CORRUPTION AND ANTI-CORRUPTION MEASURES IN CENTRAL AND EASTERN EUROPE

Editors:
Katarína Staroňová
Emília Sičáková-Beblavá

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Preface

Corruption is a phenomenon that has been experienced by many of us or at least we have heard about it. Frequently, it invites despair. In the words of Transparency International, "*Corruption is one of the greatest challenges of the contemporary world. It undermines good government, fundamentally distorts public policy, leads to the misallocation of resources, harms the private sector and private sector development and particularly hurts the poor*"[1].

However, it is not an incurable disease. By using the right approach, much can be done to decrease it. Not only in the old democracies, but also in the new ones, there are many examples of successful tackling of corruption in the public sector. From the beginning of the transition process, many measures, which have an impact on corruption restriction, were adopted in the new EU member states. They range from information tools (e.g. the Freedom of Information Act) and administrative tools (e.g. whistleblowing protection) to economic tools (e.g. active labour market policy reform). Appropriate anti-corruption measures can be developed and adopted when the knowledge concerning the concrete types and scope of corruption in a particular country is available. Thus, rather than discussing the many facets and connotations of the concept corruption, in the following volume we look at anti-corruption instruments utilised in Central and Eastern Europe.

The publication is divided into two parts. The first part discusses the level of corruption in central and eastern European countries. Miroslav Beblavý, in his paper, focuses on the convergence of corruption in the new member states and their relationship with the rest of the EU. Using the Transparency International Corruption Perception Index[2], his analysis points to a modest convergence in the EU as a whole, with the new member states as a group converging with the old member states at the rate of 0.08 points per year during the 1999–2008 period. He also stresses that although there are large differences between countries, the overall picture significantly improved during the last decade. Using a combination of static and dynamic, economic and corruption data, he shows that Estonia, Latvia, Slovakia and Slovenia are predicted to be the fastest in attaining the EU average for corruption if

1 Transparency International, http://www.transparancy.de/mission.html (Dec. 15th, 1998).

2 For more information on Corruption Perceptions Index see www.transparency.org.

their previous performances are maintained in the future. Then, the Lithuanian and Slovenian experiences with corruption and an overview of anti-corruption measures are offered. The first part concludes with a classification of anti-corruption tools, developed by Katarína Staroňová, which takes yet another approach towards the classification – that of the public policy angle and divides anti-corruption tools into informative, administrative, economic and regulatory categories.

The second part focuses on individual anti-corruption measures utilised in Central and Eastern Europe. Each paper presents only one instrument and in the form of case studies it presents the mechanics, rationale of adoption and sustainability potential of each tool. The main goal of the presented case studies is to examine the concrete impact of the adopted measures on the scope of corruption in a particular area as well as the pursuant political economy. We believe that the added value of this publication is based on the comprehension of the anti-corruption effects on distinct public policies as well as on the understanding of the means of their pursuit and enforcement. In this part of the publication we bring in particular case studies that are examples of the anti-corruption tools utilised in practice.

The majority of the contributions contained in this publication were presented at the 16th NISPAcee Annual Conference, which took place in Slovakia in 2008 within the working group on Public Sector Transparency coordinated by the Institute of Public Policy, Comenius University in Bratislava and by Transparency International, Slovakia. Almost all of the same team of experts has worked on this publication although we have managed to extend the scale of the anti-corruption tools.

We believe that this publication will be of interest to you and provide further inspiration for the preparation and use of anti-corruption tools.

Katarína Staroňová, Emília Sičáková-Beblavá

Editors

Corruption and Anti-Corruption Measures: Introduction

Emília Sičáková-Beblavá, Katarína Staroňová

Corruption is a phenomenon with severe consequences for both economic development and the fight against poverty. Moreover, it is a phenomenon which jeopardises the fundamentals and functionality of democratic governance[1]. Corruption has been the subject of a substantial amount of theorising and empirical research over the last 30 years, and this has produced a bewildering array of alternative explanations, typologies and remedies. However, as an extensively applied notion in both politics and social sciences, corruption is being used in many contexts. In the introductory article of this publication, dedicated mostly to anti-corruption measures, we wish to provide a basic framework for thinking about corruption and anti-corruption measures in the field of public policy.

1. Defining Corruption

Corruption has been defined in many ways in literature.[2] In Colin Nye's classical and most widely used definition, corruption is "*behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence*".[3] A somewhat updated version with the same elements is found in the definition by Mushtaq Khan, who defines it as "*behaviour that deviates from the formal rules of conduct governing the actions of someone in a position of public authority because of private-regarding motives such as wealth, power, or status*".[4]

1 See della Porta a Vannucci 1999, Hellman 2000, Johnston 1999, Rose-Ackerman 1999 and others.

2 Robert Williams (ed.). "Explaining corruption", In: *The Politics of Corruption*, Cheltenham, UK. Northampton, MA, 2000.

3 Nye, *J.* "Corruption and Political Development: A Cost-Benefit Analysis," In: *American Political Science Review*, Vol. 67, No. 2, pp. 417–427 (1967). p. 417.

4 Khan, Mushtaq H. "A Typology of Corrupt Transactions in Developing Countries," In: *IDS Bulletin*, Vol.27, No.2, April 1996, p. 12.

The basic distinction is between normative and positive definitions, summarised in Table 1. Two variants of normative are provided in definitions 1 and 2 in Table 1. The first looks at acts and is clearly normative whilst the second looks at the consequences of acts. The second remains a normative definition because the definition of the public interest may differ between observers. It is also problematic to define corruption in terms of its consequences because this defines out of existence cases of beneficial corruption. Economic and sociological comparisons most often use the third, positive definition using the standard of legal norms to identify the deviations. Thus, corruption is defined as a deviation from the formal rules governing the allocative decisions of public officials in response to offers to them of financial gain or political support.

Table 1
Definitions of corruption

Normative definitions	Positive definitions
1. Deviations from Ethical Norms	1. Deviations from Legal Norms
2. Actions which Harm the Public Interest	

Source: authors

The stipulation that corrupt transactions should violate formal rules rather than simply ethical norms rules out any disagreement about the appropriate ethical standards. The additional stipulation that public officials are involved in distinguishes corruption from theft, which is illegal, but which exclusively involves decisions by private individuals. The definition is still open to the problem that formal rules can vary across countries. A strict application of the definition could lead to different sets of practices being identified as corrupt. Fortunately, the corrupt practices which economists have wished to analyse would, in fact, violate formal rules in most countries.

When it comes to public policy, it can be difficult to identify the most vulnerable areas and select appropriate policy interventions because of the complexity of the causation factors. The following formula developed by Klitgaard[5], which sums up the key sources of corruption, has been shown to be effective in practice.

Corruption Formula:

$$C = M + D - A$$

Or: **C**orruption = **M**onopoly + **D**iscretion – **A**ccountability

5 Robert Klitgaard. *Controlling Corruption.* Berkeley: University of California Press, 1988, p. 75.

Monopoly concerns the first of the three conditions for corruption – the existence of the Principal-Agent-Client relationship. Market liberalisation should be promoted to replace this type of relationship with a market-based one. Where liberalisation and privatisation are not possible, competition among the Agents should be encouraged to make their power balance with the Clients more symmetrical.

Discretion underlines the third condition for corruption – the potential benefits from corrupt behaviour. Rules and regulations that depend on Agents' judgments create opportunities to negotiate private gains for both Agents and Clients. Therefore, rules, regulations and official duties should be simplified and clarified, and discretion should be minimised.

Accountability and transparency deal mainly with the second condition of corruption – the problem of information asymmetry. Accountability and transparency allow the Principal to monitor the Agents better and make them more responsible for their actions. They increase the Agent's cost of being corrupt and the probability of being caught. Accountability and transparency depend not only on the capacity of internal auditors or the police, but also on the involvement of elected bodies, citizens, media and society.

2. Why is Corruption Harmful?

Apart from the negative impacts on the ethics and morals of society, the harm that corruption does, rests upon the fact that important decisions (in the public interest) are made on the basis of private motives, not taking into consideration the impacts on society and on citizens. The decisions made are motivated by personal gain (including financial advantages), and not by the needs of the people. Thus:

- **There is an interest to preserve the extent of activities where "non-private money" is decided on, and there is a pressure on the growth of re-distribution, centralised funds, subsidies, etc.**

Internalities (private motives of people making decisions in the public interest) mean that unnecessary projects are implemented (the construction of "palaces" for banks, boards of inland revenue or other institutions, funded wholly or in part from public funds, may serve as an example), as well as business trips of employees of these institutions to exotic countries, covered from public funds (e.g. business trips to crocodile farms).

It is apparent that internalities are related to corruption. On the other hand, resources are missing in other areas, e.g. in the education and health care sectors. Preservation of the range of activities paid from public funds exerts pressure on the increase of taxes and charges, which does not motivate business and hinders economic development, resulting in negative social impacts following from unem-

ployment. It is known that a portion of funds is simply "lost" in the re-distribution process.

- **If private motives influence the decision-making on public funds, then the resources (financial, material, human) do not go where their valuation is best.**

Ineffective transfers are performed, resources are withdrawn from the efficient in favour of inefficient subjects and activities. Thus, the allocation efficiency of the economy is worsened, together with its competitiveness. This means that the best ones are not supported, their competition is not supported, conditions for their development are not supported, but advantages are granted to those with the most powerful lobby. Thus, creation of wealth is not supported, but its distribution. Business people focus on "rent seeking" rather than on "profit seeking". Thus, they are not motivated to create wealth, but to re-distribute it in their favour. As a consequence, the general wealth of the country is diminishing.

- **Corruption and non-transparent rules mean high administrative demands and high transaction costs.**

The large number of permits, licences, authorisations, and complicated procedures in order to grant them, present obstacles to business on the one hand, and open up space for corruption on the other. It is the transaction costs (costs of contact with the surroundings, paid by business people, but also by citizens,) that to an ever-increasing extent determine the prosperity of economies. This, on the one hand, gives civil servants freedom in their decision-making, and on the other, poses uncertainty for business people, impairing the quality of the business environment, and demotivating businesses.

Moreover, if the rules are ambiguous, uncertainty leads business people and citizens towards ensuring their certainty through bribery.

- **Uncertainty about whether the rules are valid, and how they will be applied, also increases the investment risk.**

If business people are not certain whether rules and laws will be observed and enforced, or if they enter an environment, in which establishment and operation of the business are to be secured by giving bribes, the investment risk in the respective country is increased for them. Thus, a corrupt climate results in a reduction of foreign investments. It is the foreign investments that are, for various reasons, a very important factor for transition economies. The mass need for re-structuring in the transition economies faces the problem of limited internal resources – foreign investments facilitate the currency exchange rate stabilisation, enable integration into global economic relations, entry to foreign markets, they bring along know-how in the areas of management and marketing, as well as a new business culture and they create a natural foreign lobby for our integration ambitions, etc. Thus, the economies that have succeeded in attracting more foreign investments are more success-

ful in their transition, as a rule. Several voices from the business circles abroad and from international institutions are warning that corruption is the obstacle to business in Slovakia.

- **Corruption means that citizens receive less than they could with regard to the respective level of resources at the disposal of the economy.**

A corrupt environment causes prices to increase, and at the same time, the quality and accessibility of goods and services decreases. For example, a business person having been awarded a public contract via a bribe will include this bribe in the price paid by us for his/her services, or the public funds for funding of other services will be reduced. The fact that the amounts involved are not minor is evidenced by estimations, according to which a corrupt environment may cause public contracts to be overcharged by 30 to 50 %. However, non-transparency in other areas also means losses for the citizen. For example, if the funding of political parties is not transparent, if the offices in state-owned monopolies are held by persons on the basis of a political key, without any possibility of public control, it may result in the pouring of funds from one place to another, in inefficiency, and in the increase of prices for services paid by the citizen.

Apart from the economic and social consequences, it is necessary to realise the broader political impacts as well. In a corrupt environment, the citizens lose their confidence in the country and in the rules. Not only is the rule of law put into question, but also equality in front of the law, and democracy as such. Morals decline, and at the same time, criminal activity grows.

There is a strong indirect relation between corruption and democracy (the less corruption, the more democracy). If we base our statements on the Corruption Perception Index (CPI), we can conclude that corruption is least widespread in countries with stable democracies, and on the other hand, countries with non-democratic, often dictatorial regimes are usually at the opposite side of the scale.

In many countries, we may speak about institutionalisation of corruption, i.e. that it is considered as a common phenomenon, and that it is becoming beneficial not only to individuals, but also to certain groups, e.g. political parties or some professions. "The expected profit from participation in a corrupt transaction compared to non-participation therein depends on the number of other people engaged therein."[6] For example, if the rules for funding of political parties are of little transparency, then the fundraising to cover their activities may be related to corruption. If one political party engages therein, the remaining political parties tend to behave in a similar way. Scandals related to funding of political campaigns did not become a subject of political fight (for example in Slovakia), whereupon it may be concluded that other parties proceed in much the same way. The higher the number of parties with similar behaviour, the higher the costs for the party that does not want to use

6 For more detail see Andvig, 1991.

such money. The problem may only be dealt with by means of changing rules and exerting pressure to provide information on the funding.

- **Corruption also causes the inequality of citizens according to whether they dispose of funds for a bribe or not, which divides them into those who have access to e.g. education, or to quality health care services, and those without such access. The division also relates to prosecutable and non-prosecutable citizens according to whether they are able to ensure a "favourable" settlement of the legal dispute by means of a bribe.**

Corruption is also dangerous due to the fact that it has broader social relations, deeper roots. It works as a system, having its own playing rules and internal mechanisms. It works on the principle of a perpetual mobile, thus, once it has originated and spreads to certain dimensions, it is then spread further by its own mechanisms. The larger its extent, the higher the increase in its potential to spread further. Thus, the present extent of corruption, to a certain degree, determines the spreading of corruption in the future, unless radical steps are implemented into the system.

Corruption undermines democratic development, inhibiting the performance of public institutions and the optimal use of resources. It feeds secrecy and suppression. Ultimately, it denies development and an increased quality of life to the most vulnerable members of society. While corruption might, at least in theory, be tamed in an autocratic and dictatorial manner using a "big stick", the inexorable decline into corruption and other abuses of power on the part of totalitarian administrations suggests that this can only be temporary. The promotion of national integrity across the board is crucial to any process of sustainable reform. By raising levels of national integrity, corruption can be reduced and this approach is vital if other efforts to promote sustainable and equitable development are not to be undermined.

As is well known, corruption engenders wrong choices[7]. It encourages competition in bribery, rather than competition in quality and in the price of goods and services. It inhibits the development of a healthy marketplace. Above all, it distorts economic and social development, particularly damaging in developing countries. Too often, corruption means that the world's poorest, who are least able to bear the costs, must pay not only for the corruption of their own officials, but also for that of companies from developed countries. Moreover, evidence shows that if corruption is not contained, it will grow, and grow exponentially. Once a pattern of successful bribes is institutionalised, corrupt officials have an incentive to demand larger bribes, engendering a "culture" of illegality that in turn breeds market inefficiency. Once the moral authority of managers is lost, through corruption at higher levels, their ability to control their subordinates evaporates.

At the conceptual level, there are many costs associated with corruption. However, it is hardly surprising that there is little hard evidence on the incidence and

7 TI Source Book 2000.

magnitude of corruption. Surveys of business people indicate that the problem varies widely across countries and that even within countries, some public agencies (for example, customs and tax collection) are more prone to corruption than others. Surveys also indicate that, where corruption is endemic, it imposes a disproportionately high cost on small businesses. Most importantly, the heaviest cost is typically not so much in the bribes themselves, but rather in the underlying economic distortions they trigger and in the undermining of institutions of administration and governance.

Emerging democracies, in particular, brave considerable political risks if corruption is not contained, as the corrupt can greatly weaken the authority and capacity of the fledgling state.

3. Studying Corruption from the Perspective of Anti-Corruption Measures

There have been a number of quantitative studies undertaken to assess the quantity of corruption in both institutions and across nations. The most well-known of the indexes on corruption are the *Business International* (BI) index, the *International Country Risk Guide* (ICRG) index, the *Global Competitiveness Report Index*, and the *Transparency International* (TI) *Corruption Perception Index*[8]. All of these indexes are, however, based on the personal judgements, perceptions and opinion of a number of observers, and not on statistical "hard data".

Yet, another way of studying corruption is not to focus on historical legacies, institutional factors and policy choices that have influenced the incidence of state capture and corruption occurrence across the region, but to deal with anti-corruption strategy and measures tailored to the specific pattern of corruption in each specific country. The most common anti-corruption efforts have either been directed at prevention or deterrence. Prevention measures have tended to involve efforts to educate members of the public and specific target groups about the nature and effects of corruption, in order to build consensus which supports integrity and values which resist corruption. Deterrence measures are intended to *increase the risks*, *costs and uncertainty* associated with acts of corruption. Unlike many common crimes, corruption generally involves actions which are readily capable of

8 The *Business International* (BI) index ranks countries from one to ten according to the "degree to which business transactions involve corruption in questionable payments" according to their own staff/journalists. The *International Country Risk Guide* (ICRG) index is based on the opinion of experts and supposed to capture the extent to which "high government officials are likely to demand special payments" and to which "illegal payments are generally expected throughout lower levels of government" in the form of "bribes connected with import and export licences, exchange controls, tax assessments, police protections, or loans". The *Global Competitiveness Report Index* is based on a survey of private firm managers/executives in top and middle management. The *Transparency International Corruption Perception Index* (CPI) is based on the perceptions of international business people.

deterrence. Prevention measures also affect this assessment, making potential offenders more aware of hidden or indirect costs of corruption, and making others more likely to report or complain about it. In the context of corruption, deterrents include both criminal justice and other measures. Risks and costs considered by offenders include the obvious risks of criminal prosecution and punishment, but also less direct risks associated with simple exposure, moral condemnation or practical administrative measures such as the loss of access to government contracts or other business opportunities. The main idea of this study is to have a ready-made set of Instruments from which each decision maker can choose and tailor them to the circumstances of the country/city/area. As a result, those designing anti-corruption strategies will need to examine the relevance of different categories of the typology for each anti-corruption measure.

Case studies (an approach undertaken in this volume), on the other hand, can reveal much information on the scope and characteristics of specific instances of anti-corruption measures undertaken. To generalise from case studies is impossible, but general hypotheses and assumptions on the nature and extent of sustainability of each anti-corruption measure can nevertheless be derived from case studies. Describing the potential pathways within the individual instrument as a whole is as important as describing the instrument characteristics in itself. In sum, methodological triangulation (the use of several social science methods) is necessary to disclose the patterns and extent of sustainability of anti-corruption measures.

Conclusion

In conclusion, the issue of corruption should not be addressed only from the viewpoint of causes and consequences of corruption per se, such as on its magnitude, on its consequences, when private interests gain favourable access to politicians, when political decisions are open to the highest bidder, and on its destructive effect on the national economy.

Rather, the study of corruption can be presented from the view point of the struggle against corruption. From a public policy point of view, the focus on anti-corruption measures is even more important as it provides answers on sustainability factors and context issues. This is important as anti-corruption measures are transnational in nature or have transnational elements that can be utilised in any country.

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PART I

Corruption in the New Member States

Is Corruption in the New Member States Converging with the Rest of The EU? An Empirical Investigation.

Miroslav Beblavý

Introduction

In economics, there is a well-developed concept of convergence between individual countries, which deals with convergence of nominal variables such as prices and convergence of real variables, particularly the per capita income. Neoclassical economic theory would generally imply gradual real convergence between countries.[1] The economically most advanced post-socialist countries, which joined the European Union in 2004 and 2007, have achieved significant steps towards real convergence with the rest of the union, particularly over the last decade. However, there is an absence of retrospective or prospective research into the same issues concerning corruption. While it is generally agreed that the average corruption levels are significantly higher in the new member states,[2] there is a lack of dynamic analysis. Are we observing (gradual) convergence of the corruption levels in the new member states with the rest of the union? If yes, how long will take it for the corruption levels to converge? Is there correlation with socioeconomic developments? How does this play out at the level of individual countries?

Using the Transparency International Corruption Perception Index (CPI), the paper examines these questions based on the data from the 1999–2008 period. The strategy of the paper is to analyse the corruption developments in a non-structural manner – i.e. without positing what structural changes in the political, economic or social environment account for improvements in corruption performance. In this respect, it is complementary to more theory-driven papers, which, of course, need to be at the forefront of research into corruption. However, a simple, data-driven modelling exercise can provide valuable additional findings, particularly as it has not before been attempted.

1 Barro, Robert and Xavier Sala-i-Martin (1992) 'Convergence', Journal of Political Economy 100(2): 223–251.

2 Rose-Ackerman, Susan and Janos Kornai. 2004. Building a trustworthy state in post-socialist transition. New York: Palgrave/Macmillan.

The remainder of the paper is structured into six sections: it begins with a brief introduction to measurement of convergence in income and proceeds to a discussion of relevant methodological issues when applying the concept to corruption. The empirical sections contain an analysis of convergence in corruption between the old and the new member states as groups and then within the group of the new member states; analysis of the corruption dynamics at the country level when controlling the level of income, and projections of future convergence prospects. The final section contains a summary of conclusions that can be drawn from the research.

Measuring convergence in income

The concept of convergence can be applied to any set of time series data to determine whether individual units (countries, regions, organisations, individuals) are drawing closer in time or not. However, in economic research, an overwhelming majority of research focuses on convergence of countries (or, in the case of the European Union, also of regions)[3] in their levels of per capita income (real convergence) and prices (nominal convergence), as well as on the relationship between the nominal and the real developments.

Over the course of the last two decades, this work has been extended to the countries in transition, particularly to the group of new member states that joined the European Union in 2004 and 2007. Its focus has generally been on examining real convergence of the acceding/new member states – is it happening and how rapidly are their income levels going to converge with those of the old member states? Earlier studies were more sceptical, as the transition recession of early 1990s and then the second slow-down in the late 1990s, seemed to confirm divergence or parallel paths rather than convergence.[4] However, the rapid growth experienced during the last decade has made observers more optimistic.[5] A great deal of attention has

3 Quah, Danny (1996) 'Regional convergence clusters across Europe', European Economic Review 40 (3–5): 951–958.

4 Wagner, Martin and Jaroslava Hlouskova (2001) 'The CEEC10's Real Convergence Prospects', Transition Economics Series Papers No. 20, Institute for Advanced Studies, April 2001, Vienna.

5 Detken, Carsten; Gaspar, Vítor and Gilles Noblet (eds.) (2004) 'The New EU Member States: Convergence and Stability', Paper presented on Third ECB central banking conference, 21–22 October 2004, Frankfurt am Main.

also been paid to nominal convergence[6] and the interaction between nominal and real convergence.[7]

However, since this paper is not interested in economic, but corruption convergence, let us focus on the convergence as a concept rather than on specifics of real/nominal convergence. There are several approaches to the concept. The concept of unconditional β-convergence is based on neoclassical economics, where countries should gradually converge to the same level of income as long as their basic underlying economic parameters are identical.[8] The presence of β-convergence is usually tested by looking at the relationship between initial income and the income dynamics, which is expected to be negative.[9] Since this process has frequently not been observed in reality,[10] a complementary concept of the conditional β-convergence has been developed, where the income levels can converge to different levels if the economies involved have different underlying parameters.[11] Econometrically, this involves controlling a variety of variables that are seen as influencing the steady-state level of income.

Another way of looking at the issue is to look at the distributional dynamics and study the cross-sectional standard deviation of values.[12] In other words, one can observe if the dispersion of all values is decreasing or increasing in time. If it is decreasing, then we speak of σ-convergence. Both (unconditional and conditional) β-convergence and σ-convergence are valuable and they are also related:

6 Wolszczak-Derlacz, Joanna and Rembert De Blander (2008) Price Convergence in the European Union and in the New Member States. Praha: CERGE-EI.

7 Grauwe, Paul and Gunter Schnabl (2005) 'Nominal Versus Real Convergence – EMU Entry Scenarios for the New Member States', Kyklos Blackwell Publishing 58(4): 537–555;

Hein, Eckhard and Achim Truger (2005) 'European Monetary Union: Nominal Convergence, Real Divergence and Slow Growth? An investigation into the effects of changing macroeconomic policy institutions associated with monetary union', Macroeconomics 0501011;

Lein-Rupprecht, Sarah; León-Ledesma, Miguel and Carolin Nerlich (2007) 'How is real convergence driving nominal convergence in the new EU member states?' working paper series no 827 of the European Central Bank, 2007, Frankfurt am Main;

Vintrová, Růžena and Václav Žďárek (2007) 'Links between Real and Nominal Convergence in the New EU Member States: Implications for the Adoption of Euro', Journal of Economics 5: 439–458.

8 Barro, Robert and Xavier Sala-i-Martin (1992) 'Convergence', Journal of Political Economy 100(2): 223–251.

9 Baumol, William J. (1986) 'Productivity Growth, Convergence, and Welfare: What the Long-Run Data Show', American Economic Review 76: 1072–1085.

10 Canova, Fabio and Albert Marcet (1995) 'The poor stay poor: non-convergence across countries and regions', CEPR discussion paper No 1265, 1995, London.

11 Barro, Robert and Xavier Sala-i-Martin (1995) Economic Growth, New York: McGraw Hill.

12 Quah, Danny (1993) 'Galton's Fallacy and Tests of the Convergence Hypothesis', CEPR, CEPR Discussion Paper, no. 820, 1993, London.

