

- intra-ministerial review by other departments and leadership of the ministry (review by other organizational units within the ministry)
- inter-ministerial review by other ministries and subordinated institutions (so-called commenting period)
- review by the Ministry of Finance (impact on the state budget)
- review by the Office of the Government (Institute for the Approximation of Law: compliance with the EU legislation; Legislative department)
- review by a relevant advisory councils of the government (Legislative Council: legislative logic and compliance with the Constitution and other laws)
- approval by the government
- review by a relevant committee of the parliament
- approval by the parliament (3 readings)

At every stage of the law adopting process, the law drafter co-operates within his/her ministry, the Office of the Government and often with the Chancellery of the Parliament.

Table 2 shows the distribution of rationales for the adoption of a new law as stated in the Plan of legislative tasks between the years 1999-2002. In order to join the European Union as a member state, the main policies are targeted for the adoption of *acquis* or emerged from the Regular report of the EC on the state of readiness for the EU accession. International treaties, agreements and recommendations also play an important role in determining the policies. From the nationally oriented policies, only half are really problem oriented. However, even this number does not distinguish whether the particular policy is based on anticipation or firefighting. The other half is administratively oriented, i.e. is concerned with the institutional relations, arrangements and distribution of competencies, a more detailed explanation of an existing law or harmonization of the existing laws. Executive order to a law sets up implementation mechanisms.

Table 2: Rationale for the initiation of a policy (legislative intention or a draft law) according to the Plan of legislative tasks

Rationale	**International**	**EU**			**National**			
	Treaty e.g. NATO	Harmonization	Regular Report	Secondary legislation	Government ruling	Executive order to a law	Admin. related	Problem related
2002	6	129	14		9	4	25	25

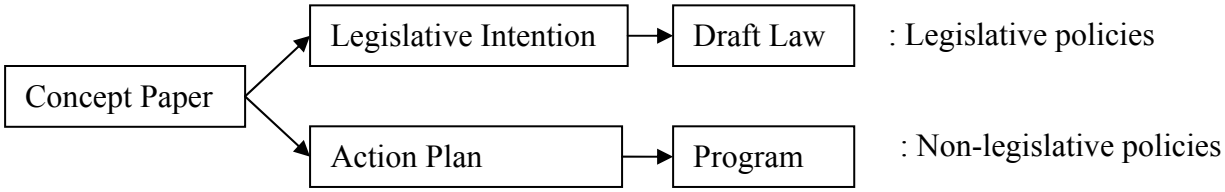
2001	8	65		5	8	3	25	41
2000	5	39			6	2	46	45
1999	12	40			10	4	66	39

C) Promulgation
The Constitution stipulates that each act passed by the Parliament shall be signed by the President of the National Council, the President of the Slovak Republic and by the Prime Minister. The President has the right to return the law with comments to the Parliament or sign it within 15 days after his receipt of the act. The Parliament must reconsider the act and when it is passed, it must be promulgated. Any law enters into effect after promulgation in the Collection of Laws and into force by the fifteenth day after promulgation in the Collection of Laws (unless specified otherwise in the law itself).

In principle this would suggest a rather well organised policy process. However, it should be noted that legislation remains almost the exclusive instrument for operationalizing policy concepts.

2. Policy Process in Practice
Stage 1: POLICY DEVELOPMENT
Policy development phase takes place **at individual ministries**. The formal framework does not address this phase at all.[5] Moreover, there are **no guidelines** or standards in this regard either. Some Ministries have internal methodology or guidelines on preparation of documentation for the meetings of the decision-makers at the ministry, for the meeting of the government and parliament. These guidelines, however, regard the technical aspects of the final product in the formal legislative process as stated in the Legislative Rules (e.g. parts of the cover page, number of copies to be submitted) rather than techniques of policy analysis, concept drafting or drafting of non-legislative policies. As a result, some civil servants, particularly in the lower levels of the hierarchy of the Ministry, have only a vague picture of the policy making process and of that how they themselves contribute to the final outcome.

Ideally, policy material to a particular issue is designed in the following stages:



Thus, ideally, a concept paper defines the background, issue and approach on solving a certain problem. If legislative tools are to be used, the legislative intention describes in more detail the substantive issues and remedies, including impact on society, etc. The

[5] It only mentions the right for formal **initiation of the law** before the parliament (parliamentary committees, members of the parliament and government).

final output should be a draft law. If Non-legislative tools are to be used the action plan details the vision drafted in the concept. The final output is a concrete project or program. In reality, however, only a very small percentage of the materials submitted to the government for approval does undergo these three steps. 60% of the submitted draft laws have never had any concept paper or legislative intention and barely any draft law has both.[6] There is no guideline on when and how to develop a concept paper, legislative intention or action plan. The practice is to prepare such a piece of material on government ruling. There is not even a practice to develop a concept paper or action plan internally within the Ministry. The legislative rules stipulate that the legislative intention is developed only if the draft law will anticipate "considerable impact on economy and state budget " or by government ruling[7]. Thus, the majority of the draft laws are being prepared from scratch by writing the law directly in paragraphs and similarly programs are prepared without having a concept or action plan.

a) Analysis of the Development Process

One of the typical features in the development of a certain policy in a transitional country is a complex reform of a whole area at once, the best within a four-year election period. It is a natural process for transitional countries, which intend to do the necessary reforms as soon as possible. As a result, however, the process is too quick or the deficiencies too big to be solved and serious errors occur. On one side, the end results are not systematic and it is not an exception that a certain bill is amended immediately after it's passing in the parliament or within the first months of its existence. On the other side, since the problem is usually stated very broadly, e.g. *penal code reform*, *education reform*, *higher education development in the 21 century,* the drafters loose the rationale for the reform and time delays occur in the delivery of the final product. One of the top civil servants stressed that if he had a possibility to start again the first thing he would do was to divide the big reform into several smaller units and progress in smaller steps. He stressed that civil servants and experts in the area do not have the capacity to prepare such huge reforms. He noted that if the reform was encountering such problems in the development phase he is unable to imagine what will happen in the implementation phase since nobody was concerned with that.

Example: Problems with Big Reform Projects.

One of the major reform projects at the Ministry of Justice concerned "Recodification of the Criminal Code" and it build on the concept paper that has been partially developed but remained undelivered under the previous government. Altogether it took 8 years to deliver the concept paper and develop a law intention. Draft code remained undelivered as the working group did not manage to provide it on time and it will wait for the next government. Similarly, at the Ministry of Education the "Strategy on Informatization of the Society" is being prepared for 8 years and it is still not ready. The Act on Higher Education,

[6] Information provided by the Legislative committee of the Government where all draft laws and legislative intentions go for approval.

[7] Article 8, Legislative rules of the Government as amended by the Government ruling No. 1118 from 1999 and No. 1130 from 2001, p.6.

on the other hand, was passed after 4 years of preparations. However, voices for its amendments are already heard.