β-convergence is a necessary, but not a sufficient condition, for σ-convergence to occur. Therefore, if the latter can be demonstrated, the former must also be present.[13]

Applying the concept of convergence to corruption

The use of the concept of convergence and of related econometric methods in case of corruption is a new phenomenon. Only Gunardi uses methods that, to some extent, overlap with ours to determine whether there has been a global β-convergence and σ-convergence in corruption during the period 1984–2003 as measured by the International Country Risk Guide data.[14] He finds both types of convergence in his sample, which covers a number of developed and developing countries.

Analytical work using the concept of convergence can be both structural and non-structural in the sense of (not) being driven by a model with explicit theoretical foundations.[15] The paper generally takes a non-structural approach and is data-driven. Its objective is not to explain why convergence/divergence happened, but to discover whether it has been happening or not. It will use concepts of unconditional β-convergence and σ-convergence, with the former primarily used for comparison of means of the new and the old member states and the latter used for analysis within the group of the new member states and for the EU as a whole.

Nonetheless, one needs to answer several methodological questions before proceeding further, related to the existence or absence of theoretical foundations for the expectation of corruption convergence, the effect of per capita income and whether it is useful to use the past to predict the future in this particular case, or not. There is also the issue of the use of the Transparency International Corruption Index as the source of data for the quantitative analysis.

In terms of theory, there is the question of whether convergence in corruption should be expected at all within the European Union, particularly between the new member states and the rest. Based on literature, the level of corruption is positively influenced by many factors, three of which can be applied to the new member states: economic development, economic openness and long exposure to democracy.[16] In

13 Wagner, Martin and Jaroslava Hlouskova (2001) 'The CEEC10's Real Convergence Prospects', Transition Economics Series Papers No. 20. Institute for Advanced Studies, April 2001, Vienna;

Abreu, Maria; de Groot, Henri and Raymond Florax (2005) 'A Meta-Analysis of Beta-Convergence: The Legendary Two-Percent,' Tinbergen Institute Discussion Papers 05–001/3, Tinbergen Institute, 2005, Amsterdam.

14 Seldadyo Gunardi, Harry (2008) Corruption and governance around the world: An empirical investigation. Enschede: PPI Publishers.

15 Abreu, Maria; de Groot, Henri and Raymond Florax (2005) 'A Meta-Analysis of Beta-Convergence: The Legendary Two-Percent,' Tinbergen Institute Discussion Papers 05–001/3, Tinbergen Institute, 2005, Amsterdam.

16 Treisman, Daniel (1999) The Causes of Corruption: A Cross-National Study. Los Angeles: University of California

other words, passage of time brings increases in longevity in exposure to democracy in the new member states, which improves corruption prospects. Additionally, as long as we expect the real convergence and we also expect the EU membership to stimulate trade integration, there are grounds to believe in the corruption convergence. There are other specific reasons to believe that EU accession and membership have additional beneficial effects on corruption levels, particularly with regard to the rule of law. However, there are reasons to believe that some of the positive effects are related to EU accession rather than EU membership as such [17] though there are conflicting views on the continuing influence of the EU after accession.[18]

This leads us to the issue of whether the recent past is a good guide to the future of corruption developments in the enlarged European Union. The answer depends on whether the convergence of the last decade, which will be demonstrated in the empirical section of the paper, has been primarily related to the long-term trends associated with economic development, openness and consolidating democracy, or more with one-time accession effects. From a theoretical point of view, one cannot give an *a priori* answer and, empirically, not enough time has passed since accession to be able to distinguish which of the explanations is valid. As the empirical part of the paper will show, the gap between the old and the new member states has continued to decrease since accession, but the period is relatively short.

The paper also tries to disentangle the effects of economic development from other factors. A crucial question for any research looking into corruption convergence in the enlarged EU is: To what extent is the higher level of corruption in the new member states about their relative poverty and can be expected to largely disappear as the per capita incomes converge? To answer the question, the paper uses a simple model of corruption that strips away the effect of income levels, using panel data analysis. It should also be noted that the correlation between per capita incomes and corruption does not imply causality or determine which way it goes. The point of the model is not to try to explain corruption in terms of its relation with wealth. By isolating the effect of income, it allows us to determine the size and dynamics of the other factors rather than to try to explain them.

The last methodological issue is the use of the Corruption Perception Index, published annually by Transparency International. The period of analysis is 1999–2008, for which the CPI data are available for all countries except Cyprus

17 Schimmelfennig, Frank; Engert, Stefan and Heiko Knobel (2003) 'Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey', Journal of Common Market Studies 41(3): 495–518;

Haughton, Tim (2007) 'When Does the EU Make a Difference? Conditionality and the Accession Process in Central and Eastern Europe', Political Studies Review 5(2): 233–246.

18 Pridham, Geoffrey (2007) 'The EU's Political Conditionality and Post-Accession Tendencies: Comparisons from Slovakia and Latvia', JCMS: Journal of Common Market Studies 46 (2): 365–387.

and Malta. For this reason, the European Union in the paper means EU without Cyprus and Malta.

Use of CPI has both strengths and weaknesses.[19] The chief weakness is that of any perception-based indicator: there is no direct relationship to the "objective" incidence of corruption. However, there is no available dataset, which would measure corruption in the EU states in an "objective" way. Warner documents why a comparative attempt to measure corruption levels in individual EU countries through objective measures – ranging from reports of EU-level institutions to national prosecutions or discoveries of irregularities in the utilisation of EU funding – is largely futile.[20]

Lambsdorff, Lancaster and Montinola make a convincing argument why CPI is successful in overcoming most of the problems related to perception-based indices.[21] They point to the use of respondents (such as international businessmen and risk analysts), who have an explicitly comparative perspective in their assessments. For the EU member states, the index utilises several uniform sources of data available for all countries analysed in the paper: Economist Intelligence Unit; Freedom House, Nations in Transit; Country Risk Ratings by Global Insights (formerly World Markets Research Centre); World Competitiveness Report of the Institute for Management Development; Grey Area Dynamics Ratings by Merchant International Group; and Global Competitiveness Report of the World Economic Forum. Therefore, the composite indicator should filter out problems of individual indicators in a consistent way. Most of the indices are highly correlated, indicating their robustness in measuring the underlying problem.

19 Hindess, Barry (2004) 'International anti-corruption as a program of normalization. Occasional Paper to Political Science Program', Research School of Social Sciences, Australian National University, Canberra;

Lambsdorff, Graf J. (1998) 'Corruption in Comparative Perception'. In Jain, A. (ed.): Economics of Corruption. Dordrecht: Kluwer Academic Publishers.

20 Warner, Carolyn (2002) 'Creating a Common Market for Fraud and Corruption in the European Union: an Institutional Accident, or a Deliberate Strategy?', EUI Working Papers RSC 2002/31, European University Institute, 2002, Florence.

21 Lambsdorff, Graf J. (1998) 'Corruption in Comparative Perception'. In Jain, A. (ed.): Economics of Corruption. Dordrecht: Kluwer Academic Publishers;

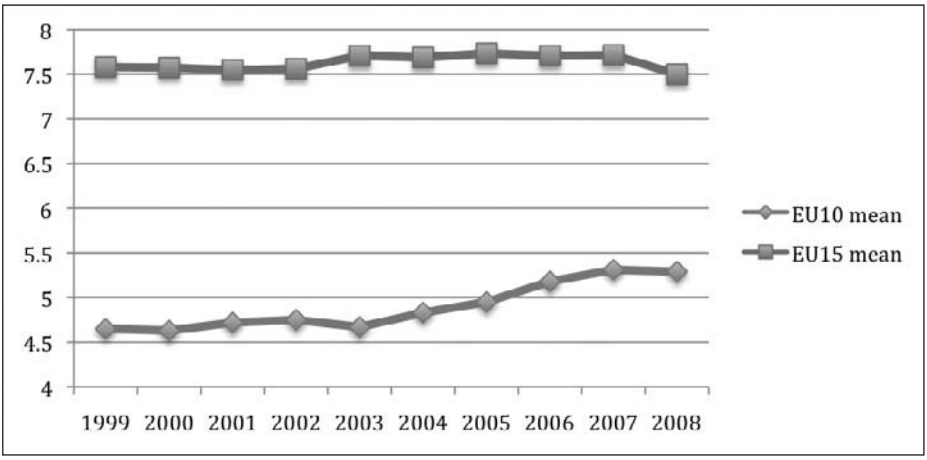
Lancaster, Thomas and Gabriella Montinola (1997) 'Toward a methodology for the comparative study of political corruption', Crime, Law and Social Change 27 (3–4): 185–206;

Lancaster, Thomas and Gabriella Montinola (2001) 'Comparative political corruption: Issues of operationalization and measurement', Studies in Comparative International Development (SCID) 36 (3): 3–28.

Corruption dynamics at a group level: old vs. new member states

This section focuses on answering the question: have the two groups of the EU member states (excluding Cyprus and Malta) been converging in their levels of corruption over the last decade or not? Since the question is posed at a group level, it is answered by comparison of two variables – mean Corruption Perception Index for the old member states (abbreviated here as EU15) and the mean value for the new member states except for Cyprus and Malta (abbreviated here as EU10). To compare the two average values, it is not appropriate to use methods usually utilised for large samples of individual countries to measure β-convergence and σ-convergence, i.e. a regression of corruption dynamics on initial corruption and the standard deviation of corruption across units over time. Instead, the methodology is based on comparison of trends in both values over time.

Figure 1
The mean Corruption Perception Index, EU15 vs. EU10, 1999–2008

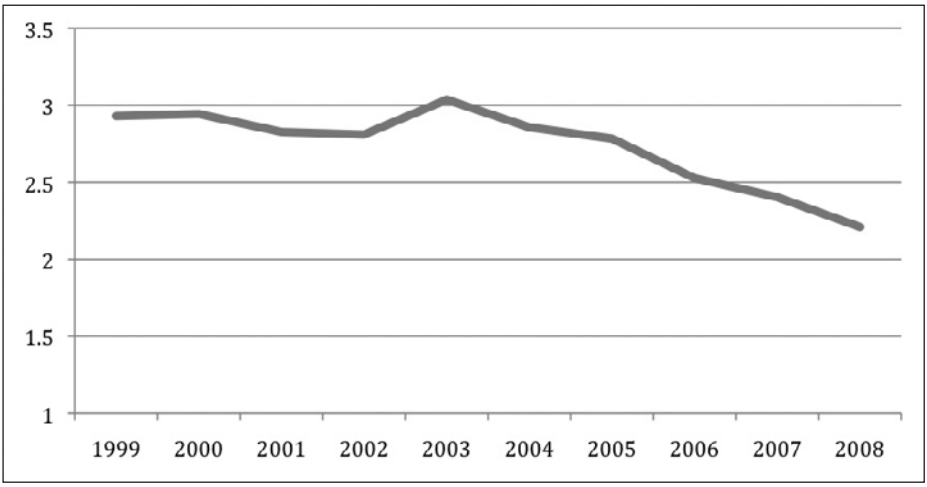


Source: author based on Transparency International data

Before conducting a more sophisticated econometric analysis, we begin with simple descriptive statistics. Visual inspection based on Figure 1 suggests that the average performance of the old member states has apparently been stable over the period, while the new member states experienced a sustained improvement in their corruption performance. This view is boosted by Figure 2, which shows the difference between the mean CPI of the EU15 and the EU10, which dropped from approximately 3 points at the beginning of the decade to 2.2 in more recent years. Visually speaking, there seems to be a convergence, albeit an uneven one.

It should be noted though that the decrease in the gap between the two groups occurred in two steps – a small improvement between 2000 and 2002, which was fully reversed in 2003 and then a sustained convergence between 2003 and 2008. It is equally worth noting that until 2006, the convergence was driven by improvements in the score for the new member states. During 2007 and 2008, the source of the convergence was the worsening of the corruption perception in the EU15 countries rather than an improvement in the new member states.

Figure 2
Difference between the EU15 and EU10 mean of perceived corruption, 1999–2008



Source: Author based on Transparency International data

The paper uses a regression of corruption developments on a time trend to test these visual findings more rigorously. If there is a time trend in one or both mean values, the trends can be compared to establish whether there has been convergence or divergence.

Let us start with the EU10 mean. The stationarity tests are negative using all three possible test configurations (see Table 1). This suggests that the mean CPI of the new member states is not a mean-reverting process, but can either follow a random walk or have a time trend or a combination thereof.

Since the visual inspection suggests a trend over time, we regress the EU10 mean on a constant and a time trend. Estimation starts with a standard OLS regression. The results (see Table 2) confirm the presence of a strong time trend in the data, where each year corresponds to approximately 0.08 improvement in the CPI. The equation explains more than 86 % of the variation in the EU10 mean. However,

the estimate exhibits strong autocorrelation of residuals since the Durbin-Watson statistic value is 0.90361, so the results may not be unbiased.

Table 1
ADF stationarity tests for the EU10 mean, 1999–2008

	Test statistic	Asymptotic p-value
Without constant	1.46926	0.9654
With constant	-0.376922	0.9108
With constant and trend	-1.54514	0.8141

Source: author

Introducing an autoregressive component into the equation estimates corrects the problem through the use of the Cohrane-Orcutt estimates. The Durbin-Watson values increase to a fully acceptable 1.76061 and the new regression has a slightly higher explanatory value - 0.918, but at the expense of decreasing N from 10 to 9 by excluding the first year (necessary to establish the measurement of the autocorrelation term). This also has an impact on the estimate of the time trend, which increases to 0.103 points per year. In a small sample, this is not surprising, particularly given that the years 1999 and 2000 were unusual in the sample because there was no improvement in CPI between the two years. However, the remainder of the paper uses the 0.08 estimate, despite its flaws, because it takes into account the longer period and is also consistent with back-of-the-envelope calculations of the size of the time trend calculated by division of the improvement in CPI during the 1999–2008 period by the number of years.

Table 2
Regression of the mean EU10 corruption level on constant and time trend, OLS and Cohranne-Orcutt, 1999–2008

	Ordinary least squares		Cohrane-Orcutt, AR=1	
	Constant	Time trend	Constant	Time trend
Coefficient	4.44533	0.0823030	4.27618	0.103363
Standard error	0.0725866	0.0116984	0.148885	0.0201956
p-value	<0.00001	0.00011	<0.00001	0.00137
R-squared	0.860863		0.918749	
Durbin-Watson	0.90361		1.76061	
Autocorrelation coefficient	0.465129		0.0729317	

Source: author

We also test residuals from both regressions for stationarity. In the case of the first regression, the ADF test without constant results in test statistic -1.84952 and the asymptotic p-value 0.06138, confirming stationarity of the residuals at the 10 % confidence interval, but not at the 5 % interval. For the second regression where the autoregressive term is included, the test statistic is -2.41535 and the asymptotic p-value is 0.01521, confirming stationarity of the residuals at the 5 % interval.

For the old member states, the results are different and indicate that the time trend is not a significant variable in explaining changes in the perception of corruption. Stationarity tests for the EU15 mean the corruption variables are negative (see Table 3), but the regression of the mean EU15 value on constant and a time trend produces an insignificant variable for the time trend. Therefore, the regression does not confirm any, even a small trend, over time. Rather, the combination with non-stationarity of the data suggests that the EU15 mean follows a random walk without any trend.

Table 3
ADF stationarity tests for the EU15 mean, 1999–2008

	Test statistic	Asymptotic p-value
Without constant	-0.175072	0.6233
With constant	-1.269	0.6462
With constant and trend	-0.113167	0.9947

Source: author

To conclude, at the level of two groups, the last decade has indeed witnessed a convergence of corruption levels, with the new member states catching up at a rate of 0.08–0.10 points annually, with the lower value probably closer to reality. The convergence has been achieved by improvements in the mean for the new member states, with the mean for the old member states stagnating for the period as a whole.

Distribution dynamics of corruption values

The previous section looked at the mean corruption values for each group. The mean value provides only limited information and does not allow a richer, more nuanced analysis of the corruption developments. This section complements the analysis of convergence of means by analysis of the distribution dynamics of corruption values. This is measured here through the σ-convergence and the so-called ordering plots.

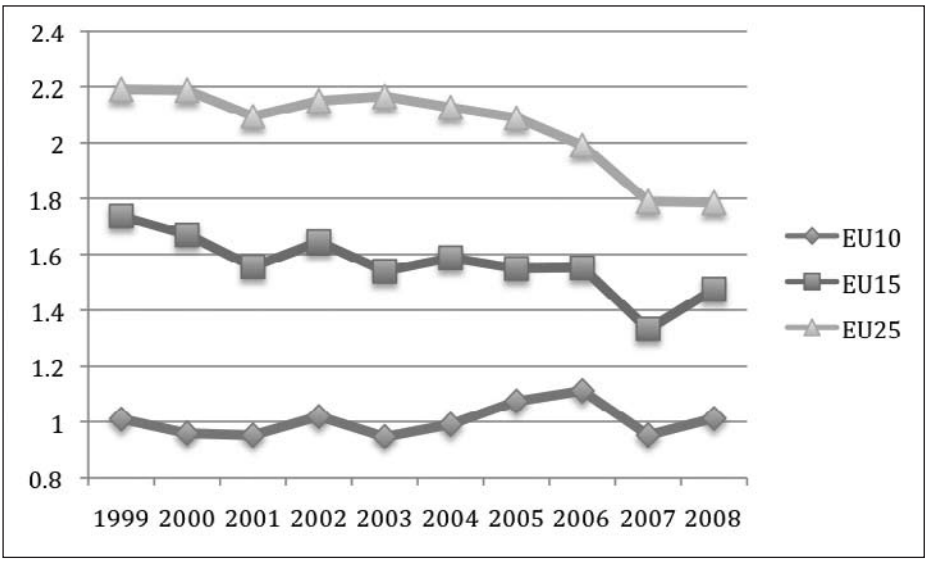
The measurement of σ-convergence is shown in Figure 3, which depicts changes in the standard deviation of the Corruption Perception Index during the last ten years for the following groups: new member states as a group, old member states as

a group and the entire EU. The dynamic analysis of standard deviation, by telling us how widely spread the values in the data set have been over time, tells us whether the countries in each group have been coming closer together or not.

From the point of view of the paper, the most important finding is that there has been σ-convergence for the EU as a whole (again, excluding Cyprus and Malta). The standard deviation of corruption values within the whole European Union decreased by 19 % in a decade, so the result is quite robust. This has also been accompanied by similar developments within the group of old member states (decrease in standard deviation of 15 %), but not for the new member states (where the minuscule increase of 0.2 % is essentially a stagnation). As already mentioned, β-convergence is a necessary condition for σ-convergence, so σ-convergence confirms the presence of β-convergence Therefore, one can conclude that there has also been β-convergence within the group of the EU as a whole, i.e. for all member states. Based on these findings, the corruption in the EU as a whole has also been converging when measured through corruption at the individual country level. However, the new member states, even as they were catching up with the rest of the EU as a group, were not becoming internally more cohesive, since their internal variation remained at the same level.

It should also be noted that the values of the standard deviations for the three groups are not comparable because of the differing size of sample for each group. When they are normalised by a number of countries in each group, the standard deviation for the old and the new member states is roughly the same at the end of the period, with the old member states initially having much higher dispersion. This also seems to suggest that the new member states are internally as diverse with regard to corruption levels as the old member states.

Figure 3
σ-convergence in corruption in the three groups of EU states, 1999–2008

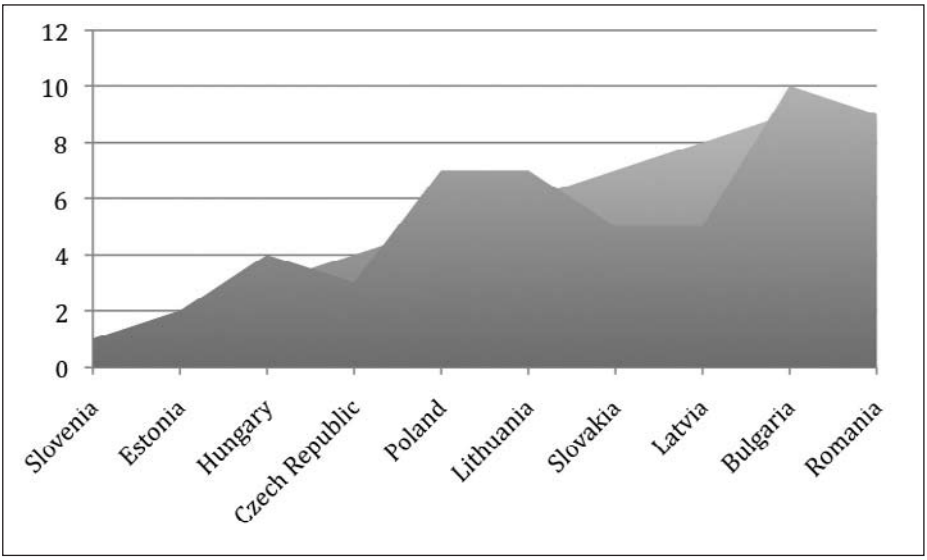


Source: author

The other approach is to look at the so-called ordering plot. The ordering plot is based on the ordering of all countries, according to the value of the variable in the initial period and then contrasting it with their ordering in a later period. The more the two orderings vary, the more the individual countries changed places in the overall ranking between the two periods. The ordering plots are complementary to the measures of σ-convergence presented above. The σ-convergence measures change in the dispersion of values for individual countries, but if two countries "exchange" their corruption statistics, there is no change in σ-convergence. However, the ordering plot captures the development.

Figure 4 shows the ordering plot comparing the years 1999 and 2008 for the EU10 group. Seven out of ten countries changed their position during the recent decade and for 3 of them, the change was 2 places or more. When put together with the stagnating σ-convergence values for the new member states, it indicates even more strongly that there is quite a lot of dynamism in the level of corruption, but that dynamism does not lead to internal convergence within the EU10 group.

Figure 4
Ordering plot of CPI in EU10, 1999 vs. 2008



Source: author

Disaggregating corruption data in the new member states

This section tries to disentangle the effects of economic development on corruption from other factors. It does this through building a simple panel-based model of relationship between the per capita incomes and corruption levels and using the results generated by the model to make predictions. In the literature, income tends to have a very strong relationship with corruption, even if the direction of the causal relationship tends to be hotly disputed.[22] Therefore, a simple model relating corruption to income would have several advantages.

The relevance of the model is that it allows us to see how strong the relationship is in the case of the EU. If it were strong, this would indicate that continuing economic convergence between the new and the old member states will likely be accompanied by a continuing corruption convergence. Secondly, it would allow us to disentangle the improvements in the corruption score in the new member states into "income effect" related to economic convergence and "corruption premium"

22 Treisman, Daniel (1999) The Causes of Corruption: A Cross-National Study. Los Angeles: University of California;

Lambsdorff, Graf J (2006) 'Causes and consequences of corruption: What do we know from a cross-section of countries.' In Ackermann-Rose S. (ed.) International Handbook on Economics of Corruption, Cheltenham: Edward Elgar Publishing.

indicating whether the new member states have higher or lower corruption levels than their wealth would suggest. The corruption premium can be further disaggregated between the EU10 premium and the difference for individual countries. Thirdly, it would allow us to make a more sophisticated prediction of convergence prospects for individual member states based on a combination of economic and corruption factors.

We test three specifications of the model (see Table 4). The simplest one regresses CPI on constant, GDP per capita and the EU10 dummy variable. Analysis of this regression shows that two additional groups of countries stand out – the Nordic countries – which have a significantly better corruption performance than their already high income alone would predict; and Greece and Italy (and to a much lesser extent, Portugal and Spain), which have significantly worse corruption performance than could be expected based on their economic performance. Therefore, two additional specifications – both containing a Nordic and a Southern dummy – are used, with differences in how "South" is defined.

For regression, we use generalised least squares with random effects, as OLS is unlikely to produce the best linear unbiased estimators in this case and the use of dummies prevents GLS with fixed effects. Breusch-Pagan and Hausman tests indicate that this is an appropriate choice for all specifications.

Table 4
Relationship between corruption and income
and the EU10 corruption "premium", 1999–2008

	No South or North dummy	South = Greece, Italy, Portugal, Spain	South = Greece, Italy
Constant	5.23199	5.52756	5.39682
GDP per capita	0.0192545	0.0168327	0.0172659
EU10 dummy	-1.76664	-1.92955	-1.82255
North dummy	-	1.89882	1.97661
South dummy	-	-1.40111	-2.34317
Breusch-Pagan test: test statistic	936.466	732.766	650.975
P-value	1.16094e-205	2.24258e-161	1.37096e-143
Hausman test: test statistics	0.0259011	1.66447	0.848775
P-value	0.872142	0.197	0.356899

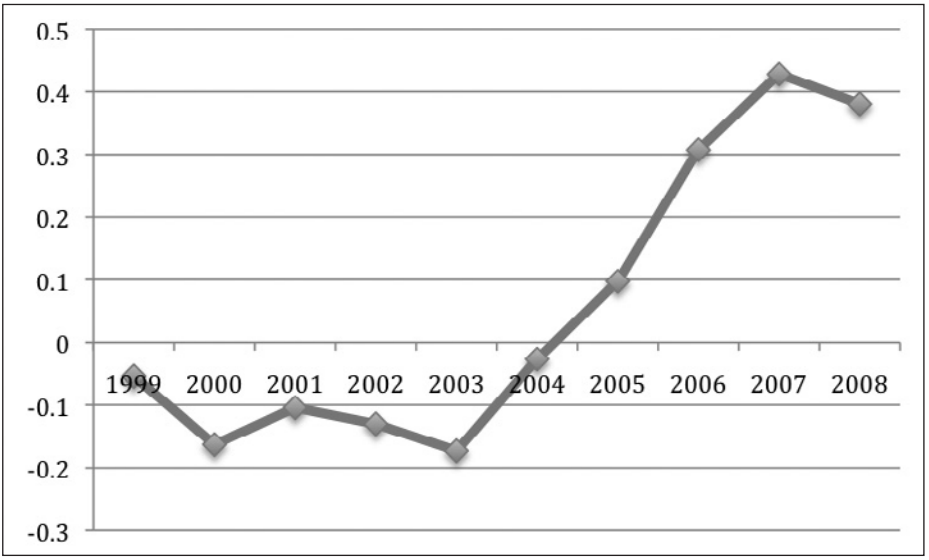
Source: author

Looking at the results of the regressions, we see that there is a EU10 corruption "premium" of -1.77 to -1.93 for the period as a whole, depending on the specification. In other words, the new member states have a significantly higher corruption than their poverty alone would predict. This result on its own does not bode well for the future corruption convergence – even if the new member states economically close with the others, their corruption would remain significantly higher.

However, from a dynamic point of view, the picture is not so bleak. Figure 5 shows the development of the EU10 corruption premium in time by measuring the sum of residuals in the regression for all EU10 countries in individual years. We can see that the average corruption premium for this group steadily improved during the last decade and is now better by 0.4 than the average result over the period. This would lead to the corruption premium for the average EU10 country of -1.4 to -1.5 compared to the EU average by 2007–8. As a group, they have, by 2008, become similar to the "extended" Southern group of EU states in the size of the corruption premium.

Figure 5

Sum of EU10 residuals – changes in the corruption premium over time



Source: author

There is also a significant difference between countries both in static and dynamic terms as shown in Table 5. Estonia and Slovenia have the best performance and have essentially eliminated the corruption premium of being a new member state. In other words, both countries essentially have a corruption level that

reflects their level of economic development. By the same token, Bulgaria and Romania exhibit a negative corruption premium of -0.5 to 0.65, even compared to the EU10 corruption handicap. What this means is that they have a corruption perception index worse by -2.3 to -2.5 points than would be commensurate to their development.

From a dynamic perspective, Latvia and Slovakia have managed to decrease the corruption handicap most strongly during the last decade, but it is worth noting that this has essentially brought them to the EU10 average – so they are cases of laggards catching up rather than leaders. Nonetheless, the improvement is particularly impressive if one considers that it was also achieved in a period of high economic growth for both countries, which raised the baseline value rapidly.

Overall, this disaggregated analysis, together with the findings of the previous sections, raises the issue of how valuable it is to group the new member states into a group for analytical purposes in the future. The difference in the corruption premium between Slovenia and Estonia on one hand, and Bulgaria and Romania on the other, is equal to that between Ireland and Italy.

Table 5

The individual country corruption premium compared to the EU10 average

	Country corruption premium compared to the EU10 average in the 1999–2008 period			**EU10 corruption premium (1999–2008 average)**	**Country corruption premium vis-à-vis EU-25 in 2008**
	1999	2008	Change		
Bulgaria	-0.74	-0.65	0.09	-1.77	-2.42
Czech Republic	-0.18	0.2	0.38	-1.77	-1.57
Estonia	1.39	1.79	0.39	-1.77	0.02
Hungary	0.7	0.44	-0.26	-1.77	-1.33
Latvia	-0.8	0.41	1.21	-1.77	-1.36
Lithuania	-0.44	-0.05	0.39	-1.77	-1.82
Poland	-0.22	0.08	0.29	-1.77	-1.69
Romania	-0.72	-0.5	0.22	-1.77	-2.27
Slovakia	-0.75	0.2	0.95	-1.77	-1.57
Slovenia	1.05	1.58	0.53	-1.77	-0.19

Source: author

Predicting future convergence

In this section, the paper looks at the prospects for future convergence in corruption between the new member states and the rest of Europe. It does so in two different, but complementary ways. Both are based on looking beyond the average values for the EU10 countries and the utilisation of individual country developments. Before moving on to actual analysis, it is worth repeating that the value of this exercise depends on the likelihood that for corruption developments in the new member states, the recent past is a good guide to the future. Its relevance is in the creation of scenarios of differing plausibility for future convergence, rather than in asserting plausibility of one particular scenario.

The simplest way of predicting future developments would be, of course, to forecast developments in the mean CPI for the new and the older member states based on the past 10 years. As we saw in the previous section, between 1999 and 2008, the EU10 mean increased by 0.08 annually while the EU15 mean did not increase. This would imply that if developments continued in the same manner, it would take 30 years for the mean for the groups to equalise. However, the single baseline figure does not make full use of the rich data on the past period. Therefore, a preferable approach is based on examining the frequency of improvements of different magnitudes in the Corruption Perception Index. The results are presented in Table 6. The table is based on an analysis of convergence in corruption with the EU15 mean in individual countries during overlapping 5-year periods. There have been 50 such episodes between 1999 and 2008 (5 in each country – 1999–2004, 2000–2005, 2001–2006, 2002–2007, 2003–2008). We measure the frequency of 5-year episodes with the annual rate of convergence equal or higher than one of the four benchmark values. One is 0 or no convergence; the second is 0.08, the average convergence rate; and then there are two benchmarks for accelerated convergence – double (0.16 per annum) or triple (0.24 per annum) the average convergence rate. These can be seen as representing optimistic scenarios of even more rapid closing of gaps between the old and the new member states.

Examining episodes of faster convergence, we see that over the 1999–2008 period there was an 80 % probability that in a 5-year period, a country would experience some convergence vis-à-vis the old member states. There was 56 % probability that it would experience convergence of at least 0.08 points annually, which would imply 30 years or less to full convergence if the trend remained. Concerning faster convergence, in the past 10 years there was a 42 % probability that the convergence would be at least 0.16 points annually – if the future developed like the past, there would be the same chance for a convergence in 15 years or less. And finally, there was a 12 % probability that the convergence would be at least 0.24 points annually, implying a convergence no longer than 10 years for the future. This probabilistic distribution shows that while some convergence was very likely over a 5-year period, a very rapid convergence (0.24) was equally unlikely. Interestingly,

the probability of a quite rapid convergence (0.16) was not much lower than that of a moderate one, pointing to a relatively high frequency of rapid improvements in the corruption index.

Table 6
Frequency of episodes of faster or slower convergence, EU10 countries, 1999–2008

	Number of 5-year episodes with an annual rate of convergence of at least:			
Rate of convergence	0.24	0.16	0.08	0
Bulgaria	0	1	2	4
Czech Republic	2	3	3	4
Estonia	0	3	4	5
Hungary	0	0	1	2
Latvia	2	4	5	5
Lithuania	0	1	2	4
Poland	0	1	1	2
Romania	0	2	2	4
Slovakia	2	4	4	5
Slovenia	0	2	*4*	*5*
Sum	6	21	28	40
% of all episodes	12	42	56	80
Years to convergence	10	15	30	-

Source: author

The second approach utilises disaggregation of the corruption performance into economic and non-economic elements. The logic of this method is the following. The expected time of convergence is a function of the future per capita income and future corruption premium. The future per capita income can be estimated as a function of the current income level and the expected dynamics of growth. The same is also true for the corruption premium. Therefore, a composite index of the four variables is constructed to assess the expected time of convergence for individual new member states. In the model, the expected dynamics of economic growth and corruption is proxied by the past dynamics of these variables. As a result, the calculation is based on the consideration of four variables:

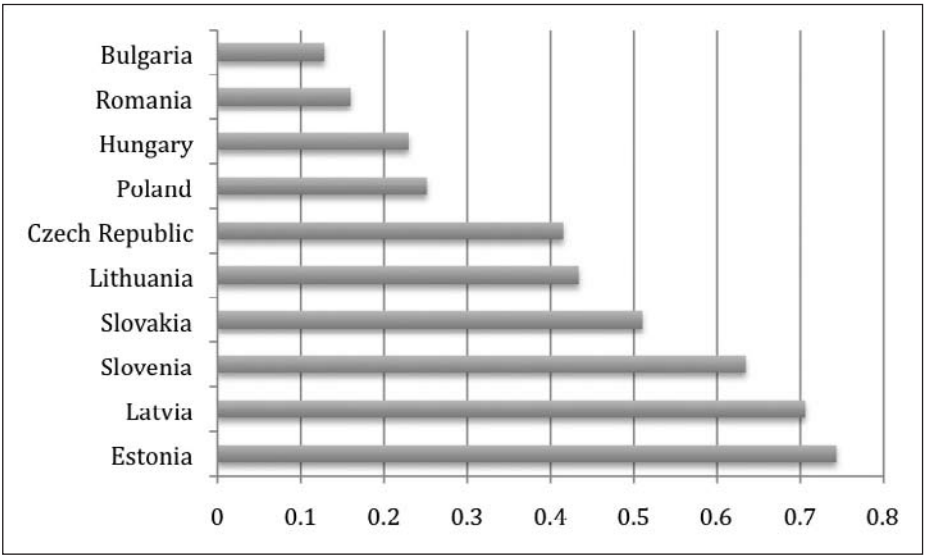
- per capita income (2008)
- economic dynamism (1999–2008 average of real GDP growth)
- corruption premium/handicap compared to the EU10 average (2008)
- dynamics of corruption premium (2008–1999 difference)

To be able to compare them, each of the four variables was normalised to 0–1 range, with 1 being the best performance. An unweighted average of the four variables is the final index, depicted in Figure 6.

We can see that this methodology would predict fastest convergence for Estonia, Latvia, Slovenia and Slovakia, with Lithuania and the Czech Republic in the middle and Poland, Hungary, Romania and Bulgaria as the laggards. For Latvia and Slovakia, this reflects the recent dynamism in economic growth, but also in improvements of the corruption premium when controlling the effect of economic growth. For Estonia and Slovenia, it reflects the achievement of relatively low levels of corruption mixed with either economic dynamism (Estonia) or a high level of income (Slovenia).

Among the laggards, the last two places for Bulgaria and Romania are not surprising given the fact that their absolute corruption levels are the worst from among the new member states and that their relative poverty plays only a small role in explaining this. Rather, it is the fact that even controlling for low income, their corruption performance is the worst in the sample and recent years have not seen much of an improvement. What seems more surprising at first is the low ranking of Hungary, which traditionally belonged to more affluent and less corrupt countries of Central and Eastern Europe. However, both its economic and corruption performance stagnated during the last decade, leading to the conclusion that if such trends continued, it would fall further compared to some of its more dynamic neighbours.

Figure 6
The expected speed of convergence, EU10 countries



Source: author

Overall, the section has introduced ways of predicting future corruption performance that are fairly nuanced, but still based on the past corruption/economic performance data rather than a rigorous theory of corruption dynamics. Nonetheless, the exercise can be instructive in showing that while it is very likely that the new member states will continue to converge, the speed will be quite uneven between individual countries.

Conclusions

The paper used the Transparency International Corruption Perception Index (CPI) to examine the convergence of corruption levels in the new member states with the European Union as a whole. It utilised and further developed techniques designed to examine convergence in income levels between countries. The examination of the data points to a modest rate of convergence in the EU as a whole, with the new member states as a group converging with the old member states at the rate of 0.08 per year during the 1999–2008 period.

The paper also analysed corruption developments at the individual country level, controlling the influence of per capita income. The model reveals that the new member states have corruption levels higher than their per capita income would predict and face a significant corruption handicap. However, there are large differences between countries, with Slovenia and Estonia showing no such handicap and Latvia and Slovakia managing to make the most significant improvements in theirs.

Based on the analysis, the paper constructs baseline predictions of future developments. For the new member states as a group, the analysis predicts 80 % of some further convergence, with 56 % probability of convergence at past speed and a 42 % probability of convergence that would be twice as fast as the average until now. Using a combination of static and dynamic, economic and corruption data, Estonia, Latvia, Slovakia and Slovenia are predicted to converge the fastest with the EU average in corruption if the previous performance was the basis for the future. At the same time, Bulgaria, Hungary and Romania can be expected to be the slowest in terms of convergence.

Overall, the paper raises the issue of the use of 'new member states' as a means of distinction with regard to corruption. It shows that, when controlling for income, the distance between the best performing and the worst performing new member states is nearly as large as that between Northern and Southern Europe.

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What are the Changes in the "Lithuanian Map of Corruption"?[1]

Jolanta Aleknevičienė

The Lithuanian Map of Corruption[2] (Map of Corruption) has been measured since 2001. The Map of Corruption is the first complex sociological research of corruption in Lithuania, which indicates that the extent of corruption can be measured by applying both qualitative and quantitative sociological methods.[3] The Map of Corruption is based on national surveys and expert analyses and examines corruption through the views of various social groups, public perception of particular institutions, the geographic incidence of corruption, public experience of corruption and evaluates the anti-corruption potential of the Lithuanian public. Six such maps have already been published in Lithuania.

The latest Map of Corruption 2008[4] is notable for its conciseness, while still allowing for data comparison with previous surveys. This Map draws from different social groups – the general public, business leaders, municipal and government officials, whilst also featuring a psycho-graphic analysis that can be used for targeted anti-corruption education.

1 This article was first published in "Tracking Corruption in Lithuania" (ed. Sergej Muravjov), Transparency International Lithuanian Chapter, Vilnius: Eugrimas, 2009. The article is based on the report "Lithuanian Map of Corruption 2008" prepared by Prof. Aleksandras Dobryninas (see: http://www.transparency.lt/new/images/lt_map_of_corruption_2008_en.pdf, accessed 2009 05 20).

2 "Lithuanian Map of Corruption" is the first complex sociological research of corruption in Lithuania, which indicates that the extent of corruption can be measured applying both quantitative and qualitative sociological methods.

3 For detailed explanation of the research methodology, see: Ališauskienė, R., Dobryninas, A., Žilinskienė, L. 2005. Lietuvos korupcijos žemėlapis 2001–2004 [Lithuanian Map of Corruption 2001–2004]. Vilnius: Eugrimas.

4 The research was organized and implemented by Transparency International Lithuanian Chapter (TILC) together with market research companies RAIT (survey of state and municipality officers), VILMORUS (survey of the Lithuania public) and VISEO (survey of business leaders). Focused discusions were organized by TILC. The head of the research – professor of Vilnius University Aleksandras Dobryninas. The research was financed by the Embassy of the Kingdom of the Netherlands in Lithuania. The research was conducted from September 2008 until February 2009. For more information visit www.transparency.lt .

The Lithuanian Map of Corruption was greeted with varying expectations. Following the presentation of the data, the Lithuanian media greeted the report with the following headlines: "Lithuanians have corruption in their blood", "Corruption continues to spread in Lithuania", "Lithuanian hospitals are the home of corruption", "The professionals of corruption – Highway police and Regitra (Motor Vehicle Registration Centre)", "Sociologists: The level of corruption in Lithuania remains constant, but the public willingness to fight it grows", "The roots of corruption are deep, and its fruit tarnishes the country's image". From these headlines, most would deduct that there is no good news – perhaps because it is much easier "to sell" bad news.

At the same time, institutions fighting against corruption and responsible for corruption prevention and control are most likely expected to be able to dig out the details from the report to prove their good work. There is some good news in there as well.

This article seeks to examine the Lithuanian Map of Corruption, how it has changed and what it looks like now. To achieve this we have used the results from the "Lithuanian Map of Corruption 2001–2008" and other international corruption surveys. Particular attention was paid to the findings in the latest Map of Corruption.

What do people in Lithuania think about corruption?

Corruption[5] has been regarded as a particularly serious problem and significant barrier to public life and business from 2001 (see Annex 1). The data of the Map of Corruption 2008 study indicates that corruption remains one of the most serious problems in Lithuania[6]. The general public of Lithuania rate corruption the third largest problem in the country; municipal and government officials rate it the largest problem; while business leaders – as the fourth largest problem. Other problems considered very important are the economic situation and crisis, unemployment, high taxes, the healthcare system, governance problems and others.

What factors promote corruption and corrupt behaviour?

Even though it is often claimed that corruption is a legacy of Soviet occupation, or some national Lithuanian characteristic, this study did not confirm that.

Participants in the study thought corruption is more likely to be associated with a decline in public morality, a lack of democratic administration and an established culture of democratic governance in Lithuania.

5 The given definition of the corruption was "abuse of public power pursuing personal gain".

6 Participants of the research were asked to point five main problems in Lithuania today.

An additional factor which promotes the spread of corruption was thought to be the fact that corrupt individuals are not ashamed of their actions and have no fear of sanctions, while at the same time the public is lenient in their perception of corrupt individuals. These factors were mentioned by all respondent groups (see Annex 2). A law enforcement expert in a study focus group said: "I never met anyone that felt any shame in taking a bribe; the only regrets have been that they got caught." This lack of any stigma associated with corruption means there is very little social control of the problem, i.e. there is no public reaction forcing people to comply with generally accepted norms.

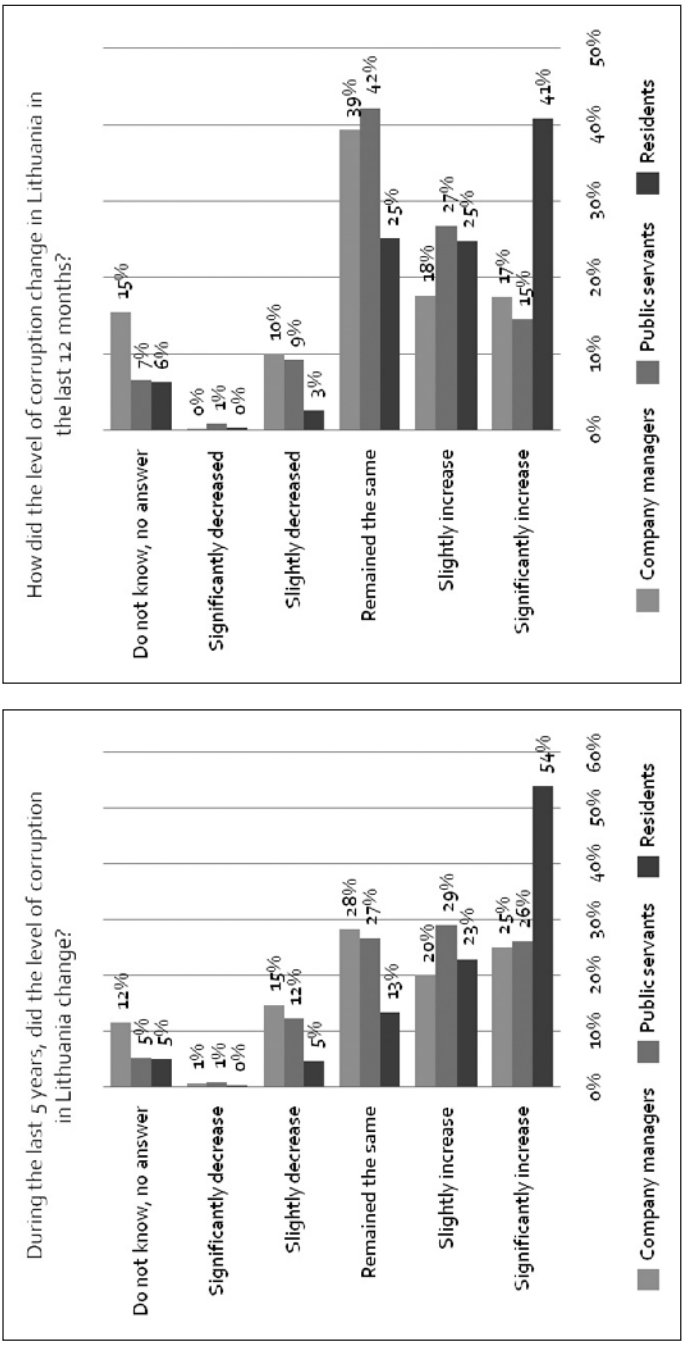
The study participants were asked to assess the levels of corruption in Lithuania during the last five years, and then in the past 12 months. The general public held the bleakest views believing that corruption has partially or significantly increased (see Figure 1). Public officials and business representatives thought that the level of corruption had not changed. From 2005, the general public tend to see corruption everywhere and as always growing, while business people believe it is in decline (see Annex 3).

The influence of the media on the general opinion on the level of corruption in Lithuania is undeniable. More than half of the general public admit they usually learn of corruption through the media. In the recent parliamentary elections there was much public discussion about corruption as a social evil. This could have further strengthened the perception of how widespread corruption is in the eyes of the public.

The answers of the public to the question of whether they thought "*each of the authorities mentioned, institutions or other organisations are very corrupt, most likely corrupt, most likely not corrupt, or fully corrupt*" came as no surprise. Among the five most corrupt institutions in all three surveys, the most frequently mentioned were parliament, the government and political parties. Parliament takes first place among the most corrupt institutions according to the general public and officials, while business leaders gave first place to the municipalities. The court system received the second most negative evaluation from the general public, but was in third place according to officials (see Annex 4).

It has to be understood that the survey reflects the perception of participants and not the reality of the situation. In addition, the opinion about corruption is directly related to the confidence and trust in these institutions, so this question is worthy of attention. Thus, the Seimas, the government and political parties have the least public confidence among the public, and study participants considered them as evil, i.e. very corrupt. Certainly, such a negative assessment of these institutions and their work can lead to public opposition rather than support for their work.

Figure 1
View of the extent of corruption



Source: Transparency International Lithuanian Chapter/RAIT/Vilmorus/Viseo
Lithuanian Corruption Map 2008
General Public N = 1050, Municipal and Government Officials N = 509, Business Leaders N = 500.

Another question of the Map of Corruption sought to establish the five most corrupt procedures in Lithuania. The most frequently referred-to procedure was issuing of permits for construction and reconstruction, as well as alterations of land usage. The general public and officials also mentioned restitution of property rights in the list of top five; the general public and business people – the allocation of state jobs; public officials and business representatives – public procurement (see Annex 5).

It can be assumed that the responses may partially be the result of media reports and public discussion. However, when it comes to business leaders, they are more likely to base their opinions on direct experience with corruption.

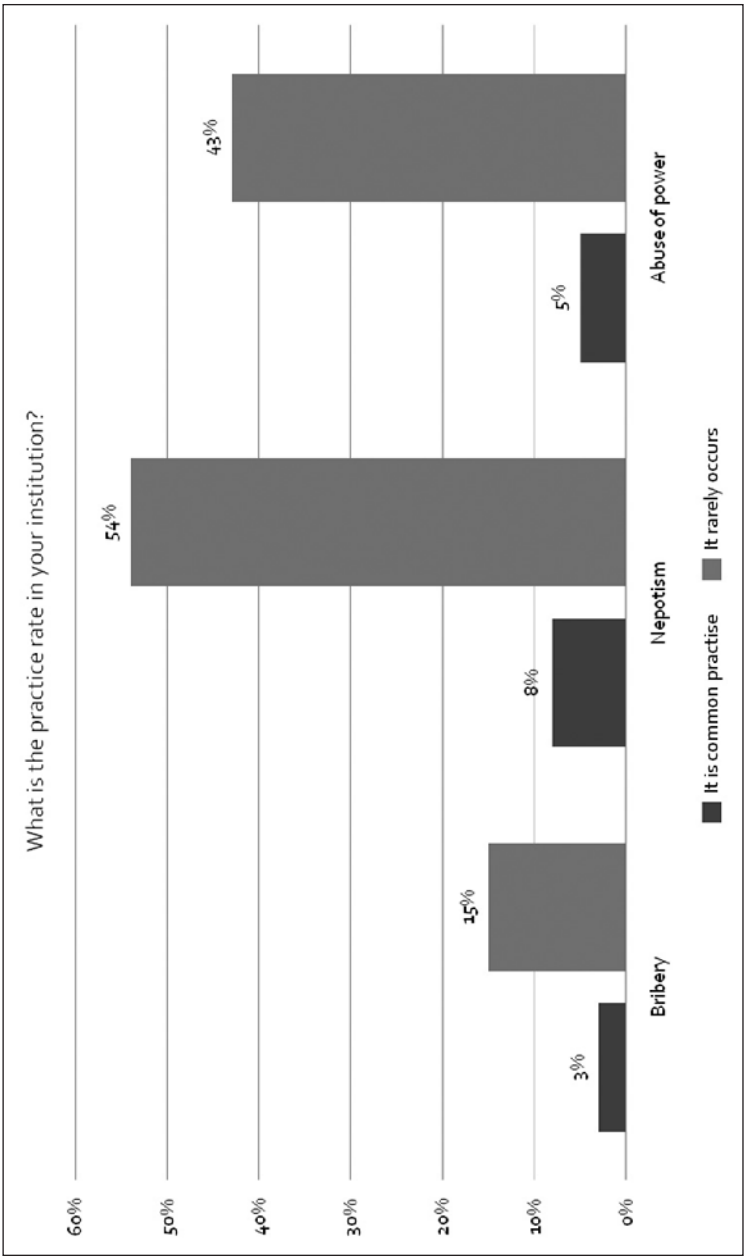
The other question researchers asked was – *What are the most prevalent forms of corruption in Lithuania?* According to the general public, the most popular forms of corruption are bribery and abuse of official office. Business leaders thought it was abuse of office, nepotism (promoting relatives and friends), and bribery, while public officials said it was nepotism.