The practice is to create ad hoc committees and working groups comprised of civil servants and experts in the field who are involved in the drafting of a particular piece of concept or legislation. Official working groups are formed by a decree of the Minister to elaborate conceptual issues, action plans and drafts of the legal acts. There is no legal requirement for inter- ministerial coordination before a legislative draft is finalized but informal coordination at the working level should take place. The number of members ranges from 4 to 24. Informal working groups are much smaller and usually consist of 1-3 civil servants and relevant 1-2 experts. It is not an exception that the informal working groups were formed on the impulse of the expert rather than civil servant. There are no formal guidelines or recommendations on how to create a working group or a committee, who should be a member, what size and how the work should progress.

In practice, the exact number of committees and working groups existing at the central level of the government and their composition is not publicly known. It is not known to the civil servants themselves, not even within the same ministry. Simply, the lists of all the working groups do not exist although big committees on reform of an important law are put on the internet. If anybody happens to know about the existence of such a group, usually it is not a problem to get the list of members[8]. It is rather a sign of mismanagement than deliberate act of keeping this information secret. The consequences, however, are enormous.

First, as a result there is a relatively big number of advisory bodies at various levels and point of time of various quality and results. In cross-sectoral issues, it is not an exception that the same problem is being dealt with by several working groups at once who do not even know about the existence of the other. As a result, instead of merging all the effort of the civil servants and interest groups into one force for solving the problem, it is dispersed into several working groups or even competing drafts.

Example: Miscoordination of the Working Groups on the Same Issue

The problem of domestic violence and the protection of victims became an issue to the end of 2001 thanks to the NGO campaign and subsequent public and media pressure. It was felt that new legislation in this field is needed. Therefore, an unofficial working group was set up at the Ministry of Justice consisting of woman NGO representatives and legislators of the Ministry (on the impulse of the NGO) in order to draft complex legislation on the issue. At the same time the Association of the Female Judges created their own working group. Both Ministry of Justice and the Association of Female Judges prepared competing drafts of laws without discussing the issue with each other. The latter working group approached a MP to introduce a bill on domestic violence (and thus skipping the whole process of sequencing). Only in the parliamentary committee the two competing drafts were merged into one proposal after a series of negotiations among the representatives of the two groups. None of the two working groups, however, was aware of the working group at the Office of the Government that was dealing with family

[8] If the Ministry was hesitating about this issue, one can use the Free Access to Information Law.

violence and was in existence for several years, however, without any tangible outputs in the form of concept paper or draft legislation / non-legislative policies.

Second, the trend is to have its own working group at a ministry and the civil servants many times do not realize that a certain issue is cross-sectoral. As the information on the existence, composition and aim of a working group is not publicly announced, the coordination with other ministries or institutions is rather on an ad-hoc basis. This extreme "resortism" was already noticed by the Audit of the Central Government and usually is attributed to the nature of the coalition government where disputes among parties in the coalition are reflected in the disputes among ministries. A paradox arises when even those Ministries where the ministers are from the same party are not coordinated as the example bellow illustrates.

Example: Miscoordination among Ministries

In late 2001 Ministry of Justice created a working group on probation and mediation with the aim of preparing a pilot project on probation and mediation at three courts in Slovakia. On the basis of this pilot project legislation should be developed. The members of the working group consisted of people dealing with the penal issues, such as judges, investigators and police officials; all people with background in criminal law. Officially, the creation of such a group was not announced. The representatives of the Ministry of Labor and Social Affairs who deal with the social protection of convicts before, during and after the imprisonment approached the Ministry on their own initiative. They learned about the intentions of the Ministry to work on probation and mediation from media and as they were interested in the issue, started to investigate around it. Luckily, after the first meeting the civil servants from the Ministry of Justice immediately understood the necessity of coordination and also officially invited the Ministry of Labor to be represented in the working group. The interviewees from the Ministry of Labor stressed that this is not always the case and that they have to fight for the place in a working group at a different Ministry.

Third, there is usually a separate working group for the drafting of a concept and a separate one for the drafting of a concrete piece of legislation. Although there exists a link between these two groups (either the leader of the working groups is the same or some core members are present in both groups) it happens quite frequently that the working groups are working simultaneously. Thus, the working group on the development of a piece of legislation does not have the concept paper as that is not ready yet. Consequently, the whole rationale for having a concept paper is lost. Interviewees blamed the extreme time pressure under which they have to work for this practice. Time management and sequencing of the work according to a tight time schedule seems to be a factor influencing the quality of work in the working groups.

Example: Parallel Working Groups

The Ministry of Education created two working groups on "Millennium: Educational Strategy for the 21 century" that were working in parallel: one on the concept paper and the other on the draft law. Thus, by the time the first

working group prepared a draft concept paper following the principles of good governance (e.g. discussions with public and interest groups) the second working group had already drafted a law without having seen the results of the working group preparing the concept paper.

A very important factor that influences the quality of output seems to be the organization of the work within the working group. The question of roles and tasks of the individual members of the working group is usually not very clear. The interviewees complained that the aim of the work is not clearly set up (usually they know that a reform or drafting of a new issue is going on) and working material is inadequate and they have to utilize their own sources. Only few working groups have records on the work in progress. If somebody joins the group later in the process, he or she does not receive any orientation in terms of material or division of roles. Again, this is rather a sign of mismanagement. Some of the respondents complained that being a non-lawyer gives a difficult time in the working group where legal expressing is expected and often a non legal statement is underestimated.

All the civil servants agreed that the lesser and less formal the working group, the better the results are. Big committees are usually very difficult to manage and have a quite high rate of late (or no) output delivery. Also, the more formal the group the more prestige its members associate with it and the membership is perceived as a social status rather than a sign of work. One of the members of a committee that has not delivered the output for several years noted that "a membership in a ministerial committee is a reward for previous work". Usually, the external members of the committees and working groups are not paid and work extra besides their regular jobs. Thus, it is extremely difficult to motivate and organize the work. It proved to be a good strategy to break down the committees and big working groups into smaller units. The best results are with small informal groups. However, if the working group is informal it is more difficult to defend the output of it (be it a concept paper, legislative intention or draft law) within the ministry or in front of the other ministries. As one of the interviewees noted he uses the existence of a working group for defense of an idea in the concept paper. A formal working group increases the credibility of the findings in front of the others (although the work might be produced by a civil servant and not by the committee).

Both current analysis and report to the Open Society Foundation (Verheijen, Beblavy, Staronova, 2001) revealed that the civil servants at the ministries heavily rely on the outside actors in the process of development of formal documents, most frequently on the interest groups of that area (teachers at the Ministry of Education and judges at the Ministry of Justice). The head of the Association of judges confessed that their association has their own legislative committee that drafts concept papers and laws concerning judges ahead of time and approaches the ministry with ready-made material. He noted that civil servants are glad to receive such material as they have less work in developing it and judges are trusted for their "legal thinking".