When it comes to indirect experience with corruption by public servants, it is worth noting that half of the officials thought nepotism was sometimes a problem and less than a tenth that it was very prevalent (see Figure 2). Abuse of office was mentioned by 48 % of respondents, and bribery was mentioned by 18 %. This is the first time nepotism appeared so strongly in the results of the Map of Corruption. Such results may be attributed to the fact that government and municipal officials were participating in the survey for the first time and nepotism most often occurs in those institutions.

Nepotism enhances a sense of social injustice and weakens the public sector, when your "own" people are employed instead of skilled workers, thus undermining confidence in public service.

To what extent are politicians, civil servants, business leaders, residents, or even you complicit in corruption? The vast majority of the general public, business leaders and public servants say that politicians are most responsible for corruption in the country, while half of all respondents blame business people. The study participants blamed themselves or their own environment the least (see Annex 6). Comparing the general public and business people's opinions from 2008 and 2007, in 2008 more of them blame corruption on politicians and public officials. According to a law enforcement expert, "Political corruption creates a background which is followed by society. Society observes what is going on in parliament and if they do not see any responsibility from politicians and the government can do anything it wants, then the public says: 'if they can do that, why can't I do the same?'"

Figure 2
Indirect officials experience of corruption



Source: Transparency International Lithuanian Chapter/RAIT Lithuanian Corruption Map 2008. N = 509

What is the Lithuanian public's experience of bribery?

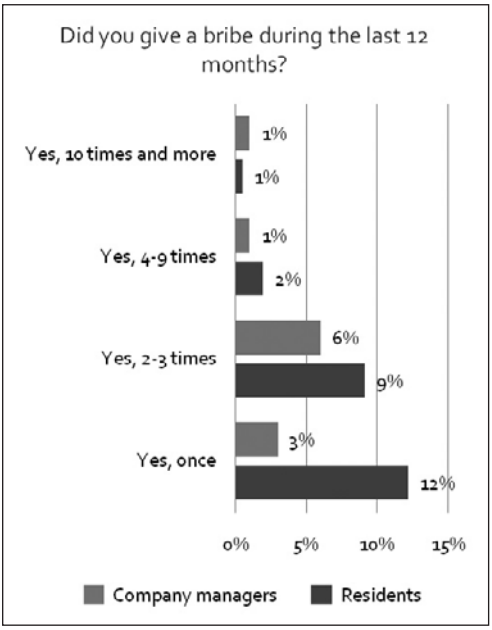
The vast majority of the general public, business leaders and public officials agree that bribes help. Comparing data from the last two years we see a decrease in numbers in the general public (from 85 % in 2007 to 75 % in 2008) and business leaders (from 78 % to 75 %) supporting the view that bribes help. How do we evaluate these changes? Looking at it sociologically, one year is not long enough to confirm a positive (i.e., decreasing) trend, particularly as the studies were conducted by different public opinion research companies. Looking at the trends since 2002, we see that the views of both the general public and business leaders have not changed much since 2002, when 75 % of the general public and 76 % of business leaders thought that a bribe helps – which is almost the same as in 2008 (see Annex 7). It should also be noted that 68 % of public officials in 2008 thought that bribes helped. Notably, this is the lowest percentage among the three groups of study respondents.

Another question the Map of Corruption sought to answer was whether people are prepared to give a bribe – *Would you give a bribe if you needed to solve a very important issue, and in the solution to this problem a bribe is expected?* Less than half (42 %) of public officials, about half of the general public (51 %) and about two-thirds (64 %) of business leaders would. It was found that people with a higher income, of working age (30–59 years), living in larger cities, and self-employed would more likely give a bribe, but pensioners, students and schoolchildren would not. The percentage of the general public who would give a bribe in the last five Lithuanian Map of Corruption studies remained virtually unchanged. The response of business leaders on this matter fluctuated somewhat over this time – since 2002 we see that slightly less business leaders are prepared to give a bribe (see Annex 8). Despite this, there is still a clear indication that there is a strong tolerance for corruption in Lithuania. In addition, one may ask: Why are we only asking about bribery and not other forms of corruption such as nepotism, abuse of office, etc. Of course, such forms of corruption can also be used, but bribery is fairly well understood and "visible" in society, and therefore may be measurable sociologically and legally.

Direct experience of bribery was investigated using the following questions: *during the last 5 years or 12 months did you give a bribe?* Over the past 5 years 44 % of the general public and 23 % of business leaders gave a bribe at least once. Observing the dynamics of bribe-giving since 2002 it can be concluded that among the general public the trend is almost constant, while among business leaders there has been a significant decrease. The analysis of the bribing practices of the general public and business people in the last 12 months showed a similar trend. Over the past 12 months a quarter of the general public (24 %) and a tenth of business people (11 %) gave a bribe. From 2005, business leaders who gave a bribe in the last year decreased by half, while in the general public the figures remained almost the same (see Figure 3). This raises the question of whether business representatives bribe less, or are they less inclined to admit to bribery? It should be noted that in 2008 the

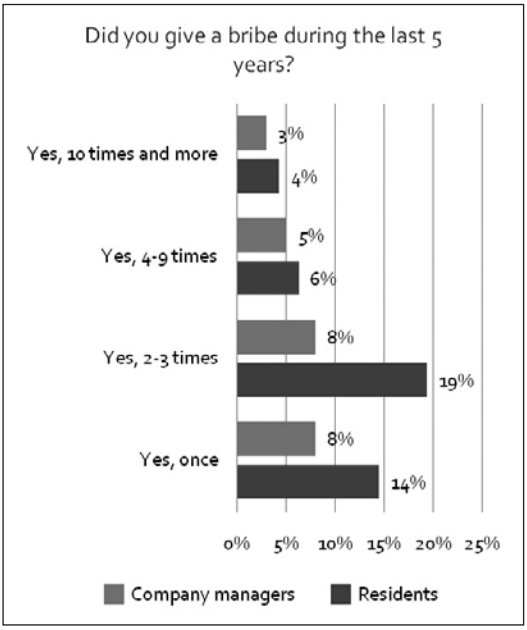
business leaders were interviewed by telephone, which could lead to lower admittance of bribery. On the other hand, the fact that business sector representatives are less inclined to admit to bribery may mean it is increasingly becoming a shameful and "untrendy" action. At the same time however, we must also remember that there are other forms of corruption to consider.

Figure 3
In the last 12 months did you give a bribe?
Answer – at least once / General Public, Business Leaders



Source: Transparency International Lithuanian Chapter/Vilmorus/Viseo Lithuanian Map of Corruption 2008. General Public N = 1050, Business Leaders N = 500.

In the last 5 years did you give a bribe?
Answer – at least once / General Public, Business Leaders



Source: Transparency International Lithuanian Chapter/Vilmorus/Viseo
Lithuanian Map of Corruption 2008. General Public N = 1050, Business Leaders N = 500.

Looking at *the geography of bribery* we see that almost a third (28 %) of bribes occur in the capital of Vilnius and the Vilnius district, and about a fifth (22 %) in the second largest city Kaunas and Kaunas district. The smallest number of bribes is paid in Tauragė and Marijampolė and their districts (see Annex 9).

One of the most pressing questions for all anti-corruption programmes is *why did you give a bribe*? Both the general public and business people usually give bribes because they believe this will help to quickly resolve an issue. About a third of the population gave bribes because they wanted to thank someone (29 %) and 29 % also thought that without a bribe their problem would be difficult to solve. Then 26 % gave bribes because they thought it was the normal thing to do. More than a third (36 %) of business leaders mentioned that a bribe was "demanded from the person who was in a position to solve their problem."

Why didn't you give a bribe? - was asked of those who did not give bribes. Most of the general public (46 %) and business leaders 48 %) did not give a bribe because they were not required to. More than a third (35 %) of the general public also noted that they managed to resolve their issues without a bribe, while nearly a fifth (18 %) confessed they did not have the money. A quarter of the general public and a third

of business leaders said that giving a bribe was against their beliefs. In 2002, 12 % of the general public and 18 % of business leaders made the same claim. In both cases, we observe a growing number of people who claim that they did not give a bribe because of their beliefs. Among the general public these were more often people with higher education, higher income and city residents. It is worthwhile drawing attention to the answer that indicates a respondent's respect for the law – "*did not give a bribe because it is against the law*" – that was chosen only by 6 % of the general public and 6 % of the business people.

Such answers to questions about giving and not giving of bribes signals a need for better public administration in Lithuania. It is obvious that people give bribes because they cannot quickly resolve their own problems and say that it is important to avoid situations where a bribe could be asked for.

Which institutions are most damaged by corruption? The participants were asked *representatives of which institutions they had paid a bribe to*. The general public most often paid a bribe in various health sector institutions and to the police, while business leaders – town and district municipalities and county administrations. In an analysis of trends in the general public bribery practices[7] we see that the institutions that lead in requiring bribes have not changed over the years. National hospitals and clinics "lead" the way, with 56 out of 100 people reportedly having paid a bribe in the last 5 years. 51 of 100 people have given a bribe to the highway police[8]; 44 of 100 have done so in smaller regional hospitals. Every third person who had dealings with the local and district land authorities confessed to giving a bribe. Every fourth person that has dealt with town and district municipalities gave a bribe. One in five used bribery in medical clinics and the Regitra (motor vehicle registration centre) (see Figure 4).

According to the general public, they often give a bribe because the other party expects it from you, i.e. when you are being extorted to bribe. Bribe extortion is most frequently reported in dealings with the highway police (62 of 100). However, when it comes to medical institutions, the residents themselves initiate the bribes. Finally, when it comes to the effectiveness of bribe-giving, it is most effective in dealing with the highway police and Regitra. The data shows that everyone who gave a bribe to these institutions said that they successfully resolved their problem. "The high efficiency of bribery supports the widespread opinion that bribes help solve problems, is based on fact, and means that people are willing to pay significant amounts for these 'illegal' solutions (Ališauskienė, Dobryninas, Žilinskienė 2005; 28).

7 Bribery experience in institutions is easier to interpret by introducing so-called bribery indices: demanding, giving, effectiveness and initiative. More information about bribery indices – Ališauskienė, R., Dobryninas, A., Žilinskienė, L. 2005. Lietuvos korupcijos žemėlapis 2001–2004 [Lithuanian Map of Corruption 2001–2004]. Vilnius: Eugrimas.

8 Highway policing is one of the police functions. The reason of such separation in the Map of Corruption is due to its topicality: according to the Lithuanian Map of Corruption, from 2001 onwards the highway police department is one of the most corrupt institutions in Lithuania.

Figure 4
General public bribery index (in the last 5 years)
Only institutions with over 100 respondents

	Bribe required index	Bribe giving index	Bribe efficiency index	Initiative index
Cities and municipalities (N=239)	0,36	0,24	0,95	0,12
State Tax Inspectorate (N=144)	0,07	0,05	0,86	0,02
County and district land offices (N=132)	**0,49**	0,30	0,80	0,19
State medical institutions (N=402)	**0,46**	0,36	0,88	0,10
Registers Centre (N=136)	0,10	0,08	0,82	0,02
Registers Centre (N=250)	0,11	0,08	0,95	0,03
Smaller medical centres (N=233)	0,14	0,09	0,82	0,05
Health clinics (N=743)	0,28	0,22	0,93	0,06
Urban and regional hospitals (N=480)	0,50	**0,44**	0,92	0,06
State hospitals and clinics (N=272)	**0,55**	**0,56**	0,9	-0,01
REGITRA (N=207)	0,25	0,19	**1**	0,06
Highway police (N=223)	**0,62**	**0,51**	**1**	0,12
Schools (N=213)	0,10	0,08	0,88	0,03

Source: Transparency International Lithuanian Chapter/Vilmorus
Lithuanian Map of Corruption 2008. N = 1050.

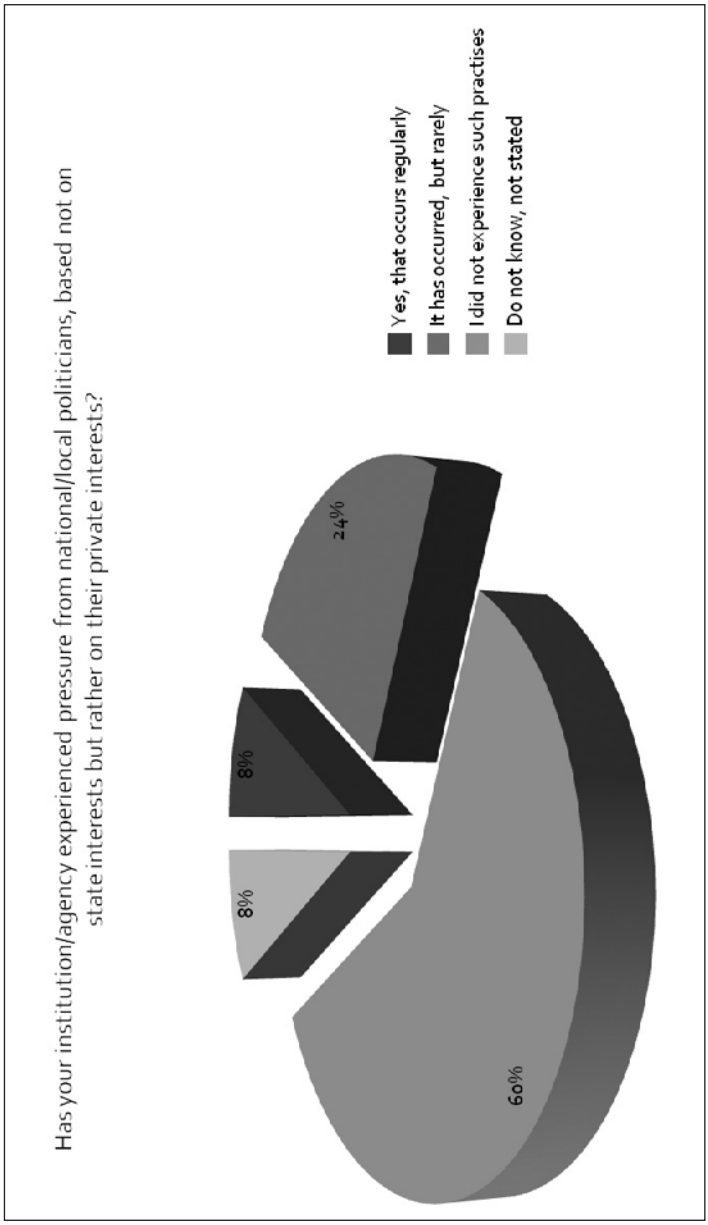
Looking at bribery indices, we see that from 2005 to 2008 (see Annex 10) there was a slight increase in the bribe extortion and bribe effectiveness indices. An increasing number of people feel they are expected to pay a bribe in national hospitals and clinics, regional hospitals, city and district municipalities, i.e. bribery is becoming more effective, i.e. helps solve problems, particularly in dealings with the police and in national hospitals and clinics. From 2005 to 2008, bribery indices in various institutions changed little. Meanwhile, it may be risky to compare the data of 2007 with that of 2008, because of the short time-span between the two studies.

A separate question was asked of public and municipal officials: *In your institution/body did you feel any pressure from national or local level politicians the aim of which was not public but their private interests?*

About a quarter of the officials surveyed acknowledged that their bodies had faced political pressure which pursued the private interests of politicians. Less than one-tenth stated that such cases were frequent. So, about a third of all surveyed

public officials confirmed that politicians interfered in the work of public servants (see Figure 5).

Figure 5
Officials and political interference in their work



Source: Transparency International Lithuanian Chapter/RAIT Lithuanian Corruption Map 2008. N = 509

What is the anti-corruption potential in Lithuania?

The question *"What measures would be most effective in reducing corruption?"* is relevant to authorities, business, and of course, the public intolerant of corruption. This question was presented to all study participants. It should be noted that the general public, officials and business leaders all stressed the need to strengthen sanctions against corrupt behaviour. Public officials and business leaders also noted the importance of such measures as raising public moral standards and the use of anti-corruption expertise. About one-third of business people pointed to the need to strengthen administrative responsibility for corrupt behaviour (33 %), to increase publicity in the media (33 %), and to make the selection of candidates to the civil service stricter (27 %). There are no significant changes in the general public responses from 2004 to 2008. Moreover, the vast majority of survey participants agreed that the problem will not go away by itself (see Annexes 11A and 11B).

Among the institutions working to curb corruption in Lithuania, only the media was evaluated positively. The parliament, the government and political parties received particularly low scores. The general public also positively considered the work of the Special Investigation Service, Financial Crimes Investigation Service, and the State Security Department (see Annexes 12A, 12B, 12C).

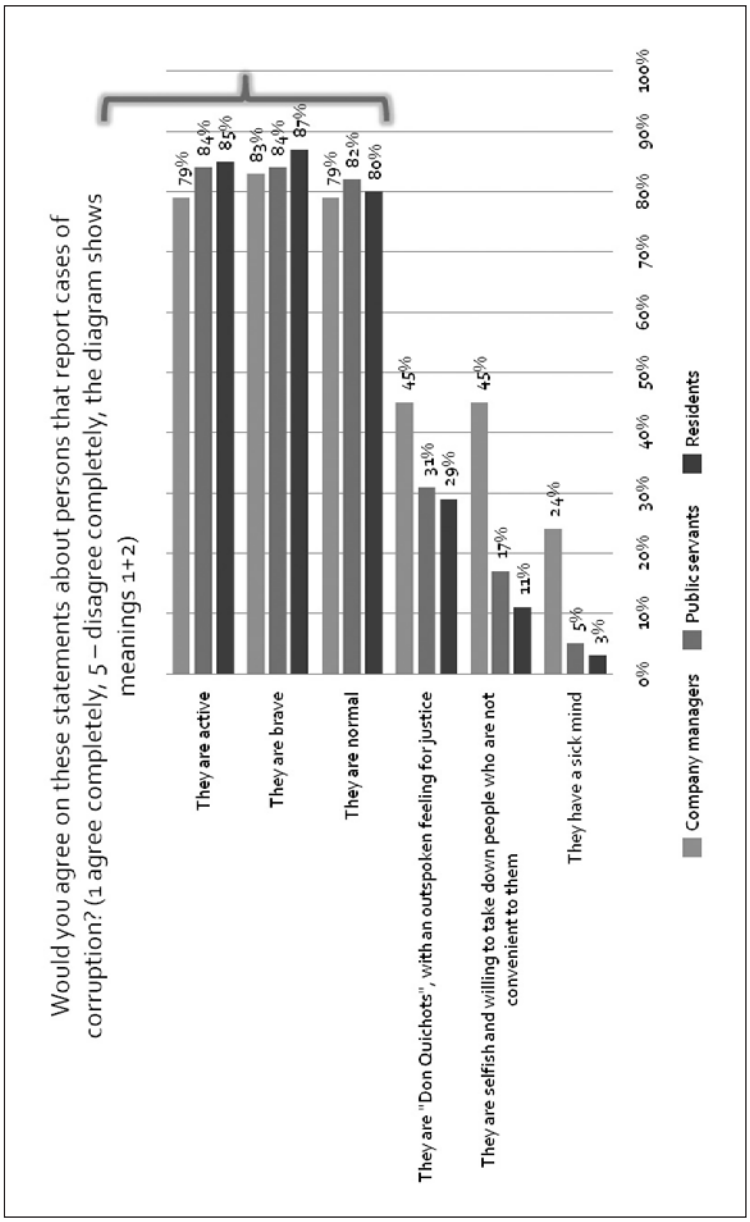
Would you like to participate in anti-corruption activities? About one-third of business leaders (35 %), 28 % of public officials, and about one-fifth of the general public (22 %) would take part in anti-corruption activities. It should be noted that since 2005, the percentage of general public and business people ready to take part in such work has increased.

Talking of anti-corruption potential, it is essential to note the importance of whistleblowers – citizens who report cases of corruption. One could also call them "people of change" (Juozapavičius 2009). Sometimes it "is sufficient for only a few people to refuse to do what everybody else does or to report such actions". In Lithuania, there is no legal whistleblower protection that would encourage the reporting of corruption. Meanwhile, all Lithuanian Map of Corruption respondents provided a positive evaluation of people who report corruption (whistleblowers). A vast majority of the people surveyed stated that whistleblowing is normal behaviour, undertaken by brave and democratically mature people (see Figure 6).

What is the psychographic profile of the study participants?

In 2008, for the first time, the Lithuanian Map of Corruption research allowed the formation of a psychographic profile of survey participants. All study participants were asked to select several statements that described their character best. The respondents were divided into several groups: the optimists and pessimists, innovators and conformists. The analysis shows that in the past five years, optimists

Figure 6
Evaluation of corruption whistleblowers



Source: Transparency International Lithuanian Chapter/RAIT/Vilmorus/Viseo
The Lithuanian Map of Corruption 2008.
General Public N = 1050, Municipal and Government Officials N = 509, Business Leaders N = 500.

had paid bribes less often than pessimists, and more often than pessimists give a bribe because it is considered normal practice and more often than pessimists did not give a bribe because in the past they solved their problems without resorting to such practice. Pessimists more often than optimists believe that over the past 5 years the scale of corruption has increased significantly, and more often than optimists did not offer a bribe because they did not know how to. Innovators were less likely to bribe than conformists. They also more often than conformists both did not give a bribe because it was against their beliefs and expressed a willingness to participate in anti-corruption activities. Meanwhile, conformists give bribes more often than innovators to resolve their problems quicker and to reward the people that helped them.

Further on, the survey participants were divided into the following groups: the innovator optimist, the optimist conformist, the innovator pessimist, the pessimist conformist (see Figure 7).

Figure 7

Optimist Innovator 	**Optimist Conformist** 	**Pessimist Innovator** 	**Pessimist Conformist** 
Gave fewer bribes than others over the past five years	More often than others justify bribery as a way of thanking someone who helped solve a problem	More often than others think that it is much harder to resolve a problem without a bribe	More often than others think that the level of corruption has increased over the past five years
More often than others did not give a bribe due to their beliefs	Most often likely to offer a bribe in order to resolve an important issue	More often than others have given a bribe over the last five years	More often than others are likely to use a bribe to solve an important problem
More likely to participate in anti-corruption activities			More often than others do not have enough money to pay a bribe
			Less likely than others to take part in any anti-corruption activities

Source: Transparency International Lithuanian Chapter/RAIT/Vilmorus/VISEO

Lithuanian Map of Corruption 2008. General public N = 1050, Government and Municipal Officials N = 509, Business Leaders N = 500.

We see that optimist innovators are least prone to bribe. The psychographic profile of the study participants is also important for other reasons. Such data can be used in various anti-corruption education measures. For instance, optimist innovators, which say that giving a bribe is contrary to their beliefs, would be the quickest to absorb the message that bribery is unethical and demeaning. Meanwhile, pessimist conformists, who more often than others lack money to pay a bribe, would be more susceptible to the message that money can be used in a more appropriate and noble way.

In Figure 7, the references to "happy" and "sad", "big-cheeked" and "thin-cheeked" facial expressions reflect the different characters of people and can adequately aid the development of social advertising or other anti-corruption measures and implementation of further corruption diagnostic tests.

How do international organisations evaluate corruption and anti-corruption activities in Lithuania?

Research on corruption and anti-corruption activities carried out by international organisations complements national research, increases the possibilities to compare and interpret available data between countries. Such research is essentially a different tool that can be used for the same purpose, namely to understand and explain the situation in Lithuania.

According to the international anti-corruption organisation Transparency International Corruption Perceptions Index (CPI), in 2008, Lithuania received 4.6 points and occupied 58th place from the 180 countries analysed. This comprehensive survey provides a panoramic view of the various countries and their efforts to control corruption by evaluating the situation with one number.

In the CPI scale, 0 means an absolutely corrupt country and 10 a very transparent country[9]. The research draws from local and international experts along with journalists and business leaders. During the last ten years, Lithuania's CPI has changed very little. In 2001 Lithuania's score of 4.8 has remained essentially the same (see Annex 13). The CPI founder and permanent compiler Prof. Dr. Johann Graf

9 Corruption Perception Index (CPI) is a derivative indicator which allows ranking countries according the prevalence of corruption among state servants and politicians. The CPI gathers data from sources that span the past two years. For CPI 2008, this includes surveys from 2008 and 2007. CPI 2008 was calculated using data from 13 sources originated from 11 independent institutions. In 2008, these were the following sources: Asian Development Bank, African Development Bank, Bertelsmann Transformation Index, Country Policy and Institutional Assessment, Economist Intelligence Unit, Freedom House, Global Insight and Merchant International Group. Additional sources are resident business leaders evaluating their own country; in the CPI 2008, this consists of the following sources: IMD, Political and Economic Risk Consultancy, and the World Economic Forum. To determine the mean value for a country, standardisation is carried out via a technique of matching percentiles.

Lambsdorff of Passau University, Germany, points out that the CPI should change at least 0.5 in order to indicate any meaningful anti-corruption policy changes.

Lithuania has never broken the 5-point barrier, and until we do, Lithuania will not be considered capable of controlling corruption. Among the new European Union countries, the only countries with a worse CPI than Lithuania are Romania (3.8) and Bulgaria (3.6). After a long period of trailing behind, Poland (4.6) now matches Lithuania, while Latvia moved ahead with a score of 5.0.

The international human rights organisation "Freedom House" also recently published its report on democratic development in central and eastern European countries *"Nations in Transit 2008"*. The overall index of democracy in Lithuania this year slightly improved but was minimal – changing from 2.29 in 2007 to 2.25 points in 2008, with 1 being the highest and 7 the lowest score.

This index is calculated using seven criteria, with the level of corruption in Lithuania raising a lot of concern. Scores in corruption slightly improved from 4 in 2007 to 3.75 in 2008. However, Lithuania had already achieved that level in 1999, 2001, 2002 and 2005. The report on corruption was conducted by Lithuanian commentators. Among the ten new European Union countries the Lithuanian score comes as one of the worst, with only Romania (with the score of 4.00) being worse off. Although the 2007 Freedom House report has been criticised (Girnius 2007; Aleknevičienė 2007), it remains one of the tools for constructing a 'Lithuanian reality' in an international context.

Another international organisation "Global Integrity" has published its *"Global Integrity Report 2008"*, which evaluated the availability, efficiency and accessibility of anti-corruption mechanisms in Lithuania. These evaluations were drawn from a standardised questionnaire, completed by local corruption experts, journalists, scientists, and consultants from related fields of expertise. The report consists of six categories, one of which includes the evaluation of national anti-corruption activities and the observance of the rule of law. Evaluations are presented from 0 to 100, where 0 means "very bad", and 100 – "excellent". Lithuanian anti-corruption activities and the observance of law was evaluated well (82 points), with the Lithuanian anti-corruption legal framework rated with the highest score of 100 points and criminal prosecution – the lowest score of 65 points. In comparison, anti-corruption activities and the observance of law in Poland was assessed with a score of 91, in Bulgaria –88, Hungary - 72. The "Global Integrity" study covered 58 countries. Lithuania was included in this study for the first time.

To sum up, the latest international research portrays Lithuania as a country with poor or only mediocre results in curbing and controlling corruption that has changed little over the past five years.

Summary

Reviewing the *"Lithuanian Map of Corruption 2001–2008"*, and the results of recent international research into anti-corruption activities which included Lithuania, the conclusion is that the Lithuanian Map of Corruption has changed only slightly. While anti-corruption potential has gradually increased, public attitude and experience testifies that there remains a tolerance for corruption.

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Corruption and Anti-Corruption Tools in the Slovenian Political System

Miro Hacek

Corruption is, in all societies, perceived as a social pathology that brings about great material and moral damage and is a threat to the continual development of societies. Especially in those countries with a newly consolidated democracy, where democracy has just recently taken place and market economy has only started to develop, the phenomena of corruption must be treated with much needed attention. Widespread corruption can bring about mistrust in a state's institutions and disrespectful relations of citizens towards the law. It is therefore necessary that all means are explored to set up an efficient system, which would prevent and suppress corruption. Slovenia is also a county with only two decades of democratic traditions, where the anti-corruption system is still being established (Dobovsek, 2002). In our paper we are going to analyse the problem of corruption in Slovenia. The analysis itself will be divided into several sections in which we are going to discuss the problem of the definition of corruption, the implementation of anti-corruption tools and solutions, and the results of Slovenia's public opinion research on corruption. We will emphasise that Slovenia, despite being amongst the most successful countries with a stable, consolidated democracy, is still building up effective tools for an anti-corruption struggle and corruption is still being perceived as one of the most important unsolved problems in society.

1. The consolidation of Slovenian democracy

Before we can even discuss democratic consolidation, at least three minimal conditions must be fulfilled. The first is the existence of a state, because otherwise there can be no talk of free elections or human rights. The second condition is that no democracy can be consolidated before the process of democratic transition has ended. A necessary, but also not a sufficient prerequisite to complete the democratic transition is free, general and democratic elections. In many cases of free, general and democratic elections it became obvious that governments *de facto* lacked real decision-making power, which in spite of the institute of democratic elections, remained

in the hands of the former rulers or other powers. The third condition of democratic consolidation is therefore the necessity of democratic rule. If democratically elected authorities violate the constitution, restrict human rights, interfere with the work of other independent authorities and do not govern within the borders of the rule of law, then we cannot talk of a democratic regime. It may be concluded that only democracies can be consolidated democracies (Linz and Stepan, 1996). If we are to talk about a consolidated democracy, then we must also fulfil other conditions apart from those mentioned above. Linz and Stepan list five more interlinked prerequisites: economic consolidation, the rule of law, the existence of an organised civil society, an efficient state bureaucracy and the relative autonomy of political society (Linz and Stepan, 1996: 14–33).

We can measure the success of democratic transition and democratic consolidation through various indexes; one of the most commonly used is the Democracy Index, measured annually by an organisation called *Freedom House* and presented in a special report –*Nations in Transit*. The Democracy Index is composed of seven indicators. It includes estimates of election systems, civil society, free media, democratic government (national and local levels), independence of the judiciary, and for the purposes of our paper most interestingly, the spread of corruption. Every indicator is measured on a scale from 1 to 7, where 1 represents the highest level of the democratic process and 7 represents the lowest level. *Nations in Transit* encompasses all former socialist countries, including the successor states of the Soviet Union. These countries are divided into five groups. The highest group includes those countries with the best ratings in the Democracy Index. In the 2006 Report[1], the member countries of this group were Slovenia, Estonia, Slovakia, Hungary, Latvia, Poland, Lithuania, Czech Republic and Bulgaria; in the 2009 Report[2] Bulgaria dropped into the second group of Semi-consolidated democracies.

Table 1
Democracy Index 2009 (2006)

CONSOLIDATED DEMOCRACIES (1.00 to 2.99)	
Slovenia	1.93 (1.75)
Estonia	1.93 (1.96)
Latvia	2.18 (2.07)
Czech Republic	2.18 (2.25)
Poland	2.25 (2.14)
Lithuania	2.29 (2.21)
Hungary	2.29 (2.00)
Slovakia	2.46 (1.96)

1 Source: Freedom House, accessible at http://www.freedomhouse.orf (accessed 2nd of November 2009).

2 Source: Freedom House, accessible at http://www.freedomhouse.org (accessed 2nd of November 2009).

SEMI-CONSOLIDATED DEMOCRACIES (3.00 to 3.99)	
Bulgaria	3.04 (2.93)
Romania	3.36 (3.39)
Croatia	3.71 (3.71)
Serbia	3.79 (3.71)
Montenegro	3.79 (3.89)
Albania	3.82 (3.79)
Macedonia	3.86 (3.82)
TRANSITIONAL GOVERNMENTS OR HYBRID REGIMES (4.00 to 4.99)	
Bosnia	4.18 (4.07)
Ukraine	4.39 (4.21)
Georgia	4.93 (4.86)
SEMI-CONSOLIDATED AUTHORITARIAN REGIMES (5.00 to 5.99)	
Moldova	5.07 (4.96)
Kosovo	5.11 (5.36)
Armenia	5.39 (5.14)
CONSOLIDATED AUTHORITARIAN REGIMES (6.00 to 7.00)	
Kyrgyzstan	6.04 (5.64)
Russia	6.11 (5.75)
Tajikistan	6.14 (5.93)
Azerbaijan	6.25 (5.93)
Kazakhstan	6.32 (6.39)
Belarus	6.57 (6.71)
Uzbekistan	6.89 (6.82)
Turkmenistan	6.93 (6.96)

Values in brackets are from the Nations in Transit 2006 Report. Source: Freedom House, Nations in Transit; http://www.freedomhouse.org (1st of November 2009).

Freedom House[3] specifies the characteristics of each of the discussed political systems. Among other characteristics, consolidated democracies comprise:

- The authority of government is based on universal and equal suffrage as expressed in regular, free and fair elections, conducted by secret ballot. Elections are competitive, and power rotates among a range of different political parties.
- Civil society is independent, vibrant and sustainable. Rights of assembly and association are protected and free of excessive state pressures and bureaucracy.
- Media are independent, diverse and sustainable. Freedom of expression is protected and journalists are free from excessive interference by powerful political or economic interests.
- National and local governmental systems are stable, democratic and accountable to the public. Central branches of government are independent and an effective system of checks and balances exists. Local authorities exercise their powers freely and autonomously of the central government.

3 Freedom House, Nations in Transit; http://www.freedomhouse.org (accessed 2nd of November 2009).

- The judiciary is independent, impartial, timely and able to defend fundamental political, civil and human rights. There is equality before the law and judicial decisions are enforced.
- Government, the economy, and society are free of excessive corruption. The legislative framework, including strong protection from conflicts of interest, is in place so that journalists and other citizens feel free and secure to investigate, provide media coverage or prosecute allegations of corruption.

Table 2

Nations in transit 2009 – ratings of specific indicators and the collective Democracy Index for a group of consolidated democracies.

Country	EP	CS	IM	NGOV	LGOV	JFI	CO	Democracy index
Slovenia	1.50	2.00	2.25	2.00	1.50	1.75	2.50	1.93
Estonia	1.50	1.75	1.50	2.25	2.50	1.50	2.50	1.93
Latvia	2.00	1.75	1.75	2.50	2.25	1.75	3.25	2.18
Czech R.	1.50	1.50	2.25	2.75	1.75	2.25	3.25	2.18
Poland	2.00	1.50	2.00	3.25	2.00	2.25	2.75	2.25
Lithuania	1.75	1.75	1.75	2.75	2.50	1.75	3.75	2.29
Hungary	1.75	1.75	2.50	2.50	2.50	1.75	3.25	2.29
Slovakia	1.50	1.75	2.75	2.75	2.50	2.75	3.25	2.46

The Democracy Index score is an average for Electoral Process (EP); Civil Society (CS); Independent Media (IM); National Democratic Governance (NGOV); Local Democratic Governance (LGOV); Judicial Framework (JFI) and Corruption (CO). Source: Freedom House, Nations in Transit 2009 Report; http://www.freedomhouse.org (1st of November 2009).

Table 2 shows that Slovenia scores best amongst all the consolidated democracies in the fields of the electoral process, national and local democratic governance and also corruption. Freedom House, on the other hand, estimates Slovenia's main lag is civil society. It also publishes a short evaluation of every country's annual changes and the condition of its democracy. The evaluation report from 2006 stated that "… the corruption rating slipped as an amendment transferring the competencies of the Slovenian Commission for the Prevention of Corruption to Parliament also raised concerns over independence, leading the non-parliamentarian Youth Party of Slovenia initiating referendum procedures to obstruct implementation of the amendment…" (Freedom House, 2009). The latest report on Slovenia (2009) states, that in 2008, unproven claims surfaced that Slovenian officials had been bribed by the Finnish company Patria to help finalise the purchase of armoured personnel carriers for the Slovenian army. The affair reached its peak during the electoral campaign, just three weeks before the elections. Being connected with the affair at the time, Prime Minister Janez Janša brought charges against a journalist

from Finnish National Television and several Slovenian contributors to the broadcast that broke the story. Also, during 2008, the Commission for the Prevention of Corruption fought serious financial problems, which resulted in the National Assembly approving the lowest budget in the Commission's history. Because of the scandal surrounding the Patria affair and obstructing the Commission's work, Slovenia's rating for corruption lowered from 2.25 to 2.50 and is currently at its lowest for the last decade.[4]

2. The definition of corruption, Slovenian anti-corruption legislation and anti-corruption tools

There are many definitions of what constitutes corruption. The World Bank made a short statement; it describes corruption as the abuse of public office for private gain. Another, more detailed description was conducted by the Council of Europe, where corruption means bribery and any other behaviour in relation to persons entrusted with responsibilities in the public and private sectors, behaviour which violates their duties following from their status as a public official, private employee and the like and aimed at obtaining undue advantages of any kind for themselves or for others.[5] In Slovenia, the most comprehensive definition of corruption was put forward by the Office for the prevention of corruption in the year 2002, according to which, a corrupt act is any wrongdoing in Slovenia or abroad which is aimed at obtaining advantages for themselves or others. As we can see, it very much follows the definition of The Council of Europe.

When analysing Slovenian anti-corruption legislation, corruption is not treated differently from any other kind of crime. In Slovenia, the Prevention of Corruption Act was adopted only in 2004. It defines corruption as every trespassing of obligated treatment of official or responsible subjects in the private or public sector, as well as treatment of subjects, that are initiators of violations or subjects, that can benefit from the violation (Prevention of Corruption Act, 2004). As is the case in many other countries, the Slovenian criminal code incriminates standard forms of corruption such as giving and taking a bribe, abuse of official position and authority and corrupt acts concerning various manipulations of the voter. The Criminal Procedure Act, which deals with corrupt acts within chapters 26, 24 and 17, does not, however, use the term corruption as a legal term but the terms used are different for every single crime that covers a particular type of corruption. In the Slovenian Criminal Procedure Act, the phenomenon of corruption is described by five of-

4 Corruption index was valued 2.00 from 1999 to 2006, when political attacks on the President of the Commission for the Prevention of Corruption began, and 2.25 for 2006, 2007 and 2008.

5 The term 'any other behaviour' includes fraud, illicit payments, buying and delivering of votes, illicit political contributions, abuse of power, breach of trust or misappropriation of public funds. Source: Group of States Against Corruption (GRECO), available on http://www.coe.int/t/dghl/monitoring/greco/defaultz_en.asp (1st of November 2009).

fences: acceptance of a bribe, unjustified acceptance of gifts, undue influence, giving of a bribe and unjustified giving of gifts. Despite the fact that the act does not define the generic term of corruption, it does differentiate between active and passive corruption and points out the public/private distinction. The latter is reflected in the legal definition of a particular offence as well as in the type of possible offender.

It should be pointed out that public office corruption is very well covered. Recently, in Slovenia, special attention was paid to clearly define the duties and obligations of public servants and public officials in order to constitute the transparency of the system. Through the Law on public servants, Law on public officials, Law on incompatibility of conducting public functions and any other business activity and adopting the codes of conduct (especially the Code of conduct for Public Servants which the Slovenian Government adopted in the year 2001), efforts have been made to establish ethic practices, which would, in the long run, prevent the collision of interests, ensure an adequate use of public funds and the highest possible level of professionalism. The adoption of the mentioned laws and codes of conduct was necessary for the successful reformation of the public sector and the harmonisation of Slovenian laws with the standards established in the European Union.

In recent years, quite a lot has been done in Slovenia to establish a more efficient system to combat and prevent corruption. As Slovenia adopted the necessary legislative framework and set up some of the most important institutions, the next priority must therefore be to improve their working conditions, strengthen their autonomy and develop flexible co-ordinating linkages. The greatest burden in the fight against corruption is, in most states, carried by the police, the Commission for the prevention of corruption, state prosecution and judiciary.

The police

Under the provisions of the Law on the police it is the institution of police which is responsible for the prevention, discovery and the investigation of all criminal acts and offences. It is also responsible for conducting investigations and arresting the offenders. The police are organised as an independent state body within the Ministry of Interior. The Section for corruption within the Organised Crime Section, Criminal Investigation Directorate is responsible for planning, directing and monitoring all actions concerning corruption in the public sector. When investigating corruption, the police force can use some special methods and techniques, which upon a proposal from the public prosecutor, the investigative magistrate can order. This special investigative means can only be used for crimes specially listed in article 151 of the Criminal Procedure Act.

State prosecutor's office

Apart from the police, the State prosecutor's office is a very important institution. It is in charge of the police investigation when it comes to discovering and dealing

with criminal acts of corruption. When talking about the State prosecutor's office one must mention the Group of Public Prosecutors for Special Purposes, responsible for dealing with the detection and proceedings of all major corruption and crime-related cases. The group was founded in 1995.

Judiciary

Slovenia has a system of permanent terms of office, which provides the independence of judges. However, there is no special court dealing only with cases of corruption. The creation of any kind of special courts is prohibited by the Constitution. What is interesting about the Slovenian judiciary system is the institution of the investigative judge, which is responsible for investigating cases, where reasonable doubt can point to the possible perpetrator.

Office for the Prevention of Corruption

The Government of Slovenia established the Office for the Prevention of Corruption with a decree in July 2001. It established an independent specialised agency to prevent corruption, co-ordinate activities related to the preparation of anti-corruption strategy and co-operation with other state bodies in the preparation of legislation aimed at the prevention of corruption. The office was created due to a recommendation by GRECO (the anti-corruption group of states at the Council of Europe). In spite of the fact that the creation of the Office did show (political) willingness of the Government to combat corruption, it did not provide the Office with any independence or autonomy. Its efficiency was therefore very much dependent on the goodwill of other state bodies, since the office itself does not have any real powers. The office could only make proposals and suggestions and it co-ordinates the preparation of anti-corruption legislation, but lacks any investigative authority and real autonomy. The Office's greatest priority was to prepare a draft for the Prevention of Corruption Act. It was clear that new law would have to answer the question of the future organisation of the office, which could go two ways: as a separate independent agency or an agency directly entrusted to the Prime Minister.

Commission for the Prevention of Corruption

It was clear that the role of the Office for the prevention of corruption would have to be strengthened, if the government was being serious about battling and preventing corruption. This was carried out in December 2003 when the Prevention of Corruption Act was adopted by Parliament and the *Commission for the Prevention of Corruption* was established. The Commission was established as separate, independent and autonomous agency, which has limited investigative powers, among them the right to conduct inspections. Among the other tasks of the Commission and especially important, are the elimination of conditions necessary for the establishment and development of corruption, establishment of a necessary legal and institutional

framework for the prevention of corruption, development of ethical standards, efficient implementation of international standards and the establishment of a zero-tolerance environment for all corrupt acts in society. The central state authority organs and local government organs are obliged to present the Commission with all relevant data that are necessary for the Commission to perform its tasks and to enable the examination of corresponding documentation to the Commission. During the times of the right-wing government of Prime Minister Janez Janša (2004–2008), the Commission was under heavy pressure and there were even proposals (some of them inserted in the parliamentary procedures) for its annulment, due to its inefficiency and lack of rational use of public funds; although the impression was that it was more a political confrontation with the President of the Commission. The Commission survived the political onslaught and continue to work to this day, although the political attacks certainly did not contribute to the Commission's efficiency and autonomy.

The Office of Money Laundering Prevention

The Office of Money Laundering Prevention is organised at the Ministry of Finance and its main responsibilities are to gather and analyse reports on suspicious transactions, which are deriving from financial and non-financial institutions and could point to money laundering, to provide statistics on the phenomena and to analyse personal financial and material gains which could derive from criminal acts. The office is obliged to notify the police or prosecutors' officials with their findings.

The Auditing Court of the Republic of Slovenia

The main objective of the auditing court is to monitor the legality and efficient use of public funds.

Tax administration of the Republic of Slovenia

The Slovenian tax administration is an independent institution under the Ministry of Finance and is responsible for tax collections; but on other hand, tax administration and especially tax inspection can play an important role in discovering possible cases of corruption, because it exercises control over people's revenues and assets.

The Parliamentary Commission established according to the Prevention of Corruption Act

The Commission Established under the Prevention of Corruption Act exercises direct supervision over the tasks of the governmental Commission for the Prevention of Corruption which relate to incompatibility, limitations regarding gifts and operations, and supervision of the material standing of public officials; discusses the reports prepared by the Commission for the Prevention of Corruption; supervises the material standing of the chair, deputy chair, and members of the Commission

for the Prevention of Corruption; adopts its own rules of procedure; gives consent to the forms for supervising the material standing of public officials; and performs other tasks provided by the law and its rules of procedure.

As we can see, there are quite a few institutions in Slovenia that can co-operate in the prevention and eradication of corruption; however, the question of the efficiency and effectiveness remains, and the political support to preventing and fighting the corruption is not always at the desirable levels.

3. Statistics on corruption in Slovenia

According to some surveys, corruption in Slovenia is not perceived as a serious problem, especially if we consider it in the comparative perspective with other central and eastern European (CEE) countries. Regardless of the presented data, we must be aware of the fact that corruption is a relatively concealed phenomenon (Dobovsek, 2006: 11–12). This means that we must always bear in mind the immeasurable dimension of corruption. The official data on corruption-related crimes are gathered in police, state prosecutors' and judiciary statistics. These show that in the period from 1991 until 2008 the police have been dealing with 19 to 58 corruption offences per year. Most criminal offences connected to corrupt acts were reported in the year 2001 (58), in 2007 there were only 19 and in 2008 only 18 such acts. Structurally speaking, the acts of accepting the bribe by public servants and the acts of giving bribes prevailed. In most cases (77.6 %) the police itself found out and reported the corrupt criminal acts (Dobovsek, 2006: 50; Report on police work, 2009: 26). This could show the relatively high efficiency of the police on the one hand; however, on the other it shows a lack of willingness of people to report misconduct. It also shows a low awareness in public of how damaging corruption can be. The preventive actions to raise such awareness are very important. They show people that something is being done to eradicate corruption and that it is important to report such deviant acts.

Even surveys conducted by international institutions prove the above stated fact that corruption in Slovenia is not a great problem. A close look at Transparency International,[6] shows us that for the year 2002, Slovenia was in 27th place out of 102 countries on the Corruption Perception Index (CPI) rankings with the grade 6.0. In 2008, the Report situation has neither improved nor worsened; Slovenia was 26th out of the 180 countries included in the Report, with the grade 6.7, just one place in front of Estonia (27.), but with a wide gap with the Czech Republic (45.), Hungary

6 Transparency International is a nongovernmental organisation which main concern is to establish the rule of the law and to eradicate corruption throughout the world. Source: Transparency International, available at http://www.transparency.org (2nd of November 2009).

(47.) and other countries from CEE (Corruption Perception Index Report, 2009).[7] In both reports (2002 and 2008), Slovenia was presented as a successful transition country. We can also point out that based on the CPI, Slovenia is placed next to developed countries such as Germany and even higher in comparison to some "older" EU states such as Portugal, Italy or Greece.

In order to correctly present the perception of the extension of corruption in Slovenian society, we must put forward the results of the "Viewpoints on corruption 2008"[8] public opinion poll (Kurdija, 2009) conducted by the Centre for Public Opinion Research and Mass Communications at the Faculty of Social Sciences in Ljubljana. The survey shows the subjective responses of those questioned and it examines the opinions of Slovenian citizens towards corruption. The results show that people in Slovenia believe corruption is a very big problem in their country. This response was given by 36 % off all respondents (compared to 27 % in the same survey conducted in 2002); another 31 % (26 % in 2002) believe that corruption is a big problem. It is also interesting that 63 % (60 % in 2002) of Slovenians are convinced that the rate of corruption has increased since 1990. On the other hand, only around 7 % (20 % in 2002) have actually had any encounter with any kind of corrupt behaviour so far. When asked how extensive corruption is in the public services, 58 % (44 % in 2002) of the citizens are convinced that almost all civil servants and officials are committing some kind of corrupt act. The highest probability of corrupt acts are expected in the field of health services (47 %), where the highest percentage of the population (12 %) also had some personal experience with corrupt actions. When asked about the institution that is expected to fight and prevent corruption, the highest percentage of respondents indicated the media and the Commission for the Prevention of Corruption. Most respondents, who have had no personal experience with corruption have constructed their views on the subject, based on media reports (30 %) and other informal channels. It may be that the ever increasing media coverage of large bribery scandals, especially the recent corruption affair with Patria armoured cars, which we mentioned before, has given the impression that the scale of corruption is generally increasing.

As one can observe, public opinion towards corruption and corrupt actions in the public sector has not improved over the last six years; we can conclude that in the Slovenians' opinion, civil servants are corrupt and corruption is an important problem in Slovenian society, although the average citizen has not really had any

7 The Transparency International CPI measures the perceived levels of public sector corruption in a given country and is a composite index, drawing on different expert and business surveys. Each country is scored on a scale from zero (highly corrupt) to ten (highly clean from corruption). For 2008, the highest scorers are Denmark, New Zealand and Sweden with 9.3, and the lowest, Somalia, with 1.0. Source: Transparency International, available at http://www.transparency.org/policy_research/surveys_indices/cpi/2008 (2nd of November 2009).

8 The phone research was carried out in February 2009 on a sample of 3255 adult Slovenian citizens, of which 911 agreed to participate in the survey. A very similar survey was also carried out in 2002.

personal experience to base such a negative opinion upon. An in-depth analysis shows that according to the survey, the most corrupt sector is the health sector and the least corrupt is the education sector. Almost half (47 % and 46 % respectively) of the population believe that lawyers and doctors are the most corrupt. The research also asked about the most important causes for corruption; 24 % and 21 % of respondents believe the most important are inefficient prosecution and deficient legislature. Some believe the extent of corruption is connected to an inefficient police force and judiciary system and less than 7 % believe the main cause for corruption is the lack of political willpower to fight corruption.

The described survey is the first special survey on corruption in Slovenia that has been carried out every year since 2002; data gathered in it will serve not only to assess the current expansion of corruption, but will also enable further research on the phenomena to be conducted.

4. Conclusions

Corruption is a social deviation that has existed in societies since the beginning of time and it has become more transparent in the last decade. Corruption in the public sector is one of the most important problems and must be treated with special attention in every modern state. Hence, it is necessary to raise public awareness, protect and develop the freedom of the press, develop social science research on corruption and above all, develop modern anti-corruption tools for preventing and fighting the phenomena. The limitation of corruption can also be ensured through the education and training of civil servants (and also youths in the educational process), improving their working conditions and strengthening ethical values. As we saw in previous chapters, Slovenia managed to develop various tools designed for the prevention and/or fighting corruption, and despite a periodical lack of political support or even political impediments, the results are visible, as the most important international organisations are not perceiving any substantial rise in the levels of corruption, as can be observed in several EU and CEE countries over last few years. The majority of the population have had no personal experience with corruption or corrupt acts, but the general impression still lingers in society, that corruption is an important problem and that it is present all around us. But, even if this general impression is more or less incorrect, it is important to be constantly aware of the problem and to continue improving the tools necessary to prevent and fight corruption, as corruption will not be easy to eradicate and all necessary (especially political) support will be needed for the next steps.