The report sees various reasons for heavy involvement of outside actors as noted by the interviewees and confirmed by current analysis: the need for policies to have broad

support among affected groups and the lack of internal capacities in ministries to create high quality conceptual documents.[9] This is also related to frequent lack of trust in the ability of ministerial staff by politicians and senior civil servants. The report warns that lack of internal capacities creates a potential danger, if outside involvement is used to replace ministerial substantive expertise; as "this does pose a potential risk of 'state capture', especially in areas where the number of actors involved in the process is limited."[10] However, it is important to stress that in most cases, increased levels of consultation are a result of a tendency in government and administration to rely increasingly on broad societal consultation on major policy concepts.

The growing involvement of outside organisations in policy formulation is a positive trend. However, it should be matched by increased substantive knowledge and ability in ministries, if ministries are to be equal partners to interest groups and by increased public consulting. There is no evidence that there is a trend of building increased capacities in ministries, which will pose problems in the long term. Also, public consulting at this stage is more an exception than a rule and is done purely on a voluntary basis. Public consulting is discussed in more detail in the section of stage 2: policy adoption where it is required by law.

In conclusion, the following main problems in the development process were identified:

- The policy process is not codified in the same matter as legislative process. The central government does not have mechanisms in place to evaluate the usefulness of non legislative instruments and thus automatically uses law as a primarily tool;
- The effort to reform a whole area at once results in low quality outputs. Many times, the issue on which a certain policy should be developed is stated too broadly (e.g. education or penal code reform) and the purpose of the reform is not clear to the drafters themselves;
- Substantive knowledge on some aspects of policy is in short supply, and the problem of the lack of domestic expertise in some key areas was highlighted in several interviews. This creates a potential risk of capture of policy-making by specific interests (inside or outside the public sector);
- The creation and composition of the working groups is not transparent and effective enough which has influence on the quality of the output (both in terms of contents and timeliness);
- Management skills in the organization of the work within a working group have to be increased. Most problems can be manifested in a poor workload distribution, time delays and poor cross-sectoral coordination.
- Need to increase public consultation (particularly active consulting of specific groups);
- Timetables (Plan of legislative tasks) are not followed and there are no sanctions for delays occurring.

b) Analysis of the Documents

[9] Verheijen, Beblavy, Staronova, p. 7.
[10] Ibid., p. 8.

Legislation remains the key policy instrument applied in Slovakia. Prior to the work on a draft law, individual ministries prepare a legislative intention which has to undergo the reviewing process and be approved by the government (see stage 2: policy adoption). It becomes then a binding document for drafting a law.

Concept Paper

As it has been already mentioned there is no rule on when and how a concept paper should be developed. The impulse for drafting a concept paper is formalized and it always comes from above, most frequently from the government itself, either by a government ruling or a decision of the government advisory body. Thus, a concept paper has to always undergo the adoption phase, i.e. intra-ministerial and inter-ministerial review, as well as the approval of the government. As a result, concept paper is understood by civil servants as a rather formal and concise document foreseeing a certain broad problem area for a number of years and therefore being developed and adopted for a considerable period of time. The whole concept of a few page policy papers on the basis of which the first decision is done is unknown. Therefore, ideas that led to the decision within the Ministry (own initiative for a draft law or a project) are many times never put on a paper and are discussed only orally. The interviewees viewed this as a way of fighting bureaucracy and the only way how to progress quickly without any time delays. They viewed the formal concept paper rather as a document for politicians (notably Cabinet) than as an analytical tool for taking decision within Ministry.

Example: Lack of Understanding the Concept Paper as an Analytical Tool for Decisions.

The Ministry of Justice started a pilot project on Probation and Mediation in early 2002. The project was developed and runs without any written documentation. Although the analyses and options have been discussed orally between the civil servants, head of the division and Minister; a concept paper has never been issued. The respondents perceived the concept paper to be too formal (…"and it was not asked by the government to do so") and rigid for such a "minor issue as this". "We need flexibility and want to have the project implemented in time; in 6 months… we do not want to spend time on administration".

Development of concept papers is perceived by some civil servants as a "useless literary exercise", as it was expressed by one of the interviewees. Although they understand the advantages of having it, they have bitter experience either with the process of developing it in working groups or in delivering it. The practice of working groups is described in the next section. The latter concerns the decision makers who often ask for the concept paper but are not interested in the analytical work but only in the final product, notably the law. It is not an exception that a concept paper remains unread by the decision makers. Other respondents mentioned the problem of "ownership" of the concept paper. It is an anonymous product of the Ministry where no acknowledgment to the author / group of authors is given. The interviewee perceived this as a reason for a low quality of the final product as the responsibility for it is lost and anybody can add or remove parts in it without the agreement of the author. Another interviewee mentioned his unwillingness to

provide ideas into the concept paper as "without authorship all the ideas will be stolen…I want to publish them first in an academic journal". Whatever the reasons, a concept paper is many times of very low informative quality where it is not clear what, why and how a certain issue should be addressed. Only exceptionally, a concept paper deals with an entirely new issue.

The document itself is a rather long paper that discusses the current stage of a certain issue and envisions the future. The quality of the concept paper differs widely from ministry to ministry and from one working group to another working group. However, all papers have deficiencies in in-depth analyses. Variants in solutions, impact studies or budgetary considerations are rare. Cross-cutting policies and their relevant concepts lack cross-cutting information and research (duplications and gaps occur). Civil servants quote time pressure and lack of analytical specialists as one of the key constraints. Nearly all of the interviewees complained about the low accessibility of raw or analyzed data. Although the departments may commission research from their subordinated institutions or use existing academic or think-tank research, these sources are not utilized fully, especially not the latter ones. As a main reason remains unawareness of these sources (especially think-tanks) or irrelevance of the research (subordinated institutions). The interviewees agreed that more competition (via grants on a certain topic rather than constant flow of finances to the subordinated institutions) might help improve the quality and quantity of inputs. Another important factor for evidence-based analysis is the unawareness of various analytic techniques and little analytical competencies, both social and economic (evaluating, forecasting, modeling).

A few cases amongst those seen stood out as being exemplary as a whole (concept paper "Infovek" at the Ministry of Education or concept paper on "Court Management" at the Ministry of Justice). They incorporated all components of an analytical paper, including problem definition, statistical data, implications on society if non-action will be taken and both legislative and non-legislative tools in a policy. However, in both cases the concept papers were developed by interest groups who approached the ministry: the Association of the Project Infovek and Swiss experts with Slovak judges, respectively. Thus, motivation and need for argumentation and persuasion on the necessity of the concepts was extremely high. Otherwise, the development of a concept paper is usually done via committees and working groups. The civil servants themselves do not prepare such a document on their own initiative.