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Public Policy Intervention Instruments in the Fight against Corruption

Katarína Staroňová

Every country in the world faces the threat of corruption in the public sector. It undermines democratic institutions, the development of the economy and quality of public services and subsequently also citizens' trust in these institutions. International organisations such as the Council of Europe, United Nations, World Bank, European Commission, as well as governments of individual countries, seek to adopt mechanisms that would strengthen the institutional and legislative framework in the fight against corruption and also implement various measures, which would prevent, address and fight corruption. These mechanisms and measures are called public policy "intervention instruments" that aim to fight corruption. The next chapter examines the classification of general anti-corruption measures by international organisations and attempts to develop a new system of categorisation of intervention instruments in the fight against corruption from the aspect of theory of public policy instruments.

1. Classification of anti-corruption measures

A traditional approach towards the classification of anti-corruption measures, also used by international organisations such as Transparency International, is the division of measures into three basic categories according to its aim:

- Deterrence of corrupt behaviour
- Prevention
- Raising awareness and values

The first category of measures aims to sanction and punish corrupt behaviour. The measures seek to increase *the risks*, *costs and uncertainty* associated with acts of corruption by means of a threat of strict punishment in case of exposure. Unlike with other criminal acts, in the case of criminal corrupt activities, threat is an effective tool. Measures in this category relate to the full criminalisation of corrupt prac-

tices as defined by the Organisation for Economic Co-operation and Development (OECD), the Council of Europe (CoE), and the United Nations (UN)[1].

Preventive measures aim to reduce corrupt behaviour by means of actions on the demand and supply sides.[2] These measures also seek to increase the risk, costs and uncertainty of corrupt activities, in which case they focus on increasing the probability of exposure by means of increasing transparency and openness of processes in public administration. These measures relate to control and monitoring mechanisms, budgeting, and the publishing of results and information.

The measures in the last category focus on change of values and transformation of ethical behaviour.

Modular approach to donors is facilitated by the Global Programme against Corruption, under the framework of the United Nations Centre for International Crime Prevention (CICP). These activities have adopted a modular approach that draws from a broad set of "tools", anti-corruption policies and other measures. These anti-corruption tools are highly flexible and may be utilised at different stages and levels, and in a variety of combinations according to the needs and context of each country or sub-region. Categories of tools:

1. Awareness increase on corruption amongst the public and civil service;
2. Support to the National programme in the fight against corruption (Government Office, agency;
3. Support to amendment of National legislation in the fight against corruption;
4. Support to tax and custom offices;
5. Support to financial management and audit;
6. Educational activities for civic society and media;
7. Support to public procurement on central and local levels;
8. Support to election process;
9. Support to judiciary;
10. Support to prosecution and police;
11. Support to municipalities.

The aforementioned categories are relevant from the point of view of direct or indirect effect on corrupt behaviour in society. In this kind of classification it is not important whether the aim is prevention, sanctions or strengthening awareness. Thus, the measures can be of a broader nature and include not only explicit tools

1 The Conventions include for example the OECD Anti-Bribery Convention, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Council of Europe's Criminal and Civil Law Conventions on Corruption, the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the Council of Europe's Group of States against Corruption (GRECO), UN Convention against Transnational Organized Crime, UN Convention against Crime.

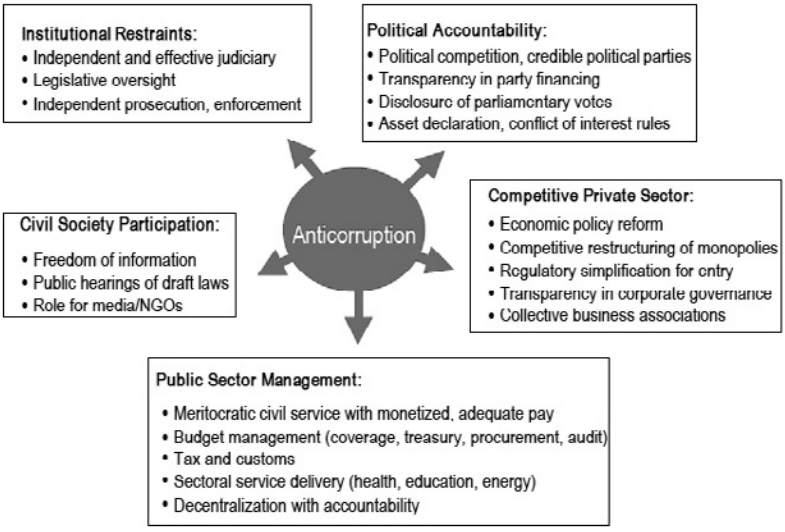
2 Economic approach views each corruption act as a voluntary transaction between two sides which makes it necesarry to analyze both supply and demand side.

(e.g. monitoring of the financing of political parties) but also tools with an implicit effect on the reduction of corrupt behaviour (e.g. election monitoring mission). There is a presumption that only a combination of several tools can effectively fight corruption in a country.

Another approach to classification of anti-corruption instruments has been developed by the World Bank, which, in recent years, published many expert publications on corruption. In its approach, the World Bank differentiates between "administrative corruption" (influence on the implementation of existing laws and rules) and "state capture or grand corruption" (influence on the drafting of basic rules). Through this differentiation, the World Bank also categorised anti-corruption measures and created its own framework in the so-called "five-pronged strategy":

1. increasing political accountability
2. strengthening civil society participation
3. creating a strong and competitive private sector
4. institutional restraints on power
5. improving public sector management

Diagram 1
World Bank Multi-Pronged Strategy



Source: World Bank (2000), Executive Summary.

In spite of this classification framework for anti-corruption measures, the range of tools used by the World Bank is so broad that further categorisation should help

in the selection of these measures. The rationale behind this categorisation is based on the assessment of the situation in the country, which determines the potential effectiveness of particular measures. This division, which is founded on the existing stimuli for public officials to act in an opportunist way, distinguishes between societies with high or low incidence of corruption. Certain pre-existing conditions in the country breed the corrupt behaviour of public officials – when from an economic point of view the gains from corruption are higher than expenses or risks. In countries with a high incidence of corruption and a low quality of governance, the goal when choosing anti-corruption instruments should be the establishment of the rule of law, strengthening of the participation and accountability of institutions, and limiting government intervention to its key roles. On the other hand, in a country with medium incidence of corruption and a fair quality of governance, the priorities are decentralisation and economic reform, i.e. introduction of competition into the provision of public services, output-oriented management, assessment of outputs, etc. In a country with a low incidence of corruption and good mechanisms of governance, the anti-corruption measures can take the form of anti-corruption programmes and agencies, strong financial accountability, increased public and official awareness and through high-profile prosecutions (see Table 1).

Table 1
World Bank classification of anti-corruption measures

Incidence of corruption	Quality of governance	Priorities of anti-corruption efforts
High	Low	• Establish rule of law; • Strengthen institutions of participation and accountability; • Establish citizens' charter; • Limit government intervention • Implement economic policy reforms
Medium	Fair	• Decentralisation and economic policy reforms • Public management
Low	Good	• Establish anti-corruption agencies; • Strengthen financial accountability; • Raise public and official awareness; • Conduct high-profile prosecutions

Source: Shah – Schacter (2004), p. 42.

2. What are public policy intervention instruments?

The aforementioned types of classification of anti-corruption measures show that there is not a unified opinion on the criteria of categorisation of instruments. In

most cases the categories stem from the approach of the donor or international organisation, which, based on the assessment of the situation in individual countries, created a generalised set of anti-corruption measures. This chapter offers an alternative approach to anti-corruption measures – from the point of view of the intervening organisation, i.e. state/municipality, which has certain instruments at their disposal.

The concept of public policy instruments ensues from the systemic causal model of policy development, in which the government aims to solve the existing problems in society by using intervention instruments. These are the means that the government uses to implement its strategies and goals to achieve expected results. Thus the government decides not only about which problem to solve and whether to intervene in that matter, but also whether it will pursue its decisions by means of coercion, incentives, information or capacity building. Lester Salamon defines intervention instruments as: 'an identifiable method through which collective action is structured to address a public problem'. This approach emphasises the instrumentality which has a dynamic nature (activity) and aims to influence and control social processes in society to attain desirable outcomes. The outcomes could be public services and goods, e.g. ethical behaviour in the civil service, streamlining of institutions' internal procedures to avoid delays or legal certainty. The government can choose from a range of instruments – regulatory, economic, information or administrative; restrictive or motivational; it can choose instruments with high or low levels of intervention. The basic thesis of the instrumental approach is that every category of instruments has its characteristics and dynamics, which can be identified and which define the method for attaining the goal. Outcomes can be achieved through one or a combination of different tools and it is up to the government to determine which instrument will be the most suitable to attain the particular goal. Hence public policy instruments are merely technical means to reach ends. The choice of the appropriate instrument (or their combination) determines the method of governance and the form of the government's performance. During the selection, it is important to take into consideration the potential of each category of instruments and the political consequences or negative effects of the instrument.

Each public policy instrument corresponds to different goals; however, it can be assumed that government intervention aims to achieve the following outcomes:

- Change in behaviour of individuals, groups, business entities, etc.;
- Change in values (approaches) cherished by different subjects in society;
- Change in environment, in which the undesirable behaviour occurs or in which the subjects function.

The government also has the option of no action, which does not involve an actual choice of instruments. Inaction has its effects; however, they are not the subject of this chapter. The application of intervention instruments by the government can be done directly or indirectly. When acting indirectly, the government influ-

ences the actions and behaviour of citizens, organisations or businesses by means of information (information instruments) or by influencing the outcomes, expenses and sources of action (economic instruments). When acting directly, the government acts in its own capacity and is accountable for its actions. This includes the drafting of rules and sanctions for their violation (regulatory instruments), their enforceability (police, justice, prosecution) or direct provision of services and goods (administrative instruments). The following Table 2 shows the classification of public policy instruments according to their type (regulatory, economic, information and administrative) as well as the level of intervention and coerciveness from the side of the government (from compulsory to mixed and completely voluntary).

Table 2
Classification of Instruments

Instruments	Regulatory	Economic	Information	Administrative (organisation)
coercive	Legislative Framework (criminal, civil, admin. law)	Liberalisation of market, privatisation, decentralisation	Free Access to Information Law	Direct provision of services
	Legal regulations (Conflict of Interest, Civil Service Law.	Open competition: public procurement laws	Control and accountability mechanisms	Infrastructure and capacity building
mixed	Secondary Legislation (rulings, decisions)	Grants, vouchers, subsidies, loans, credits	Information provision	Indirect provision of services (outsourcing)
	Methodological guidelines, internal rules	Open competition: Auction of rights, lottery	Participatory and consultation mechanisms	
voluntary	Codes of Conduct, good practice benchmarking		Quality lists, contests	Nongovernmental Organisations
				Family, community
				market

Source: Staroňová (2002)

The scale shows to what extent the instrument is restricting (prohibiting or ordering) a certain type of behaviour in order to deter or motivate. This characteristic determines whether the instrument is compulsory, mixed or voluntary. From this perspective each instrument type can include instruments which are highly

restrictive and coercive (for example compulsory provision of information) but also instruments that are voluntary with a low level of coerciveness (for example provision of examples of agencies that have reformed their internal procedures). This approach will also serve in the following discussion on individual types of anti-corruption instruments.

3. Intervention Instruments in the Fight against Corruption

The following overview of intervention instruments for fighting corruption is neither a comprehensive list of existing instruments nor an outline of how to fight it. It is rather a framework summarising the functioning of each category, the "instrumentality" of each instrument, so that the decision maker can craft an efficient anti-corruption programme and strategy. However, it is important to realise that this categorisation is not definitive, i.e. that an actual instrument may have the characteristics of more than just one category of instruments. Many instruments actually combine the characteristics of several categories in order to enhance their efficiency. Moreover, they ought to have the institutional and administrative support and therefore combine the elements of administrative instruments. Other instruments have to be in a legislative form to become obligatory and thus may seem to be regulatory instruments. However, in their essence they are of an economic, information or administrative nature but take a legal form. In order to illustrate their dynamic, the listed examples relate to the main function of these instruments.

Regulatory instruments

Regulatory instruments regulate community relations, define the rights and obligations of subjects (natural persons and legal entities) and protect relations that are of importance to the community. Regulatory instruments thus define by means of criminal, civil or administrative sanctions the binding and enforceable frameworks that underlie the implementation of public policy; they demarcate corrupt forms of behaviour and the corresponding criminal, civil or administrative sanctions. The key purpose of regulatory instruments for fighting corruption is to increase the sanctions for corrupt behaviour in such a manner that they will be higher than potential gains and thus discourage the occurrence of corruption.

The fundamental legal framework for fighting corruption is based on international conventions, in particular the United Nations Convention against Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Council of Europe's Criminal Law Convention on Corruption[3] and The Civil Law Convention on Corruption. All these

3 The Criminal Law Convention on Corruption No. 173 was signed on 27 January 1999. Slovakia became its signatory on 27 January 2000 and the convention was ratified on 9 June 2000. The aim of this convention is to set the standards for national legislations necessary for a coordinated approach to fighting corruption.

conventions are legally binding for the Slovak Republic. An insufficient regulatory and legal framework can lead to "state capture"[4]; i.e. a situation where corruption is involved in the shaping and drafting of legislation, laws, regulations, ministerial orders, rules, court decisions and other forms of regulation to the benefit of politicians or interest groups.

An anti-corruption legal framework uses instruments that punish unacceptable illegal behaviour – the different forms of corruption. The Criminal Law describes various forms of corrupt behaviour by means of different types of offence listed in the Criminal Code, such as *receiving a bribe or another undue advantage, giving bribes, indirect bribery, intervention in the independence of courts, misuse of the public office*, etc. Depending on the degree of harm to society and the type of offence, the instrument determines the type of liability (criminal, labour, civil, administrative), the responsible subject (public official, person, legal entity) and the form of penalty.

Criminal Law deals not only with the criminal responsibility of natural persons but usually also with the **criminal responsibility of legal entities** (not yet in the Slovak Republic). The latter is important in sophisticated cases of subsidy fraud, environmental offences and various forms of diversion of property, which require the prosecution of legal entities for illegal corrupt behaviour. A potential punishment can be the prohibition to partake in public tenders, confiscation of a company's property or a ban on a company's activities. Such punishment significantly changes the motivation and exerts pressure, not only on the employee, but also on the employer, who has an incentive to curb corrupt behaviour among its employees.

Apart from criminal law, there are other legal regulations that determine the rights, responsibilities and limitations of employees and employers (e.g. ban on business activities, ownership and management of private enterprises while in public office or in civil service, post-employment measures) that apply to their position and relate to ethical behaviour. These are particularly the Civil Service Law, Law on Performing Work in Public Interest and the introduction of zero tolerance in legal professions where integrity is a precondition for service in such a capacity. Besides criminal sanctions, other options are loss of employment or capacity, loss of financial reward, transfer to another capacity, etc.

In addition to laws that regulate penalties and sanctions for corrupt actions and behaviour in a criminal or commercial context, regulatory instruments also regulate measures, which strive to pre-empt corrupt action. This applies mainly to actions involving a conflict of interest at all levels of public service (state administration, public administration, municipalities and public officials). A conflict of interest is a situation which occurs when a public official has the opportunity to advance his/her personal interests over that of the public's interest, i.e. in the interests of all

4 Hellman, J. S. - Geraint J. - D. Kaufmann 2000.

citizens or the majority of them. As a consequence, an unfavourable decisions is adopted, whereas the expenses are borne by citizens and not by the decision-maker (in economics this is considered an externality). Thus, regulation is supposed to limit some of the activities of public officials, specify sanctions in cases of their infringement and regulate the exercise of the civil service and disciplinary action[5]. The concurrence with information instruments is also utilised here.

A generally binding legal framework can allow for loopholes that contribute to corruption. These loopholes can be addressed by various types of secondary legislation (government regulations, ministerial orders, rulings, measures, generally binding regulations of municipalities) and methodological guidelines, decision guidelines and internal rules[6]. During their drafting or amendment, it is beneficial to conduct an anti-corruption revision and evaluate the ability of this regulation to prevent or enable the favouring of private motives over public motives.

Besides laws and generally binding regulations, one of the most important informal factors reducing corruption is the existence of codes of ethics, internal standards, norms and mechanisms for increasing the quality and performance of the public service (e.g. best practices) that are less binding, but thoroughly applied. The existence of these voluntary instruments of regulation at all levels of state and public administration as well as in business (mostly in case of municipal enterprises/civil corporations or companies where state or municipality have a share) is another step towards curbing corruption and conflict of interest[7], mainly if applied in practice. In general, codes of ethics are summaries of moral requirements and principles, which should apply to all employees or members of a community. They sum up the stance of the institution introducing the code on ethical and moral values and regulate the conduct and behaviour of employees. Conduct in violation of the code is sanctioned by e.g. disciplinary proceedings, loss of employment or remuneration, etc.

"Benchmarking" belongs to informal methods for increasing quality and transparency. It "applies systemic methods for comparing oneself to others and searching for better ways and approaches to do one's work"[8]. Benchmarking is a comparison with a standard – a "benchmark" – but not only with the aim of meeting it; the ultimate goal is to become the best in the particular area, i.e. to become

5 The conflict of interests can be regulated not only through laws (Conflict of Interest Law, Law on Protection of Public Interest during Performance of Public Function Officials) but also by means of a government resolution or ministerial orders. There are specific rules for the regulation of conflict of interests in deciding about EU Structural Funds (Prohibition of the Conflict of Interest).

6 It is important to differentiate between the levels of the so-called legal hierarchy, on which the particular legal acts are.

7 See more in e.g. Sičáková – Zemanovičová 2000; for work on the importance of business ethics see Remišová 2002.

8 For more on benchmarking in the Slovak environment see e.g. Balážová 2006.

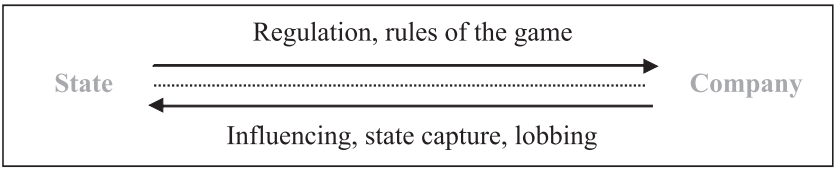
the new benchmark, e.g. in the provision of services, in internal organisation or in ethical principles or transparency. The comparison can signal not only reserves in efficiency, but also irregularities, which can stem from corruption. These instruments can therefore efficiently control the quality and impartiality of public administration, professions (professional codes of ethics) or companies.

Regulatory instruments also have the task to increase the probability of **detecting, documenting and sanctioning corruption**. The detection and documenting of criminal acts related to corruption is a complex process that requires technical and personal equipment of responsible authorities in order to achieve high success rates. Simultaneously, it is known that if the risk of being detected and suffering the consequences is low in comparison with corruption benefits, corrupt behaviour is higher. Reform of authorities involved in criminal proceedings (mainly the judiciary) is a vital precondition of a complex solution for corruption. Specific measures are applied aimed at improving the detection, e.g. the institution of an agent (i.e. the Ministry of Interior of the Slovak Republic appointed an agent and assigned him/her with detecting, investigating and convicting criminals involved in corruption) or an obligation for entities to monitor and report unusual commercial transactions (Law on the Protection from Legalisation of Income from Criminal Activity).

In the case of regulatory instruments, it is also important to standardise the level of regulation – too much regulation creates space for corruption already in the drafting stage (state capture) or during enforcement (administrative corruption). The relationship between the state/regulators and companies/the subjects of regulation goes both ways (see Diagram 2): on the one side the state creates regulation, which the companies have to follow and on the other side, the companies try to influence the regulation to their advantage[9]. By means of state capture, companies try to gain rent to have an advantage; this happens through the deformation of basic rules of the game, e.g. influencing the drafting and adoption of legislation, government/public administration decisions, regulation and regulatory institutions, financing of political parties, etc. Deregulation measures, liberalisation and privatisation, as well as institutional measures (see the part on administrative instruments), are utilised. They are aimed at the creation of functional market economy institutions and support of a legal and regulatory framework that ensures long-term sustainable growth on newly established markets. *Regulatory institutions* (Telecommunication Office, Network Regulatory Office, Anti-monopoly Office, Public Procurement Office and the State Aid Office) play an integral part in determining the level of regulation by means of simulating competition – it is an independent professional way of managing the economy.

9 Zemanovičová, D. "Ovládnutie štátu zo strany firiem" in: Sičáková-Beblavá– Zemanovičová (Eds). 2003.

Diagram 2
The Relationship between the State and the Company



Source: Zemanovičová, D., p. 229. In: Sičáková-Beblavá– Zemanovičová (Eds). 2003.

Economic Instruments

Classic examples of economic instruments are those which are part of basic economic relations. They play a part in economic processes and therefore influence their essence – demand and supply – which further explains their versatile usage and high efficiency. These instruments include taxes, loans, interests, investments, prices, wages, subsidies, grants, vouchers, etc. From an economic point of view, every corrupt act is a voluntary transaction between two parties where both sides enjoy financial or other benefits[10]. For the individual who is being corrupted, the benefit is an amount of money or other advantage. For the one who is corrupting the gain is in the action of the corrupt individual. From the aspect of economics, corruption pays off when the private gain is higher than the private cost for both sides of the corruption transaction. Therefore economic instruments for fighting corruption attempt to influence the demand and supply side but unlike regulatory instruments they leave the decision with the individual subjects. They (individuals and organisations) make the decision on the basis of calculations of costs, gains and their financial resources.

The existence of a monopoly creates opportunities for corruption[11]. The creation of market conditions by means of decentralisation, privatisation[12] and economic or financial liberalisation (market deregulation and liberalisation) reduces the number of potential corrupt transactions (gathering gains and benefits), which stem from a monopoly. Decentralisation of public authority (transfer of powers to municipalities) and finance is currently considered an effective way of reducing corrupt behaviour in rendering public services because it is assumed that the closeness of authority/decision-makers to their voters will result in effective public control

10 For more see e.g. Huther – Shah 2000, Beblavý 2007.

11 Based on the scheme by Klitgaard (2000) on the reasons for corruption: **Corruption = monopoly + leeway in decision-making – transparency**. For more on corruption from the point of view of economics, political science and sociology see e.g. *Teórie korupcie.* 2006.

12 The process of privatisation is a transaction that involves high risk of corruption in the private sector. In this chapter we focus on the creation of a basic framework for the functioning of market conditions and presume that self-regulatory competition mechanisms are functioning, i.e. the principle of the "invisible hand" that controls the balance and an effective division of resources.

and subsequently reduce corruption. There is, however, a risk in smaller communities because the informal links between citizens and entrepreneurs on one side and the local public authority on the other are relatively strong, so an absence of control mechanisms (see the chapter on Information Instruments) can lead to corrupt behaviour. The reduction of the administration's monopoly is linked to a complex economic reform, which reduces barriers and introduces market pressures. According to the data from Transparency International, the perception of corruption has decreased in areas where the state reduced its influence and where the rules of the game were set by the market and not the public sector, e.g. restructured and privatised banks, partially also natural monopolies. Privatisation of banks led to a better access to loans, an overall improvement of quality of services and a reduction of corruption.

Creation of conditions for open competition in a market economy is another step towards reducing the leeway in decision-making in awarding public orders, grants or other products and services. Any kind of favouring of certain applicants can be a source of corrupt activity such as bribery, nepotism, cronyism, but also a source of an unproductive and ineffective management of public funds, which has to be fought as a major anti-social phenomenon. Public procurement provides the basic framework for applying competitive processes (public tender, competition among short listed candidates and negotiated proceedings with public output) because it necessitates the use of market forces in awarding and procuring of public orders. Worldwide statistics and analyses[13] conducted over a longer period of time prove that well-managed public procurement carried out under the competitive conditions of a market economy saves 5 to 15 % of public funds.

Open competition should also be applied in the hiring process into the civil or public service – using selection processes leads to de-politicisation of the civil service. If the main criterion for hiring pre-selected candidates is political affiliation or favouring friends and colleagues, then such a system creates conditions for patronage, nepotism and cronyism, i.e. conditions for a legal conflict of interest. The Civil Service Law and the Law on Performing Work in Public Interest sets the criteria for the selection of employees into the civil service, e.g. admission into the service, filling of civil service positions, selection commissions, appointments, remuneration, etc. In this respect it is important to stipulate to whom conditions for open competition apply (civil servants, senior officials from local authorities, government appointed civil servants, etc.) and how these conditions are applied in practice.

If it is not possible to create market conditions, the state/local authorities **equalise the imbalance between demand and supply** of public goods and services. This applies mainly to those goods, services or information where the demand from citizens and companies is significantly higher than the supply, and thus, there is a greater effort (by means of corruption) to acquire them. This is the opposite case

13 Vlach – Ursíny 2007, p. 11.

from public procurement where the state/local authorities demand the goods and services from the private sector. Economic instruments are used to make the distribution and sale of goods and public services more transparent, e.g. loans, credits, state grants, licences, support from structural funds through grants, subsidies, as well as goods such as public housing, transfer of real estate, etc. This imbalance stems from a higher demand for certain goods and services and leads to prolonged administrative procedures, non-observance of legal deadlines for queries, so that sometimes, they exceeded more than ten times (e.g. at the Commercial Registry before its reform or at the Cadastral Office). Such a situation creates a favourable environment for corruption where individuals strive to achieve an expedited process and settlement within the legal time limit by means of bribes. One possibility for offsetting this imbalance between demand and supply is the *legalisation of fees for expedited processes* (so-called expedition surcharge). It offers a legal way of expediting a process for those who pay higher fees.

Another option is the introduction of random sampling – a lottery. The experience from several countries shows that people are willing to accept irregular results if they know that the process of decision-making/distribution was fair. It is a very important fact because in many cases there are only a limited number of places or services. In such a case, it is possible to use an economic instrument for their distribution with emphasis on the fairness of the process and not its result. Under these circumstances, a criterion-based distribution (see Administrative Instruments) is not sufficient because the number of those who meet the criteria is much higher than the available supply. The ensuing imbalance is closely related with corrupt behaviour, such as bypassing of existing rules or so-called waiting lists, etc. An example of this instrument is the introduction of a random distribution system of lawsuits, the so-called electronic filing room. Another example is the random assessment of applications for EU funds.

Information instruments

Transparency is a basic method for increasing the probability of detecting corruption and maintaining government integrity. A universal method for increasing transparency and improving the functioning of the public sector introduces openness, dissemination of information and accountability. Information instruments play a key role here because they enable citizens to participate in fighting corruption and conduct public control. From the economic aspect, information instruments not only increase the probability of detecting corruption, but by decreasing the uncertainty of private actors, they also reduce the space for corruption.

Quality and availability of information contribute not only to the efficiency of the public service but also increase citizens' participation in decision-making and policy development. This creates a more open and transparent environment, which allows the public to detect a potential conflict of interest or an excessive influence of

some interest groups. It further helps to involve a wider range of actors in the development of public policy and prevents certain powerful domestic or foreign business groups from exerting an excessive influence. In this way, the local authorities also receive feedback and many innovative ideas from citizens. Overall, this facilitates the strengthening of a community and therefore also reducing corrupt behaviour. Information instruments rest on three pillars[14]:

- **Dissemination of Information** – one-way information flow from authorities towards citizens;
- **Consultation** – two-way information flow where citizens can provide feedback; these measures include *public discussion, public settlement, and citizens' panels*.
- **Participation (active)** – relationships based on partnership and co-operation; measures concern mainly the inclusion and *involvement of the public in the decision process*, e.g. in review processes or commissions.

The fundamental mechanism of information instruments is based on **the right to information and free access to information** in the public sector (Law on Free Access to Information). In Slovakia, the right to information is guaranteed in the Constitution and various international documents on human rights. The Law on Free Access to Information helps to explicitly stipulate and define conditions, methods and processes of applying the right to information. Unlike other information instruments, which include an obligation to publish certain information (see below), this instrument gives access to any kind of information which the authority has available and to which access has not been restricted (it is not confidential) by other regulations. Moreover, this is a right that any citizen can exercise without the necessity of explaining the purpose of the request for information. The law on free access to information is thus an instrument for improving the information policy of public authorities and simultaneously increasing the legal conscience of citizens and civil servants. This special legislation regulates the access of the public to information about the municipalities or state administration and it is considered a universal standard in all developed countries.

Other than the right to access information, **dissemination of information** is another information tool. Usually two types of dissemination are distinguished: **compulsory** and **voluntary**. Compulsory dissemination of information is conducted due to an obligation from law, i.e. the constitution and laws, by central authorities and other bodies, municipalities and public officials. Voluntary dissemination of information is conducted at the initiative of municipal authorities beyond their legal obligations.

Compulsory dissemination of information thus **obliges authorities and public officials to proactively release certain information**. The Law on Free Access

14 This division can be found in OECD publications. For more see OECD 2001, European Commission 2002.

to Information stipulates – apart from dissemination of information upon request – also the duty to make certain information public without a direct impetus. This concerns displaying general information such as powers/competences, structure of the organisation, procedures, legal periods or the code in publicly accessible places, such as bulletin boards, internet, lobby of the building, etc[15]. Similarly, the local authorities are also obliged to make public the generally binding regulations, which are on the agenda for meetings of the municipal authority (Law on Municipalities). Non-compliance with this obligation is a wrongful official procedure and thus a reason for administrative or prosecutor's action. However, principles of compulsory dissemination of information to the public apply also to administrative authorities (Law on Administrative Procedures, so-called Administrative Order), which are obliged to inform clearly and on a timely basis about the start, implementation and conclusion of all proceedings that are "a public matter", e.g. proceedings concerning the environment. Other information which is publicised as obligatory is e.g. *wealth and income of public officials* (judges in particular); *annual reports of central government authorities and their agencies; public registers and databases* (e.g. commercial register), recipients of subsidies, licences and some information on privatisation. Disclosure of information about the *financing of political parties*[16] or *structural funds*[17] is a special category.

There is a broad range of voluntary information tools aimed at providing all kinds of information. The primary purpose is increasing the transparency of decision-making processes, e.g. court decisions, distribution of EU funds and background information to the decisions of the Public Procurement Office. Several cities are building a database of public orders. Among the information that can be made public are, e.g. rules of the selection process, list of members of the selection committee after the selection process, reviewers' evaluation reports, evaluation charts of separate projects and sample contracts with external reviewers. Publicising this information forces decision-makers to set clear criteria, evaluate them thoroughly and justify their decisions. These soft instruments of information policy have the potential to deepen the relationship between the citizens and the municipality and increase their trust in its authorities. Citizens (45 %)[18] most often consider publicising of all the information about activities and decisions, including reports on the management of the municipality's assets and finances, a measure that would best help to curb corruption in the management of the municipality.

15 For more information see Kamenec, T. – Galanda, M. – Pirošík, V. – Šveda, D. 2000. *The Law on Free Access to Information. A Handbook for Public Servants on State and Municipal Levels.* Bratislava: Open Society Foundation.

16 For more see Sičáková-Beblavá – Zemanovičová 2002.

17 For more see Babic – Havran 2005.

18 Rončák (ed.) 2007, p. 33.

When publicising information, compulsorily or voluntarily, there are different ways of communication, such as publishing *information materials and newspapers* and utilising the *media and internet* (see Table 3).

Table 3
Forms of Communication

Form	Description
Information materials	Relevant information in full version, abridged or in a user-friendly form
Information database	Archived documents that are organised according to a key and usually accessible via internet
Catalogues, registers, indexes	Finding information is often complicated and therefore it is advisable to sort data and document into registers
Questions and answers	Civil servants draft an analysis of frequently asked questions and publish the answers
Brochures, manuals, leaflets, posters, CD-ROMs	Official documents and reports are complex and not easily approachable. Therefore it is advisable to simplify the information and present it in a more attractive format which increases the citizen's conscience about public policy. The information can be summed up in simple language with visual aids, e.g. graphs, drawings, schemes. In many countries this format is used to explain the workings of institutions and processes. Information can focus on a certain aspect to influence a particular target group.
Audio and video recordings, films, games, curricula, picture books	Application of attractive forms of presenting information is suitable when targeting specific groups, e.g. children, minorities, etc., who are supposed to change their behaviour as a result of the new policy

Source: Adapted according to OECD (2001), pp. 45–46.

Apart from providing information, information instruments can also serve as **consultation and participation mechanisms**. Consultation and participation instruments can be compulsory and voluntary. By creating space for consultation and participation mechanisms, local authorities win citizens over for their decisions and this helps to avoid potential conflicts in the community. Particularly at the level of municipalities, it is important to determine compulsory and participatory mechanisms, e.g. the Law on Municipalities ensures participation in three different ways: through *citizens' meetings, local referenda and local authorities (*membership in municipal council commissions and commenting on generally binding regulations). On the level of state administration there is space to participate in decision-making by means of *working groups, discussion forums, focus groups and through inter-ministerial reviews* of the legislative process (allowed for by the government Rules of Procedure). Commonly used instruments for voluntary two-way communication

between the authorities and the public are various inquiries and opinion polls, as well as the creation of public relations departments within different authorities[19].

Information instruments are also related to **control mechanisms** – internal or external – that exist within the public sector and increase transparency by limiting the space for illegal and corrupt behaviour. Their preventive function is very important. A control mechanism is an instrument that focuses on the collection, processing and analysis of information (not on its accessibility and dissemination) in a manner, which makes it possible for the public institution to effectively, economically, efficiently and transparently fulfil its basic tasks. The internal control is a system whereby a control agency (internal control unit directly subordinate to the principal body) is assigned to monitor subordinate agencies within the public administration. External control distinguishes a) external supervision through institutions such as the National Council of the Slovak Republic, Supreme Audit Office of the Slovak Republic, prosecution, administrative court, independent auditors, public ombudsman and b) direct public monitoring.

An important information instrument is **direct exhortation aimed at influencing individual values** of both public and civil servants. Values are collectively accepted principles to consider what is right and acceptable. It is expected that every civil or public servant behave ethically and morally. Similarly, citizens are expected to disapprove of corrupt behaviour and actively reject participating in and tolerating it. The question remains on how they are informed and how they identify with ethical principles, values and forms of behaviour. One thing is the existence of a so-called ethical infrastructure created by regulatory instruments and aimed at the elimination of undesirable behaviour. Another thing is the overall awareness and conviction about the correctness of ethical behaviour. Information instruments such as *education and explanation* thus focus on *convincing* on the basis of arguments and *voluntary change* of behaviour on the basis of influencing the way of thinking, level of knowledge, perception of reality or values. This type of instrument includes organising *seminars, workshops and conferences* where these issues can be discussed.

Administrative instruments

According to Transparency International[20], tardiness, unnecessary delays in procedures, and the absence of rules in the decision-making processes of public authorities are the most common factors leading the public and companies to corrupt behaviour, particularly in the case of:

- Shortening of time limits (e.g. registration at the Cadastral Office or the Commercial Register),

19 For more on possibilities of local authorities to use consultation and participation mechanisms see Pirošík 2005, Staroňová – Sičáková-Beblavá 2006.

20 Zemanovičová, D. et al, 2001. This indicator has not changed in the last couple of years.

- ambiguity of criteria for granting of certificates, licences, grants, subsidies, loans, public orders, court decisions,
- non-observance of the existing rules.

After a year in his capacity, ombudsman Pavol Kandráč concluded the above when he announced[21] that since March 2004, 111 out of 131 violations of fundamental rights and freedoms were unnecessary delays in procedures. In a number of these cases delays happened at employment offices, social affairs offices, cadastral administration, courts, municipal offices and ministries that were not capable of handling their agenda and this further led to the violation of time limits set by law.

These problems are often caused by underestimating the organisational structure and understaffing the authorities or ineffective division of labour and roles, i.e. factors that can be solved by administrative instruments.

Administrative instruments usually relate to:

a) the internal division and organisation of the work of an office so that particular public policy is implemented in the most efficient manner, i.e. the creation of the necessary technical and administrative capacity in the office;

b) the provision of public services with the highest efficiency and quality, i.e. self-provision (so-called internal or direct provision of goods and services) or the involvement of a third party (so-called external or indirect provision of goods and services[22]). There is also the option of engaging self-regulatory mechanisms (market, family, non-governmental sector).

Restructuring and rationalisation of organisations, procedures or their functions in order to achieve the highest possible synergy of existing resources (human, financial, etc.) helps to simplify and formalise the processes, utilise information technology and thus shorten legally-set time limits, reduce the leeway in decision-making and increase the transparency of processes. The strengthening of an existing capacity can require the hiring of a new staff member, creation of a new position or office (e.g. introduction of the capacity of the Main Controller in the municipality, introduction of senior court officials who handle less complex matters and thus help the judge to focus on more complex matters, introduction of the Special Prosecutor's Office and the Special Court) or enlarging or reducing of existing powers (e.g. extension of the supervisory powers of the Supreme Audit Office to municipalities). In certain sensitive areas it is recommended to *rotate the staff* in order to break entrenched relationships and bonds with a high risk of corrupt behaviour.

21 Daily Hospodárske noviny, 26. 5. 2005.

22 External forms are conducted by means of external suppliers who should be chosen on the basis of the Law on Public Procurement. In public procurement the methods of public tender, competition among short listed candidates and negotiated proceedings with public output can be utilised.

Common rationalisation procedures include *simplification and formalisation of procedures* (e.g. measures related to registration at the Commercial Register), *utilisation of information technology* (e.g. electronic filing and software in Court Management), *introduction of e-governance* (e.g. inter-ministerial review process accessible online), etc. – these are steps to reduce delays. This aspect of administrative instruments relates to the *management of internal resources, processes and duties within the organisations* (e.g. restructuring of the courts during the introduction of the court management and focusing on output). The creation of an effective complaint system allowing the employees and citizens to report corrupt behaviour belongs in this category (e.g. survey at a court in Banská Bystrica). Within such a system it is important to have the capacity to review the complaints and draw criminal or disciplinary sanctions if they are confirmed. When considering the technical and administrative capacity, the actual possibilities of the organisation have to be considered; however, there are also possibilities of strengthening the existing capacities by means of *training and motivation instruments*.

This is further linked to another step – the reduction of any leeway in decision-making for those individuals who are entrusted with power. If public officials have leeway in when and how they are going to make a decision, it creates space for corruption[23]. The bigger the leeway the more space for corruption there is. Through administrative instruments, decision-making procedures and methods can be defined and standardised (some by means of regulation, e.g. Law on Public Procurement), decision-making powers clearly delineated (who approves the purpose, who assesses and evaluates, who signs the contract, etc.) and in some areas employ *collective decision-making bodies* (i.e. commissions assessing applications and offers). Where there is the need to set the criteria in advance and justify the taken decision (about privatisation, a public order award, state subsidy or grant, licence, etc.) an important administrative instrument is the *criterion-based decision-making* (Table 4).

Table 4
Differences between free and criterion-based decision-making

Decision-making	
Criterion-based	**Free**
Criteria are defined	Criteria don't exist or are unclear
The process of decision-making is defined	The process of decision-making is not defined
Justification is available	No justification is available
Investigation is possible	Investigation is not possible

Source: Zemanovičová – Sičáková – Ondrejka (2001).

23 For more see Zemanovičová, D. – Sičáková-Beblavá, E. – Ondrejka, P., 2001.

Another role of administrative instruments relates to the efficient use of resources and the quality of public services rendered – the decision **whether to directly provide services or whether to involve a third party** (e.g. a private non-profit organisation or a business entity). The degree of involvement of the public organisation in arranging and providing the service can be *direct*, i.e. the organisation uses its own resources/staff for rendering services or by means of *independent legal entities* established for this purpose and providing services that utilise the assets and other resources of the organisation/municipality (subordinate public agencies, municipal enterprises/civil corporations and cooperatives, etc.). On the other end of the scale is the minimal level of involvement, i.e. the organisation is responsible for arranging but not for the provision of the services (that is left to be handled by the market, family or community). In cases where the source of corruption rests in the limited capacity of the public sector to directly provide a certain service, **liberalisation or privatisation of the activity** may be a solution (provided other public policy priorities are not in the way). Liberalisation also concerns the introduction of competition among public organisations, e.g. by means of a system of contracts that aims at increasing the transparency of public administration. The system of contracts is used to define relations between central authorities and their directly subordinate organisations: the contracts define the output, which is being ordered by the central authority from the subordinate organisation and the allocated financial means.

This type of administrative instrument also includes the decision about the establishment of a new institution or office – whether it directly relates to the fight against corruption or indirectly improves the supervision or increases the quality of public services rendered. The creation of new structures and independent institutions to fight corruption often stems from international conventions[24] aimed at enforcing and strengthening measures, which should improve the efficiency and efficacy of avoiding the criminal displays of corruption. This applies to the institute of the ombudsman, special criminal courts and control bodies. The status and power of the control body (its autonomy and powers) depends on the institutional structure and division of powers among the separate executive, legislative and judicial bodies. One of the key tasks of the control system is to create conditions for avoiding shortcomings and an effective control mechanism.

Conclusion

Intervention instruments to fight corruption present only a fraction of the possibilities that the government has at its disposal. The intention of this text was to

24 E.g., United Nations Criminal Law Convention on Corruption, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, European Convention on the Suppression of Terrorism, International Convention for the Suppression of Terrorist Bombing, International Convention for the Suppression of the Financing of Terrorism.

describe the basic dynamics and principles of these categories of instruments (legislative, economic, information and administrative) rather than simply listing them. Decision-makers have to realise that these instruments do not function efficiently when isolated, but are mutually intertwined. Therefore, a complex strategy has to take all the anti-corruption intervention instruments into consideration and "stage a simultaneous attack on multiple fronts". Some instruments are effective in practice only when supported by other systemic or non-systemic measures with an identical objective. Thus the art of an anti-corruption strategy lies in the setting out and phasing of priorities, combining separate intervention options and introducing a combination of long-term and short-term systemic changes. Some instruments require a longer preparation period and management (administrative and political support) but they bring results only in the medium- and long-term, however, with significant effect. Others can be instantly implemented and bring results right away, but without the support of other instruments, quickly lose their strength. The choice of a concrete instrument thus depends on the interests, objectives and perspective of separate anti-corruption programmes. It should be remembered that it is more important to implement an intervention instrument in practice than merely select it as suitable.

Individual tools may be used to augment existing anti-corruption strategies, but as a general rule, tools should not be used in isolation. No serious corruption problem is likely to respond to the use of only one policy or practical measure. It is expected that countries will develop comprehensive anti-corruption strategies consisting of a range of elements based on individual tools and that the use of these tools will require careful consideration and coordination. The challenge is to find combinations or packages of tools that are appropriate for the task at hand, and to apply tools in the most effective possible combinations and sequences.

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PART II

Examples of Anti-corruption Measures in the New Member States

Interest Groups, Lobbying, Interaction Environment and Transparency in Public Sector Decision-Making

Beáta Meričková, Ján Šebo

Introduction

The "playground" for the existence and active participation of interest groups is rising constantly. The motives for such evolution must be sought in the environment, which causes the need for the creation and functioning of increasingly larger numbers of organisations representing natural persons and corporations with common interests. Most of the modern societies are based on a democratic method of preferences promotion and followed by setting the priorities for particular public policies.

The goal of this paper is to investigate the issue of mutual relations among three main aspects of transparent decision-making under the existence of interest groups: interest groups – lobbying process – interaction environment.

A brief theoretical part of this paper highlights the profound new institutional theory, public choice theory, game theory, theory of lobbying and non-profit sector theory, which shape current theoretical and practical initiatives in transparency and open decision-making at all levels of government, the European level notwithstanding. There is a model of relations among these aspects based on the economic fundamentals and legal framework defining the decision-making process.

The study uses a quantitative, as well as qualitative approach, to investigate the research question and analyses the original collected survey data from own empirical research. An analytical part provides selected data connected to the key factors that influence the success of lobbying in particular environment considering the interest group's organisational maturity. Understanding these factors, this paper presents the results of performed research in the area of various interest groups in Slovakia and puts the findings into the model of interaction between interest groups and decision-makers based on the social and market pay-off matrix. The presented pay-off matrix explains the behaviour of interest groups and decision-makers in

particular subject matter and explains the possibilities to regulate the interaction environment in the context of an open and transparent decision-making process. In contrast to the game theory, the model of effective lobbying is presented based on the empirical research of key institutional variables influencing the interest group, interaction environment and lobbying campaign.

The mechanisms, by which priorities of particular public policies are set, determine and influence the intensity of new interest group creation, which aim to enforce their interests through legitimate political measures.

The environment and relations into which the interest groups and public sector representatives enter can be characterised by constant change of formal and informal relations (Johnson, 1997) and at the same time increasing the complexity and sophistry of rules and norms of behaviour, which must be obeyed. As Kindon (1995) argues in his work, it is possible to outline fundamental factors influencing qualitative and quantitative features of increasing interaction processes:

a) principle of systematic subsidiarity of public administration,
b) economic and political climate where more interest groups (formal as well as informal) are demanding to be heard and participate actively in the decision-making process and to redistribute or retain their share of the public sources,
c) a constantly more extensive system of public administration,
d) increasing bureaucracy and the bureaucratic system of decision-making,
e) constantly more extensive, complex and complicated legislature,
f) rising extensiveness of regulation and intervention of particular levels of public administration (central and local) into everyday life,
g) ebb and flow of political ideas and political capital,
h) technological change (e.g. the speed and growth in communications technology),
i) information explosion (sheer volume of information and paper to be absorbed),
j) increased speed and urgency in decision-making,
k) tendency toward crisis management,
l) increasing specialisation within a body of knowledge,
m) pressure of re-election.

Berry (1984) claims that the success of interest groups in the process of advocating their interest and influencing decision-makers is therefore directly correlated with the ability of these organisations to operate in the environment, which is defined by a high level of competitiveness, and properly exploit the connections arising among subjects active in this area. This idea has led us to examine what these factors are and how they should be managed.

It is fair to ask whether lobbying is necessary, desirable or effective. Perhaps the answer to this reasonable question is best addressed by looking at the process of government in the absence of any lobbying. Therefore, based on the relevant litera-

ture review, we tried to draw the scenarios explaining the behaviour of government officials under the optimistic, pessimistic and real conditions.

Table 1
Scenarios of government representatives' behaviour

The ideal scenario (optimistic view)	**Theory of bureaucracy scenario** (pessimistic view)	**"Matter of fact" scenario** (real view)
Public servants are apolitical, conscientious, fair-minded and diligent	Public servants take short cuts and drive their own agendas	Public servants listen to rational argument and hidden agendas are more difficult to pursue
Ministers are thoroughly briefed by their public servants and would formulate policy on the basis of rational thought	Ministers are ignorant of the facts	Ministers keep their ears to the ground through a wide range of formal and informal contacts
Cabinet make decisions on the advice of the responsible Minister	Cabinet doesn't trust the advice given to it by the Minister	Cabinet is subject to pressure and scrutiny from various interest groups
Advisors are open to and take advice from individuals in the community	Advisors are overwhelmed by the volume and range of information and become more and more isolated	Advisors see representatives of groups with focused aims rather than an endless trail of individual, perhaps rambling complaints
Advisors influence Cabinet through party room debate	Advisors don't know enough about any subject to have productive input	Advisors may use the pre-packaged arguments of the groups they support to influence their Cabinet colleagues
Parliament debates the issue free from outside interference or influence	Parliament debates issues in a vacuum	All sides of a given issue may be aired publicly before debate in Parliament
Decisions and actions are bold, fair and free of self interest	Decisions are made without necessarily knowing their full impact	Decisions and actions are influenced by the quality and persuasiveness of the arguments put forward by competing interests
The electorate accepts the decision as hard but fair and reasonable	The electorate feels confused and frustrated	Electoral response can be more accurately predicted

Source: Own elaboration based on relevant literature review.

In reality, for interest groups entering the interaction and lobbying process as well as for lobbied decision-makers, it is necessary to accept the following circumstances and facts (Kindon, 1995):

- issues are crystallised by those who have a personal interest in pushing for or against an issue,

- opposing interests highlight the strengths of their own arguments and expose the weaknesses of others' arguments,
- competing forces within similar interest groups compel each group to lift its game.

The space for coexistence of interest groups and public sector representatives could have many forms. Understanding these aspects and intensity of relations will have a significant influence on future research in this area. It can be assumed that there is a model of relations among these aspects based on the economic fundamentals and legal framework defining the decision-making process. Recognising these factors would allow us to set-up a better interaction environment and decision-making process and avoid the ineffectiveness caused by "traditional" decision-making tools criticised by public choice theorists.

Theories shaping the interaction process

Several profound theories focus on the interaction environment of interest groups and public sector decision-makers, while suggesting ways to remove inefficiencies and non-transparency from the decision-making process.

World-recognised public choice theorists Tullock, Buchanan and Tollison (1980) and Johnson (1997) expressed their concern about the effectiveness of traditional decision-making tools performed in the public sector exercised through participatory and representative democracy. One of the issues, with the exception of the median voter and voting process theorem, especially distorting the transparency of public decision-making and creating the market for interest groups is the existence of the log-rolling process. The log-rolling process is the state of nature in public decision-making, where each voter trades support for his issue so that: "If you vote for my proposal, I will vote for yours" (Holcombre, 2005). Whether log-rolling occurs, minority-supported issues become the collective choice. Indeed, in this case, it is possible for "artificial majorities to be formed" (Hindriks and Miles, 2006).

As most public sector decisions are oriented on public goods and services provision and government failure in the provision of a sufficient amount and structure of public goods is explained by the public choice theory (Johnson, 1997), the key question in further research is the way in which market and government failure in goods and services provision can be explained using more advanced theories, such as the theory of clubs and the theory of collective action.