To sum up, the key problem areas identified are the following:

- Impulse for developing a concept paper comes from above, on ad-hoc basis and is too formalized in adoption terms but too loose in the contents terms. There is an absence of systematic impulse gathering from the field and internal concept papers development for the decision maker (oral tradition prevails);
- There is a lack of codified standards on how to develop a concept paper which results in a poor quality of the product: it does not specify the problem and reasons for it but a concrete remedy, most often a law. In-depth research results are often missing, as well as the forecasting impact studies. Thus, the nature of the concept paper is either too legalistic or too abstract;

- On one side the ministerial staff lacks the analytical skills for preparing a concept paper; on the other side where the skills are present the staff is not motivated in doing so. There is a high risk of state capture by interest groups which have a draft concept paper (or draft law for that matter) ready when they approach civil servants;
- Need to improve the accessibility of the evidence available and need to improve capacity to make best use of data and information;
- Delays in concept proposals delivery;

Legislative Intention

Legislative rules stipulate that in cases where laws that have a significant economic and financial impact or if the government decides so the ministry has to prepare a legislative intention to that particular law. In practice, the decision whether to prepare a legislative intention or not is at the discretion of the director general of the substantive department. Thus, there exist a number of laws that fulfill the above mentioned criteria but a legislative intention has never been prepared (e.g. Law on Higher Education).

The content of the legislative intention is regulated by the Legislative rules and it should incorporate:

- evaluation of the current legislation in the subject matter;
- objectives of the new legislation;
- summary of the financial, economic, environmental impacts as well as impact on employment;
- compliance with the EU legislation.

Ideally, legislative intention recommends effective procedures and structures that will permit the council of ministers to engage in meaningful debate concerning policy tradeoffs. Ministry can, in coordination with the finance department, prepare preliminary policy priority options and flag the fiscal and policy impacts. For strategic policy priorities that cut across departmental lines (e.g., combating unemployment, domestic violence, educational issues), the government will be best positioned to identify these intricate linkages and to recommend an interdepartmental approach to strategy development.

In practice, legislative intention is already a preliminary draft law written either in legal language (essay form of individual articles) or even in articles themselves. The requirement for financial impact assessment is interpreted as impact on state budget only. Economic, environmental and employment impact is most of the time neglected or stated as “none”.

Draft Law

A draft law is prepared on the basis of approved concept paper or legislative intention (exceptionally both), or directly on the basis of the Plan of legislative tasks or the initiative of the Ministry. Only at this point the legislative specialists of the Ministry should step in and together with the substantive specialists develop the legislative language of the future law, to be written in articles. There is not a unified procedure on how to create teams composed of these two types of specialists. Each ministry has a

different way and organizational structure. Some have an independent legal department (either strong or weak), some have the legal department joined with an independent policy department (it is still exception to have an independent policy department) and some have joined the individual legislative specialists with substantive departments.[11] Whatever the hierarchic organization, similar problems seem to occur at the Ministries. The most important one is little or no coordination among legislative and substantive specialists of the department. Consequently, it comes to such extremes where only substantive or legislative specialists write the draft law. If the former is the case a draft law has difficulties to pass the Legislative Council because of its legal inadequacies and major delays occur when the draft law is returned for rewriting for several times. If the latter is the case the philosophy of the law and its purpose might be lost.

Legislative rules specify the individual parts of the material that have to accompany the draft law:
- reasoning report (summary of the current social, economic and legal background; need statement for a new legislation; implementation method; financial and economic implications on the state budget; organizational implications; compliance with the Constitution; compliance with the international treaties; compliance with the EU legislation; other)
- financial, economic, environmental and employment impact (particularly the need statement for implications on the state budget)
- report of the Ministry of Finance (if the draft law has financial implication on the state budget)
- compliance report with the EU legislation

Theoretically, the draft law is accompanied by a number of materials that if prepared well could be considered to be analytical documentation. In practice, however, not adequate attention is paid to the development of these parts and all the effort of the civil servants focuses on the legal text. As a result, the accompanying documents are of extremely low analytic quality. The majority of civil servants knew that the accompanying documents, particularly the reasoning report are extremely important as they help the policy to be: a) better understood by the civil servants from other ministries and by MPs in the parliament and thus may increase the chances for the adoption; b) implemented in a way intended by the drafters and help avoid misinterpretation. Despite this knowledge inadequate attention is paid to these documents. Usually, the reasoning report is written as a last part (when a draft law is ready) and it describes article by article of the draft law and explains the legal language of the particular article rather than the rationale. The same counts for the impact studies, which are limited to the impact on the state budget only.

The draft law itself varies in quality from Ministry to Ministry. The Czech law is widely looked to as a "prime reference", with certain articles copied word by word. The interviewees confirmed this practice with the explanation that the Czech legislation is

[11] A detailed typology of the Ministries based on the type of policy and legal department can be found in the unpublished document of NOS-OSF, written by T. Verheijen, M. Beblavy and K. Staronova. In this analysis, the Ministry of Education represents type of independent legal department (weak) and Ministry of Justice represents a type where legal specialists are within individual substantive departments.

similar to the Slovak one and why not to use their experience. Similarly, the EU standards are often taken without any consideration, as the pressure is to close the chapter as soon as possible. As a result some draft laws have exact wording taken from a different legislative environment and whose objective or impact is not considered.

With regard to the issue of EU accession and its impact on policy preparation, ministries covered represent a wide range of experiences: Ministry of Justice where policy is driven by EU accession requirements and Ministry of Education where the influence is relatively small. It has been already mentioned that legislation that aims at harmonization with EU has priority and there is a relatively big time pressure for "closing the chapters". Thus, usually those draft laws do not have any concept papers or law intentions because "we do not have time for that and there is also no need". Overall, the civil servants appear to be well informed on EU issues. Some interviewees noted, however, that a deeper knowledge on what and how should be approximated to EU standards is missing. An example was quoted where a draft law stipulated an exact list of issues to be covered which was taken literally from the EU standard. The EU standard, however, listed the issues as example only and let them for the discretion of the individual countries. In sum, argumentation on "EU priority" seems to be the most effective in speeding up processes or having a certain legislation passed.

The little time devoted to strategic and conceptual thinking can be attributed to several factors. First, the problem of **staffing** is critical. There is only a small number of professional staff who has analytical capabilities and skills necessary for policy analysis. The problem reflects the poor tradition of critical thinking and procedural problem solving despite logical thinking. Training opportunities, which are non-existent in this field. Also, there does not exist a specialist position whose job would be only social or economic forecasting. The problem of staffing is also related to poor management and leadership skills. Some director generals are unwilling to delegate the work (partially also because of the problem of low trust to the civil servants capacities) and thus have to face extreme workload and consequently little time available for strategic issues. Second, all civil servants complain about the **time pressure** under which they work and the number of administrative work they have to deal with and thus which does not allow them to devote time to policy related issues. The time pressure is related to the ratio of number of big reforms that should be completed within a four-year political cycle (the history shows that no single government was reelected for a second time in CEE countries).[12] Third, the **expectations** of the politicians and other civil servants is to have a law ready and barely anybody reads the accompanying documentation (the Legislative Council checks its presence rather than the analytical quality). The interviewees confessed that in the commenting period they read only the relevant part of the draft law (thus not even the whole law) and they do not look at the accompanying documents. Thus, it is a vicious circle: where there is no demand for quality analytic papers there is no supply and vice versa.

In conclusion, the main identified needs in the development of legislative policies are as follows:

[12] Politico-administrative relations: Who rules? Edited by T. Verheijen.

- Need for systemic preparation of the strategic (concept papers of legislative intentions) and legislative material;
- Need for development of analytical material that is being neglected although the formal framework provides space for it (either concept papers, legislative intentions or reasoning report);
- Need for harmonizing substantive and legislative experts and their role;
- Need for professional preparation of the staff (no trainings have been provided in the recent years, only on ad-hoc basis) both in analytical, strategic and legislative drafting;
- Need for proper division of labor within the department.

Non-legislative Documents

Many non-legislative documents though not having legal character, have clearly regulatory impact as they influence the behavior of individuals by mandating or prohibiting actions and thus they belong to the regulatory instruments group. These regulations are issued by state authorities and are therefore obligatory within the administrative hierarchy (resolutions, decisions, statutes, measures, methodical directions, directives, etc.). The following main categories can be identified:

- internal executive instruments that detail the instructions on the application of the law
- internal organizational instruments that detail internal organizational relations
- instructions that regulate internal working order

Although the majority of policies developed in the ministries have a legislative or regulatory nature (90%), there exist a certain number of programs and projects that use other than regulatory tools. Basically, they are of the following nature:

- **pilot projects** or experimental projects **for the initiation of legislation** in a new area (for example pilot project on *Probation and Mediation* at the Ministry of Justice or *Roma assistant teacher* project at the Ministry of Education)
- **concrete projects** that target a certain aim through implementation (*Court Management* Project at the Ministry of Justice or *Infovek* at the Ministry of Education)

The developing of material to non-legislative policies encounter similar problems as the one in legislative policies: analytical documentation explaining the benefits and drawbacks of the projects is usually not developed or completely missing. Similarly, the range of policy tools available is not utilized. The action plan and program is again more of narrative than analytical nature and lacks the series of action steps within a certain time frame as well as budget.

The accession countries have a new opportunity for the development of non-legislative projects with the help of **PHARE funds** (EU funds directed to solve problems mentioned in the Regular Report of the European Commission that have to be matched with government funds). These funds, however, are extremely underutilized. The majority of civil servants was not aware of the procedures and possibilities and could not even name a person responsible for this matter within the Ministry. The civil servant responsible for the development of the projects at the Ministry of Justice noted that the capacity of the

civil servants at the Ministry to develop projects is very low. This was confirmed by the employees of the EC delegation, who review the projects prior to the approval of the Brussels. It is mostly him drafting the projects despite of the fact that he is not familiar with the substantive part. He stressed that such a project should be a team effort of substantive civil servants from several ministries and people who are familiar with EU procedures. He thought it is a mistake to have people responsible for EU funds to be dispersed at individual ministries where they have to urge others to come up with ideas. Rather, the substantive experts from the ministries should come to him with initial projects drafted and he should coordinate with other ministries and negotiate with the EC delegation. This, according to him, should happen at the Office of the government to improve the coordination capacities.

Example: Utilization of Phare Funds for Pilot Projects.

It is mistakenly believed that it is the EU that dictates what kind of projects have to be prepared from the Phare funds within the country. Although a broad framework is provided by the Regular Report, the initiation is left for the discretion of a particular country and open for the negotiation. Therefore, it is extremely important that civil servant responsible for the development of projects understand the process and are willing to undergo the negotiations. Also, all the civil servants in the substantive departments have to have a certain understanding for project development and prepare draft projects on their inputs. At the Ministry of Justice, a civil servant responsible for Probation and Mediation project prepared a draft proposal and discussed it with Phare official. Although the regular report did not specify this as a problem and thus it could have been perceived as a non issue for Phare funds, both civil servant were able to argue for the proposal and it was accepted. It was the only project in the history of Phare funds at the Ministry of Justice where the initiative came from the substantive section rather than from Phare official.

The summary of main problems in the development of non-legislative policies is as follows:

- Capacity of civil servants to prepare non-legislative projects as well as the awareness of the scale and usefulness of the non-legislative tools is very low;
- Potential of PHARE financial resources for the development of the projects is not adequately utilized;
- Project management skills and techniques are limited (training opportunities are missing);
- Need for reform in the budget development and budget management (see budgeting for greater detail).

c) Budgeting

The issue of financial resources allocation needs extra attention. The official switch to output-based budgeting ("program budgeting") and medium-term budget framework has not been given much attention by the ministry of finance and its relationship with the process of policy preparation has not been thought through by anyone.

At every stage budgeting is severely neglected and reduced to impact calculations on state budget only. Costs and benefits in total or even total income and expenditure are not taken into consideration. Consequently, a holistic picture about the benefits of a particular draft law (or project and program for that matter) is lost.

Example*:* Absence of a Holistic Picture on Costs and Benefits.

The Court Management Project consisted of a set of new laws and concrete activities aiming at the introduction of software at the courts that would automatically assign a judge to the case. As such, this project was of extreme importance as it introduced transparency into the judiciary and speed up the whole process in the courts. Therefore, it was of big interest to international donors such as the EU, ABA CEELI, Open Society Foundation and Swiss Embassy. All these international donors contributed in large amounts to the project in order to have it implemented. In spite of this fact, the project was jeopardized several times because of its relatively large burden on the state budget (introduction of the software at the filing office of the court promoted the administrative staff working there to a higher class which had to be reflected in the salary). Overall, the amount contributed by the state was smaller than the amount contributed by the international donors, this however, was unimportant to the civil servants because only the impact on state budget was taken into the consideration.

In short, the main problem can be summarized as follows:

- Budgeting and flow of financial resources is very poor (medium term budgeting framework and output based budgeting is still not in place);
- Financial impact studies are reduced to impact on state budgets;
- Responsibility for budgets rests with the administrative department rather than with substantive department, which seriously jeopardizes the successful development and implementation of individual policies.

Stage 2: POLICY ADOPTION

After the ministry produces a written material (concept, law intention, and draft law or action program) that piece has to undergo reviewing process, i.e. policy adoption stage. As it has been mentioned earlier, this stage is the only one formally organized and regulated. The evidence suggests that policy makers and civil servants concentrate their time and effort on policy adoption leading to the processing of draft legislation, and on clearance of policy (draft law) within central government. This stage, however, is profoundly influenced by the fact that central government (cabinet) consists of representatives of several parties who form a ruling coalition. Slovakia has been characterised by a multiparty system, where a number of political subjects are represented in parliament, and consequently coalition governments are formed. Up to now three distinct government coalitions can be distinguished, each having a different dynamics influencing the policy adoption stage: a) dominant party coalition or Meciar Government (1994-1998); b) broad coalition uniting all the opposition parties or

Dzurinda's Government (1998-2002); c) right wing oriented coalition resulting from the last September 2002 elections.[13]

Coalition Influence on Policy Adoption

Cabinet as a collective body decides (by using the decrees) on bills of law, ordinances, the governmental programme and its realisation, on arrangements of social and economic policy, on international treaties as well as on the state budget. The type of the coalition agreement and relations within the coalition has profound consequences on the quality and speed of the policy-making processes. The individual coalition governments develop their own mechanisms and procedures in order to achieve a relatively stable working environment and smooth policy-making / decision-making processes. The arrangements are usually anchored in the coalition agreements and range from establishment of a so called 'coalition council' to proportional representation of coalition partners at the ministerial level (minister, state secretary) where the formation of policies takes place.

One of the key impacts on the policy adoption was the slowing down effect in policy making and policy decision-making at the central level of government. It evolved from a coalition agreement process that requires the participating parties to meet before any government action is taken. The more equal partners in the coalition the more complicated is the process, through which the policy proposal has to pass in order to reach the parliamentary agenda and the more compromises have to be made in the content of the proposal. The so-called Coalition Council is a primary field of the *bargaining process* in the central government. Its importance has dynamically increased during the last two election periods due to the increase in the number of parties represented in the coalition.

Thus, the coalition council has become the highest institution in the decision making process within the coalition. This policy making instrument has no formal position in the Slovak constitution but its objectives and operational mechanism is anchored in the coalition agreement. Its main aim is to create a platform where deliberation and unification of coalition partners' opinions on major policies and bills take place; to ensure coherent progress in their collaboration; and to reveal potential problem areas that necessitate changes in the governmental programme. Thus, the real bargaining and decision making process takes place in the coalition council that constitutes a parallel policy making structure to the one anchored in the constitution. Yet this conflict resolution mechanism is too often not very effective as it is used too late in the process; i.e. when the conflict already arose. There is no mechanism in place that would foresee potential conflict areas among coalition partners and would try to resolve it on the level of party experts first.

A dominant party coalition, on the other hand, does not encounter the slowing down effect as basically no negotiations are taking place. The impact of this type of coalition government, however, is visible in the politicization of the civil servants. The leaders of the dominant party strive to place its people in the key positions in the administration in

[13] Staronova, K and L. Malikova.

several layers. Thus, the members of the dominant party fill not only the political but also the professional positions.

Stages in Adoption Process

Figure 2 on page 4 shows the individual steps in the adoption process, i.e. review process in the following steps: a) intra-ministerial review b) inter-ministerial review c) review by advisory councils of the government d) approval by the government e) approval by the parliament. The first two steps (intra- and inter-ministerial review) are also called commenting period. If we have the ideal case of "concept – law intention/action plan – draft law/program" then these materials have to undergo the sequencing steps for three times (except for the concept paper and non-legislative policies that do not have to be approved by the Legislative Council of the government). This sequencing, however, is regulated only when the draft law is initiated by the government (and thus drafted by the ministry). When the bill is initiated by the members of the parliament it goes directly to the parliament for discussion skipping the commenting period. However, it has to be reviewed for official statement by the legislative council of the government. Of course, this possibility of MPs to initiate bill is in accordance with rule of law principles and this is the way how opposition may intervene. However, a new phenomenon can be observed which is described in the next paragraph.

The civil servants from the legislative council noted that the number of cases where **MPs from the governing coalition** propose a new legislation increases. Furthermore, several civil servants have mentioned that they use the opportunity to amend a draft law in the parliamentary stage of the legislative process with the help of MPs in the parliamentary committee and thus skip the reviewing process. Some civil servants do so even if the draft law is initiated by their own Ministry but by a different department. In this way they often propose amendments to correct the draft law after it already had passed the government session rather than regularly through the commenting period. Although they admit that the amendments by MPs are not the best solution for the complexity of the law and it may turn out against them if used by other interest groups, the civil servants still view this practice as the best solution for avoiding the lengthy and many times contra-productive process of law adoption. The result, however, may have severe consequences: the philosophy and system of the law is lost. Several reasons might contribute to this practice. First, reviewing process is a rather lengthy one and not always effective. Sometimes, it is faster to approach an MP, especially in cases where in a rush an important part might have been omitted. Second, certain ministries are in constant fight which is reflected in the commenting period. Instead of providing constructive comments they try to impede it. Thus, the civil servants choose the easy way: avoid it. Last but not least, even civil servants have their own interests which they want to incorporate into the draft law and which may be removed by the reviewing process. Thus, it is far more effective to use MPs to pursue their own interests.

a) Intra – ministerial review

As it has been mentioned earlier each ministry has a different organizational arrangement of substantive, legal and service departments. Although various arrangements may have influence on the workload, it seems that same coordination problems prevail regardless of

the arrangement. One foreign advisor noted on this matter that "coordinated action, team work and team spirit seems to be missing and not valued enough in the working culture". Thus, even reviewing process is not coordinated and not all substantive departments are aware of the work of the others. In the past, prior to the approval by the Minister at his/her weekly meetings all the written material went for the review to the substantive departments. This is not the case anymore in spite of the fact that the modern electronic era could easier the communication. Civil servants attribute this to the substantial increase of materials going to the Minister.

b) Inter - ministerial review

The ministry responsible for the advancement of the draft law has to seek the opinion of other ministries and institutions. Opinions are mandatory from the ministries who have to render a written opinion. The opinion outlines the position of the ministry for or against the further progress of the draft legislative act and proposals concerning its contents. The responsible official assesses the objections and proposals submitted by other institutions and include the mentioned objections and proposals into the text of the draft and forwards the draft, together with the opinions, to the chancellery. In case of disagreements between the proponent and an institution a meeting should be arranged to which civil servants of relevant institutions are invited.

c) Public commenting

The current government has already undertaken initial steps towards building up an informed public opinion on the key issues of proposed policies. A new Law on the Free Access to Information Law came into effect on January 1, 2001. On the basis of this law proposed draft laws are required to be publicly available. A new governmental web page has been created where every single item going for government approval can be found and comments can be sent. Although it is a revolutionary step forward, the provision of information is still rather passive, difficult to understand for a non-lawyer and too late in the process as majority of the materials are ready for the governmental approval and the willingness of civil servants to deal with the public comments is low.

The official governmental and ministerial web pages still do not provide:

- abbreviated version for the public rather than full legal text;
- systematized topic division rather than chronological sequencing;
- advertising to encourage citizens to use the system;
- guidelines on how to consult effectively specific groups;
- prior notification to affected citizens in order to voice opinion;
- provoking of public debate on all range of issues of concerns.

The literary formulation of opinions, even if raised by public, is extremely important. If a comment is to be considered '*significant*' a minimum of 500 (300 for non-legislative material) citizens have to sign it. A 'significant comment' has to be dealt with by the civil servants and explained why it was or was not incorporated into the draft. Otherwise, it does not have to be considered. One interviewee noted that he received a very good comment from a citizen but as it was neither sent by a minimum number of citizens nor noted to be 'significant' he did not regard it as "it was not written in legal language and

thus would require too much work" and he did not want to encounter delays in the submission of the draft.

Thus, the general public still has a limited influence on the process, however, growing pressure may have a positive impact. Certain changes are expected to be introduced in the legislation later this year.

d) Review by the Advisory Bodies

All major policy initiatives have to be screened by the Government office before they can be put on the government's agenda. Particularly, the Institute for the Approximation of the law at the Office of the Government checks the compliance with the *acquis communaitaire.*

Items for discussion at government meetings are screened also by the advisory councils of the government. The advisory councils differ by importance (for example government legislative council and government economic council are the most important and permanent ones) and functions – some existing advisory councils do not function, for example the economic council. The legislative council reviews the draft for compliance with the already existing legislation. These institutions discuss issues and make recommendations to legalistic issues but cannot take substantive decisions unless it contradicts the constitution or existing laws.

The **legislative council** is extremely overloaded with legislative policy documents (legislative intentions and draft laws) that it cannot absorb. The head of the legislative department mentioned that even with weekly meetings where 7-8 issues are being discussed some issues have to wait for 8 months to be placed on the agenda. The criteria for the selection of an issue for the agenda are as follows (however there is no written document stating these criteria): 1) EU chapter closing; 2) government priority; 3) government ruling; 4) change of issues in a newly passed law if they do not make sense. He acknowledged that lobbing pressures of individual ministries to push through legislative drafts of his or her own ministry are apparent. In this case the cabinet office should establish honest but tough negotiations with line departments to establish how many and which policy proposals will be brought forward and within what time frames. Another problem that the individual ministries encounter is that it is not clear what exactly is the legislative council checking: the contents or the technical-legislative drafting. Therefore, each ministry send a different person to discuss the draft bill with the legislative council: some send the substantive expert and some the legal drafting expert.

e) Review by the Parliamentary Committees

The draft law is in principle sent to the committee relevant to the sector of the proposed law. In addition, other committees may deal with the same law when the matter refers to them, making them subsidiary committees. The decisions of the committees and the draft law itself are submitted to the parliament. Draft legislation is discussed and voted in three readings. After the Parliament adopts the draft law, it is sent to the President for endorsement and promulgation.

Main problems in the adoption phase can be summarized as follows:

- draft bills initiated by the MPs or parliamentary committees have a higher probability for discrepancies in legislative quality to occur or of 'state capture' because they are less equipped to do the necessary analysis and frequently act on behalf of interest groups;
- unclear position of the Legislative Council in regards to review of contents or technical-legislative drafting;
- non-transparent criteria for prioritizing the review of the draft bills in the Legislative Council;
- time tables are not observed and nothing happens if delays occur (no responsibility taken);

Stage 3: POLICY IMPLEMENTATION (and enforcement)

Implicit in each law, regulation, order, or decree is a commitment that the longer-term implementation process will be supported. However, the practice shows and interviewed civil servants confirmed this that both stages 3 and 4 are extremely weak in policy making processes in Slovakia. Not only that there are no formal guidelines or standards as on how to proceed but this part is totally neglected. The first thoughts (if any) about implementation come only when the law is passed. Although, the interviewees acknowledged the problem of implementation and enforcement they do not perceive themselves to be the ones responsible for the implementation (or enforcement of the law for that matter). They stressed the limited human and financial resources available (civil servants at the Ministry focus their energy on having the law passed).

On the basis of relatively successful implementation cases ('Court Management' at the Ministry of Justice, 'Infovek' at the Ministry of Education) three crucial elements for the success of implementation stood up throughout the interviews: project management skills, political sensitivity skills and flow of finances. The project management skills are badly underdeveloped due to the lack of training opportunities and, most importantly, lack of management culture in the Ministries. A critical issue here is the absolute ignorance of due dates and teamwork. The best project managers were the ones who either participated in an international project with skilled managers as leaders or were supervised by such an organization, be it a NGO, international agency, private institution, etc. In both cases, it was the direct exposure to managerial culture (break down of the problem, timeline, resources, follow ups) that provided the best skills transfer. The interviewees highly appreciated this experience, especially if they were supervised rather than directed. However, a risk can occur if such a 'supervising agency' is ignorant to the domestic culture and leaves bitter experience of being "commanded".

The second factor, political sensitivity, requires a top civil servant (either a director general or minister) to take responsibility for the case and take forward action where (un)expected obstacles may occur. The person must have enough authority to improve or solve cross-departmental coordination and set up a network of supporters outside of the Ministry.

The third significant influence on the success of the implementation has the flow of finances. The annual budget is a clear signal of government's policy intentions and is often accompanied by an explicit statement of which promises the government intends to devote its resources to. In theory, since most government budgets are legislated, promises of money through the budget can be seen as implicit promises to secure the passage of and implement a particular law. As the budgets are for single years only and are often amended during the budget year, governments are rarely under a formal obligation to deliver what they planned. In practice, moreover, the allocation of significant funding to one sector does not automatically secure the policy implementation even for that particular year (not even law implementation). The biggest problems seems to be in the way how financing is realized in individual ministries. Despite the official shift to output based financing the interviewees confirmed that this is still not in place. Even the top civil servants are not responsible for a financial chapter on a concrete issue (e.g. project on Probation and Mediation) and each activity requiring financial flow has to be approved by another director general, state secretary or minister. This practice, on one hand, provides a better check on financial flows, on the other it extremely slows down processes. Moreover, as medium term budgeting is still not introduced every single implementation activity is jeopardized every year and depends on the negotiation skills of a very particular top civil servant.

Example*:* Factors of Successful implementation

The pilot project on Probation and Mediation provided a good example on implementation strategy where field workers (three pilot probators and mediators) are members of the working group. Thus, the implementation immediately incorporates the feedback from them and obstacles are being immediately addressed. Also, the director general of the Penal law department is an excellent leader and able to delegate responsibilities as he provides sufficient independence for his subordinates for action and still supervises them. He clearly stated the duties and responsibilities and named one person to be the project manager. The interviewees recognized this as one of the decisive factors for both their motivation and effectiveness in project implementation. Also, the director general is a former judge and his contacts with fellow judges enable the successful implementation of the pilot project (e.g. the choice of pilot courts, choice of working group, negotiations with other interest groups, etc.). As it has been mentioned above, the director general is not responsible for the financial flow and it happens from time to time that the finance have not been secured on time because of bureaucratic procedures. Luckily, the implementation of the project is supported by other donors who help to overcome any financial gaps.

While policy-making cannot be reduced to allocation of public funds, relationship between policies (policy documents) and budgeting is crucial for good policy-making. Implementation of most policies depends at least partially on fund allocation. Medium-term budgeting framework and some sort of output-based budgeting are key instruments in this process.

Stage 4: POLICY MONITORING AND EVALUATION

All the civil servants interviewed agreed that there are relatively poor monitoring and evaluation practices in the Ministry. Practically, there are no formal instruments in use to assist in the evaluation and monitoring process and systematic gathering of information from the field is nearly non-existent. It was recognized that detailed guidance on various methods and techniques is needed.

Thus, one can assume that the incidence of non-implementation tends to rise if there are poor monitoring and evaluation systems or weak sanctions for non-compliance. Evidence may be generated through monitoring and evaluation. The "front-line" staff in departments, agencies and local authorities and those to whom the policy is directed may provide very valuable information on the actual effectiveness of a certain policy. Very often they will have a clearer idea about why a situation is as it is and why previous initiatives have failed. This capacity, however, is not utilized.

In sum, the problems with implementation, monitoring and evaluation can be characterized as:

- Budgeting and flow of financial resources is very poor (medium term budgeting framework and output based budgeting is still not in place) – thus, the predictability of budgetary allocations and thus successful implementation is very low;
- Lack of well-established policy management processes and accountability mechanisms;
- Lack of formal monitoring systems (a system that would periodically check the action taken to implement government decisions, and failures to implement would be drawn to the attention of chief executives and, if necessary, the cabinet);
- Gathering evidence from "field work" through interviews or surveys or other types of consulting the affected groups is not utilized;
- Space for NGOs or corporations in implementation and monitoring / evaluation is not recognized (e.g. grant mechanisms);

Appendix 1: List of Interviewees

Ministry of Justice

Lipšic, Daniel – head of the office

Kajanová, Zuzana – head of the Judicial information and statistics unit (Court Management Project)

Králik, Július - head of the Phare unit, Department of International Law and EU integration

Krajniaková, Andrea – head of the press unit

Kunošík, - penal legislation and crime prevention unit, Department of Penal law

Sobolovská, Gabriela – director general, Department of Civil law

Svák, Ján – director general, Department of Printing Activities

Šándor, Ivan – director general, Department of Penal law

Štift, Peter - head of the penal legislation and crime prevention unit, Department of Penal law

Tabačíková, Martina – penal legislation and crime prevention unit (Probation and Mediation), Department of Penal law

Valová, Katarína – head of civil legislation unit, Department of Civil law

Members of the committees / working groups:

Briestenský, Ladislav – working group on Probation and Mediation (NGO)

Čentéš, Jozef - Committee on Penal Code Recodification (Procurement Office)

Farkašová, Katarína - unofficial working group on Domestic Violence (NGO)

Magurová Zuzana –unofficial working group on Domestic Violence (NGO, attorney, Institute of State and Law)

Majchrák, Juraj – Committee on Penal Code Recodification (Head of the Association of Judges)

Mrázková, Ivana – working group on Probation and Mediaton (Ministry of Labor)

Segeš, Ivan –Committee on Penal Code Recodification (Procurement Office)

Záň, Roman –working group on Probation and Mediation (experimentary probator and mediator at Court in Bratislava IV

Ministry of Education

Baláž, Branislav - specialized schooling division, Department of basic and secondary schools

Bederka, Štefan – director general, Department of Science and Technology

Galbavý, Ján - director general, Department of Basic and Secondary schools

Gallus, Igor – head of general education division, Department of Basic and Secondary schools

Hero, Ján - head of confession and private schools division, Department of Basic and Secondary schools

Krajčír, Zdenko – specialized schooling division, Department of Basic and Secondary schools

Kulich, Dušan – head of the longlife education unit, Department of Higher Education

Lobotka, Rudolf – head of the legislative unit

Mandíková, Katarína – general education division (Project Infovek), Department of Basic and Secondary schools

Mederly, Peter – director general, Department of Higher Education

Ondrášová, Katarína – head of minority education unit, Department of Basic and Secondary schools

Papp, Tibor – director general, Department of Information Society

Príkopská, Mária – head of vocational education division, Department of Basic and Secondary schools

Members of the committees / working groups:

Brestenská, Beáta – project Infovek (Comenius University, Faculty of Natural Sciences)

Mrázek, - working group on Draft law on Youth, Policy on Children (Ministry of Labor)

Pišútová, Nevenka –Council of Universities (Comenius University)

Vantuch, Juraj – Committee on Infovek, Council of Universities (Comenius University)

Other:

Bonacquist, Harold – American Bar Association (joint projects with the Ministry of Justice)

Grman, Štefan - director general, Government Legislative Department, Office of the Government

Ivanová, Denisa – Delegation of European Commission (Phare projects with the Ministry of Justice)

Appendix 2: Glossary of Terms[14]

Action plan – a formal written document for a series of non-legislative activities; when approved by the Cabinet it becomes a binding document

Advisory councils – advisory body of the government consisting of experts on a certain topic (e.g. legislative council, economic council) which prepares formal opinion to the Cabinet meetings

Civil servant – a person who has been admitted to the service on the basis of competition for an indefinite term and who has or will serve under an oath to the state (Act on State service came into effect only on 1 April, 2002 and thus not all the civil servants have taken the oath at the time of the interview)

Commenting period – a formal period when intra- and inter- ministerial review takes place to a formal document (a concept paper, legislative intention, draft law, action plan or national program)

Comment – formal opinion of the institution to a document sent for the review

Committee – a formal working group appointed by a Minister / director general to develop a formal document (a concept paper, legislative intention, draft law, national program, etc.) on ad hoc basis

Concept paper – a formal written document with a general outline of a strategy for a certain number of years that has to be approved by the Cabinet meeting and then becomes a binding document for a draft law

Department – first (highest) organizational level at a Ministry (composed of Units)

Director general – top civil servant at a Ministry, head of the department and member of the executive team of the Ministry

Division – third (lowest) organizational level at a Ministry

Draft law – legislative proposal to be approved by the Parliament

Government program – document created in the process of coalition negotiations after elections outlining the key tasks for the governing period (4 years)

Law – generally binding legal instrument issued by the Parliament

Legislative Intention – a formal written document with preliminary rationale and outline of a proposed draft law that has to be approved by the Cabinet and then becomes a binding document for a draft law

National Council – Parliament of the Slovak republic consisting of 150 members.

Plan of legislative tasks – a one year document of concrete tasks for each Ministry (a break down of tasks from the Government program)

Reasoning report – a formal part that has to accompany a draft law and that provides background and rationale for a draft law and its individual articles

[14] Please note that the below glossary provides only basic explanation of the terms used in this paper for a better orientation of the reader. It is not the intention of the author to provide precise legal definitions.

Regulation – generally binding legal instrument issued by the Cabinet or a Ministry

State secretary – political appointee at a Ministry (deputy Minister), usually coming from a different coalition party than the Minister

Unit – second organizational level at a Ministry (composed of Divisions)

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