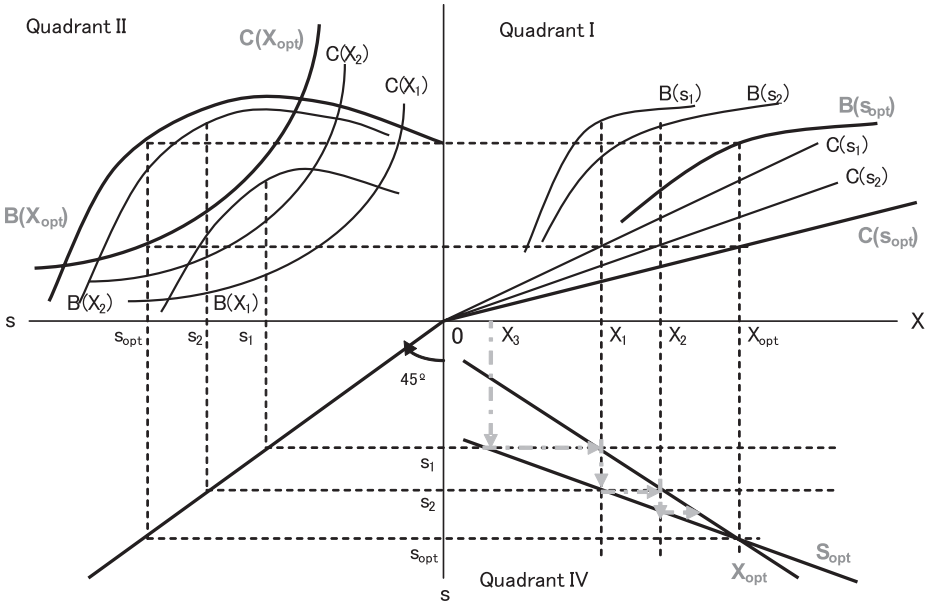
An explanation for the insufficient provision of public services is given by the unwillingness of consumers to reveal their preferences on particular services due to the possibility of "free riding" on benefits and do not contribute to cover costs. Thus, the public authority is not able to cover the real demand (Stiglitz, 1997). This issue is solved by forming private clubs that provide space for uncovering preferences and

solutions for the free rider problem. By joining clubs (profit or non-profit oriented), members become open to participation in the provision of quasi-public goods and services and willing to contribute to activities aimed at creating conditions for more efficient ways of existence on the "market". The theory of clubs searches for the rationale of the size of the interest group (organisation) and scope of provided services in order to be more efficient than the publicly run organisations and, at the same time, fulfil the preferences of members in a more personalised way.

Sandler and Tschirhart's model of clubs (1980) contributes to this debate by forming the optimal size of the interest organisation. Such organisations, by revealing the interests and preferences of represented subjects and their ability to associate them, use the economy of scale and distribute costs of quasi-public goods provision among the members. Each interest group (organisation) has a clear objective to increase its legitimacy and acceptation and thus its real influence in the process of enforcing the interests of represented subjects. To achieve the objective, maximisation of membership is the key effort of the organisation. But there will be internal counter-tendency to restrict the membership from the side of members until the overload point is reached (Olson, 1965).

The overload effect represents the capacity of interest organisation, in which the optimum number of members (size of interest group) is reached. The overload point represents the equality of benefits provided to members and costs associated with the membership. Therefore, interest groups must take into consideration (in the process of acquiring new members) the benefits delivered to each member. The benefit given to each member can be defined by the utility function consisting of the amount of gained quasi-collective good, selective good and size of the member. Recognising the utility functions of all interest group members, we can determine the optimal size of the interest organisation and optimal amount of goods, which is provided by the interest organisation to its members. The graphical expression of the optimal size of interest organisations presents the following picture.

Picture 1
Optimal size of the interest organisation



Source: Own elaboration based on Sandler, T. and Tschirhart, J.: *Theory of clubs: a survey*. In: Journal of Law and Economics, No. XVIII. December 1980.

Determining the optimality of interest group size is, in fact, the intersection of two features. These two features are presented in picture 1, in quadrant I and quadrant II. The optimal number of members using aggregated utility functions of particular members is solved in quadrant I. The procedure is based upon definition and following the aggregation of marginal costs and benefits connected to the membership in the interest group to each member. In the case where voluntary membership exists, the subject will remain a member of the interest group until marginal costs of membership (MC) equals marginal benefits of membership (MR), in short until $MR_i \geq MC_i$. Graphical illustration is expressed by the slope of the curves B(si) and C(si).

Quadrant II solves a similar problem, but focuses on the approach of the main organisation. Each interest organisation tends to maximise its size, by which maximised benefits (B) in the form of disposable sources influence a particular area. The limiting factor is the capacity constraint of the organisation and impact of the overload effect. The total benefit provided by the interest group to its members decreases by crossing the overload point and members react by leaving the organisation. The benefit function is represented by the curve B(Xi).

To determine the optimal amount of services provided by the interest group, we must also consider costs, which emerge in the process of acquiring and retaining members. This feature is expressed by increased marginal costs. The interest group distributes them on to the members equally (as expressed in quadrant I), but from the point of the interest group, the optimal size and scope of provided services is in the point where marginal benefits (MR) equal marginal costs (MC), i.e. $MR = MC$. Graphically, this situation is expressed by the slope of curves of benefits B(Xi) and costs C(Xi). Interconnecting these features and transforming into quadrant IV, we get two lines Xopt and Sopt. Their intersection represents the optimal size of the interest group and combines consumer optimum (members) as well as producer optimum (interest group).

The theory of clubs became the first approach to explain the rationale for forming private non-profit organisations and entering the interaction process with public administration in forming the environment for their efficient existence. Indeed, the breakthrough influence on the interaction process has Olson's seminal work "Logic of Collective Action" (1965), which uncovered and explained the economic behaviour of individuals towards the creation of self-interest organisations and shaping the interaction process with public decision-makers.

The theory of collective action implies the fundamental incentive of an individual to participate in the goals of the group and is based on several variables. According to Olson's (1965) implication, the individual will participate in the collective as long as his marginal benefit of membership is higher than the marginal costs of membership.

$$FB - C \geq 0 \tag{1}$$

where:

F = probability of achieving favourable outcome,

B = expected benefit of achieved favourable outcome,

C = individual costs of participation in collective.

Olson (1965) further claims that the rationally behaved potential member considers membership in a particular group if additional selective services are provided. These selective services are available only through the membership. He argues that no-one will become a member of group if the group provides only collective services, which are available for everyone without necessarily being a member.

Johnson (1997) contributed to this topic by defining the types of interest groups and explaining the rationale for their existence and influence from the point of gained benefits and shared costs. Three types of interest groups occur in society:

1. producers and production factors owners (industry),

2. non-profit non-governmental organisations (NGOs),
3. consumers.

The best conditions for the existence and rationale for entering the lobbying interaction process is given to the interest groups representing producers and owners of production factors. Because of the high benefits and effectively shared costs, the free-ride is lower than in other types of interest groups. Indeed, industry interest groups have the highest incentives to enter the interaction process with public decision-makers and lobby them.

The critiques of Olson's theory of collective action and his followers (Marsh, 1976; Moe, 1980) have developed and tested more socially-oriented approaches based on collective identity. Several research papers (Melucci, 1989; Potters and van Winden, 1992; Brewer and Gardner, 1996; Ostrom and Walker, 1997; Fehr and Gächter, 2000) confirmed that other aspects need to be studied and tested when drawing the conclusions on collective action.

Overall, we can conclude that the above mentioned results of the theory of collective action research shows that the higher the level of "social integration", measured by the theory of social capital tools (Putnam, 1993), the possibility to communicate and the intensity of selective services and sanctions utilisation (Moe, 1980), the higher the probability of the success of collective action for an interest group in achieving its goal.

Politics are especially about counter-interests and influence supported by a certain form of power. Even though it arises from the action of an individual person, it is not the matter of one person. Especially the increasing information asymmetry and lack of public control makes particular interest groups important players, as they mediate the directives of behaviour and, at the same time, "hold back" for politicians (Moe, 1980). Action, mainly collective action, is aimed at sharing interests and represents the fundamentals of a political economy, especially in the area of lobbying, public demonstrations, elections and participation. The theory of collective action with today's approach focuses on determining the factors of shared interests and develops ways on how to overcome Olson's argumentation on participation of individuals in a collective. It investigates the reasons and processes of formal and informal groups' formation, coordinated action and decision-making with regard to the level of lobbying activities and the influence of public decision-making mechanisms (van Winden, 1999).

Another theory explaining the need for public decision-makers and private non-profit sector interest groups to co-operate is the interdependence theory. According to this, a close co-operative relationship can be forged between the non-profit sector and the state in addressing public problems. For one thing, non-profit organisations are often active in a field before government can be mobilised to respond. They often develop expertise, structures, and experience that governments

can draw on their own activities. Beyond that, "non-profit organisations often mobilise the political support needed to stimulate government involvement, and this support can often be used to ensure a role for the non-profit providers in the fields that government is persuaded to enter" (Salamon, Sokolowski and Anheier, 2000). Modern economies accept this approach in creating public policies and thus strengthen the importance of this theory in practice.

Modern approaches explaining the behaviour of public decision-makers and private non-profit organisations representing different interests are based on profound advanced game theories that have become dominant in explaining the behaviour of players in different interaction games. Many authors have developed models of games in lobbying process (Becker, 1983; Cairns, 1989; Potters and van Winden, 1992; Austen-Smith and Wright, 1994; Sloof and van Winden, 2000, etc.). Most of the game-theory papers oriented towards the interaction process and lobbying, share the view that there are only two players from interest groups. Critique of these approaches is in the examination of only competing players and the "winner-takes-it-all" approach that does not count with the interaction process and player from the public sector. This shortfall led us to input an additional factor based on the interaction environment created between competing players on the one side and the public decision-maker on the other.

If we accept all the above mentioned approaches and at the same time want to apply to the model of interaction all the important factors these theories suggest taking into consideration, it is necessary to elaborate the model, which would be based on the multi-criteria pay-off matrix. This principle has been assumed in the research part.

Model of interaction

Based on our previous research findings (Šebo, 2005) we claim that there is a model of relations among internal and external aspects based on the economic fundamentals and legal framework defining the decision-making process. The analytical work presented in this part is oriented towards uncovering the key factors influencing the success of lobbying in a particular environment, considering the interest group's organisational maturity as well as the environmental conditions for the interaction process in the Slovak Republic. Understanding these factors, we will present the results of performed research in the area of various interest groups in Slovakia and put the findings into the model of interaction between interest groups and decision-makers, based on the social and market pay-off matrix.

Input data are based on the qualitative research performed during the years 2003 and 2007 in the example of 92 interest groups active in various areas representing three types of interest (producers, non-governmental organisations, consumers). Research was oriented towards the internal aspects of organisations supported

by a study of official documents. Understanding of the external environment of the interaction process was realised through the review of legislative documents specifying the legislative and administrative process in public authorities at various levels (local, regional and national). The results were tested for their relevance and inserted into the model of the interaction process.

The following indicators defining the internal aspects of interest groups according to their type were tested separately and with mutual influence on the total outcome of the interaction process using lobbying techniques:

1. relative size of the organisation (ni) – (examined the ability to define the absolute and relative size of members and interests covered),
2. homogeneity of members' opinion (ci) – (examined the ability to secure a united presentation of the opinions of the interest group by its members),
3. sources (Yi) – (material, financial and human) used for the lobbying process of interaction (examined the sources available for interaction and lobbying activities),
4. organisational maturity (Oi) – (examined the organisational structure oriented towards special lobbying and interaction departments, processes and contacts with official bodies),
5. lobbying campaign (Mi) – (strategy and tactical realisation).

In the last indicator (lobbying campaign), no tests were performed due to the inability to obtain relevant data and the specific position of this indicator, which is activated only during the campaign process.

The indicators of the internal environment have been tested using a correlation analysis with the aim to define their significance ($\alpha = 0,9$) for a successful interaction process. The results of the tests are presented in the following table.

Table 2

Correlation of internal environment indicators and type of interest group

Indicator/Type of interest group	Industry	NGOs	Consumer	Other (not specified)
Relative size of organisation (n_i)	0,854	0,598	0,239	0,453
Homogeneity of members' opinions (c_i)	0,912	0,321	0,332	0,567
Sources for interaction process (Y_i)	0,781	0,121	0,318	0,482
Organisational maturity of organisation (O_i)	0,847	0,433	0,116	0,235

Source: Own research

The results have shown the highest score in the interest groups representing industry interest and the lowest score for consumer organisations. The results ob-

tained were further used for the creation of the interaction model that could help a particular organisation to test its potential for successful interaction.

Among the external indicators which were tested in the modelling process, were the following:

1. legislative design of the players (material law aspects of interest groups and procedural law of the decision-making process),
2. interaction environment (level of openness and competition among interest groups and the position of the particular interest group in the interaction environment),
3. impact (defined as the momentum of reaction and level of mobilisation with regard to the time schedule of the decision-making process).

External indicators are far more important for a successful interaction process with government officials (Reid, 1999). Thus we tried to overcome the shortfalls of the game theory approaches by examining the players' strategies under the given conditions (Potters and Sloof, 1996) and build the model on the preconditions that these conditions can be examined and modified before entering the interaction process.

The legislative design of interest groups in Slovakia was examined using a qualitative analysis of legislative documents setting the environment for the existence of particular interest groups.

The results have shown that there are three main legislative types of interest groups in the Slovak legal system defining the interest groups:

- Civic association (Act No. 83/1990 Zb.),
- Interest association of corporations (Civil Code, §20 f),
- Chambers (individual legal frameworks).

Qualitative analyses showed the wide differences in the legal frameworks in favour of interest associations of corporations with a clear presentation of their existence rationality in the legislative act and the most favourable legal framework for chambers, which possess the exclusivity of interests' representation in the interaction with public authorities. These results prove the inequality in the approach of public authorities towards the interest based on the organisational and legal type of the interest group.

The interaction environment was examined using the "social-market pay-off matrix" that combines two factors: model of openness of interaction between the public authority and interest group and the level of competition amongst various interest groups. We investigate the position of a given interest group on the market of interest in a given environment. We search a mutual combination of four basic models of interaction (etatistic, corporativistic, social-democratic and liberal) de-

fined as openness of the decision-making system (Putnam, 1993) and position of the interest group among other interests (monopoly, oligopoly – duopoly, monopolistic competition and perfect competition) focused on the same public issue. The highest pay-off of an interest group (LA) is obtained when interest groups operate in the etatistic model and at the same time possess a monopolistic position on the "market", defined as ($S_{L_A} = v_{x1} + v_{y1}$). On the contrary, the lowest pay-off is achieved, if the interest group (LB) operates in a monopolistic position and competes against an interest group possessing a monopolistic position with an opposite interest, defined as ($S_{L_B} = 1 - S_{L_A}$). The result of the combination of these two factors (social and market) is the pay-off matrix, in which each interest group, potentially entering the interaction process, can be placed and evaluate their chance of winning under the given environment conditions. Particular factors (xi, yi) can be assigned by different weight (vxi, vyi) and thus modify the overall results in this indicator (Si). A detailed "social-market pay-off matrix" is presented below.

Table 3
Social-market pay-off matrix (Si)

Interaction environment – openness (x_i)		**Position of interest group on the market – competitiveness (y_i)**			
		monopoly	oligopoly	monopolistic competition	perfect competition
Factor significance		v_{y1}	v_{y2}	v_{y3}	v_{y4}
etatistic	v_{x1}	$(v_{x1} + v_{y1}); (1 - S_i)$	$(v_{x1} + v_{y2}); (1 - S_i)$	$(v_{x1} + v_{y3}); (1 - S_i)$	$(v_{x1} + v_{y4}); (1 - S_i)$
corporativ-istic	v_{x2}	$(v_{x2} + v_{y1}); (1 - S_i)$	$(v_{x2} + v_{y2}); (1 - S_i)$	$(v_{x2} + v_{y3}); (1 - S_i)$	$(v_{x2} + v_{y4}); (1 - S_i)$
social-democratic	v_{x3}	$(v_{x3} + v_{y1}); (1 - S_i)$	$(v_{x3} + v_{y2}); (1 - S_i)$	$(v_{x3} + v_{y3}); (1 - S_i)$	$(v_{x3} + v_{y4}); (1 - S_i)$
liberal	v_{x4}	$(v_{x4} + v_{y1}); (1 - S_i)$	$(v_{x4} + v_{y2}); (1 - S_i)$	$(v_{x4} + v_{y3}); (1 - S_i)$	$(v_{x4} + v_{y4}); (1 - S_i)$

Source: Own elaboration

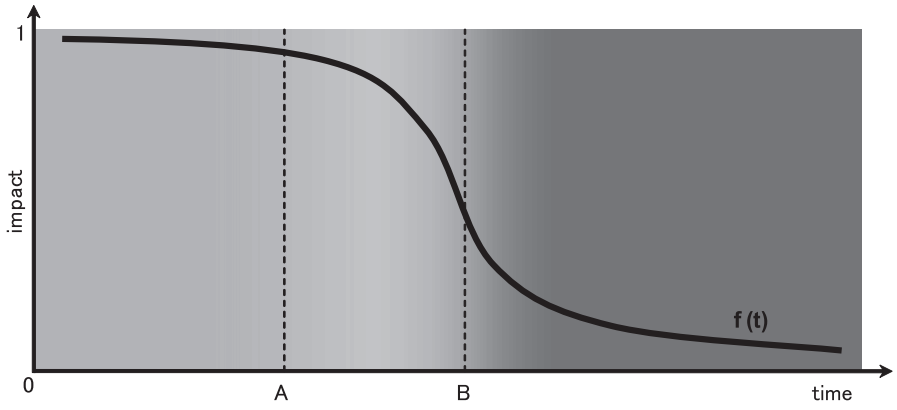
The practical usage of the indicator character depends on the position of the interest group on the market (competitiveness) and acceptation from public decision-makers. In the case where there are only two competing interest groups entering the interaction process trying to achieve the benefit (X), the sum of the market positions of the particular interest groups (Li) equals 1.

The presented "social-market pay-off matrix" explains the behaviour of interest groups and decision-makers in a particular subject matter and explains the possibilities to regulate the external interaction environment in the context of an open and transparent decision-making process. If the position of two competing interest groups is vastly different, then the environment is unfairly set, limiting the free competition amongst the interest groups (players). At the same time, if two

competing interest groups have vastly different access to the decision-makers due to the different position in the model of openness, this indicates the unfairly set decision-making procedures limiting the open presentation of interest in front of the public regulator.

The last indicator used for the model of interaction is the 'impact' (t). Impact is the specific indicators, on which many authors dealing with this problem (Potters, Winden, Austen-Smith, Sloof, Ostrom, Reid and others) focus their research. The indicator of impact is determined by the procedural aspects of administrative and legislative decision-making at particular levels of the public sector. Achieving the highest value of impact is determined by the timing of lobbying activities. In this definition, the impact represents the mobilisation of all sources the interest group have decided to use for the interaction and lobbying process (Yi) and use them in specific time with regard to the moment (stage) of the decision-making process. The specific position of this indicator is expressed by the lobbying campaign, which influences the whole interaction process. The significance of the "impact" factor is also presented by the suitable mobilisation of sources (Yi). The value of the impact factor (t) is in the range of (0;1), while the function of impact f(t) has the shape of the letter Z. Graphical expression of the function f(t) based on procedural aspects of the decision-making process is presented in picture 2 below.

Picture 2
Impact factor function of interaction process



Source: Own elaboration

Legend:
f (t) – impact factor function curve
A – point of mobilisation
B – critical point

The value of the impact function f(t) can be in the range (0;1), which means that proper timing of sources mobilisation presented as internal environment fac-

tors (see table 2) and external environment (see table 3) can bring the desired outcome expressed by benefit (X). Results of the tested model of interaction can be intensified by using the impact factor as exponentiation indicator. We can assume, if value of impact equals 1, the effect of internal and external environment factors will be maximised. In the opposite extreme, if the value of impact equals 0, the effect of the tested factors multiplied by the expected benefit will be 1, which will minimise the achieved effectiveness of interaction process limiting to 0.

Putting all these factors together will allow us to present the full model of interaction, which generates the economic effectiveness of lobbying activities for a particular interest group entering the interaction process. As presented in the formula below, we used equal weights for each factor, but this does not mean that different weights for each individual factor can be assigned to fine-tune the model and make it more precise. By running the model, the total score can be in the range (0; ∞), which expresses the total effectiveness of lobbying activities of a particular interest group in the interaction process. Thus, the complete model of interaction is as follows:

$$E_i = \frac{\left[X\left(n_i c_i + O_i + M_i + S_i\right)\right]^t}{4Y_i}; \qquad (2)$$

where: ni; ci; Oi; Mi; Si; t ∈ (0;1)

X; Yi ∈ (0;∞)

Defining the model of interaction could help us to examine the position of each individual interest group willing to enter the interaction process and assess the probability of achieving their goal via a favourable decision of the public authority.

Recommendations and conclusion

The results found show that even though lobbying activities are not regulated in Slovakia, there is a vastly different environment for the legal existence and acceptance of interest groups, as well as access to the decision-makers and decision-making procedures. The current environment allows decision-makers to prefer selected interest groups in forming policies and decisions and thus decrease transparency in the public sector. From the side of internal aspects, we proved that there are wide differences between the organisational maturity of different types of interest groups. The key differences are amongst interest groups serving producers and interest groups serving consumers. The highest organisational maturity can be found among interest groups serving producers, which gives them the highest ability to effectively influence the decision-makers. Connected with the asymmetric informa-

tion, and the limited access of competing interests to the decision-making procedures, this gives rise to non-transparency in the public sector.

As the creation of the model was based on finding particular components and testing the relevance of selected indicators, the recommendation for further research aims at the testing of this model using real data from lobbying campaigns and verifying its validity.

The main recommendations focus on the activities modifying the external environment of interaction in a way where two different interest groups are able to obtain a very similar score in the social-market pay-off matrix, especially when considering the model of openness. Achieving such status would give a clear signal to the public that all interests are treated equally with the same chance to win.

The recommendation for practical policymakers is to prepare a legislative act regulating the external environment with a clear orientation on fair competition among interests and, at the same time, open up the process of decision-making, allowing interest groups to be involved from the very beginning of any particular legislative (administrative) initiatives. Moreover, the legislative layout of the lobbying process cannot be based on creating two different lobbying groups. All interests must be treated the same way and the procedural aspects of lobbying and interaction must secure open and fair conditions for all players.

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Open Government?
Free Access to Information in Slovakia

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Introduction

After eight years of the existence of the Free Access to Information Act (further "FAIA"), it is possible to argue that the law is the most influential legal norm on citizen-government relations in Slovakia. Originating from constitutional freedom of speech, the access to information enables public control in a manner neither achieved nor attempted by the public bodies. In a country dominated by the cabinet, despite being a parliamentary democracy, in which the cabinet's control by parliament is only formal and where billions of public finances were transferred on the regional level, together with hundreds of legal powers, the FAIA is an effective tool providing for the control of the central government, regions and municipalities. The accessibility and relative effectiveness of the law is confronted with continuing efforts to limit the law's scope and diminish its appeal that enables eligible legal subjects to confront public institutions' representatives on their decision-making, performance or procedural delays. The access to the original information sources about the polities we live in is crucially important in an era in which our representatives communicate increasingly through pre-tested messages, while creating prefabricated news events that limit space for deliberation. Free access to information enables the public to react to the actual problems of a political system, while creating possibilities for participatory decision-making. This chapter provides the legal summary of the FAIA in Slovakia and its implementation during the 2001–2008 period.

Transparency, Accountability and Free Access to Information

According to Florini (1999), the increasing demand for transparency (by academics, policymakers and activists) is reflected in various contexts, ranging from banking, auditing and accounting standards, national fiscal practices, to control of drug trafficking. "In politics, promoters of democracy have come to realise that elections

alone cannot provide accountability unless citizens can monitor the actions of the officials they elect" (ibid: 1).

Transparency is therefore achievable only if:

1. subjects, who are expected to behave transparently are able[1] and willing to allow the access to the information[2];
2. subjects receiving information are able to use this information for evaluation that is based on generally accepted rules of conduct.[3]

For free access to information to have an impact as an accountability instrument and anti-corruption measure, broad access has to be granted, there has to be a sufficient administrative and financial capacity in place to provide information and accessing subjects (citizens, media, NGO, political opposition) have to be able to use the information obtained. As research on information access and corruption shows, the causal link between the two is not easy to establish. Islam (2006) focuses on the relationship between the flow of information and governance. She creates a new transparency index, measuring the frequency with which governments update economical data that are accessible to the public. One of the indicators for the index is the existence of FOI legislation in the country. According to Islam, countries with better information flow are also governed better. The assumption that the introduction of FOI laws will negatively affect the level of corruption is contested by Tavares (2007). By using a sample of democratic countries and two different corruption indices[4], Tavares finds that countries that adopted FOI laws saw an increase in corruption. It should be mentioned that the study does not analyse the implementation of FOI legislation, but simply looks at the snapshot before and after the introduction of legislation. The study neither provides a causal link between FOI legislation and level of corruption, nor attempts to compare the dynamics of corruption between countries with or without it.

In the Slovak case it is possible to propose two causal links between the introduction of FOIA and the decrease in corruption. First is that the FOIA provision that requested public agencies to publish previously unavailable information, or available exclusively to some subjects (such as draft legislation), decreases the level of corruption. The second link is that free access to information enables a better

1 The free access to information depends on existing administrative, financial and expert capacity in a specific country.

2 Although rules that were adopted allow for free access to information, the implementation stage may be complicated by individuals who may prefer secrecy to:
a) cover up incompetent behaviour,
b) protect opportunities for rent-seeking (access to previously secret information),
c) avoid public scrutiny (Stiglitz, 1998).

3 According to Florini (1999: 6) it is not always clear what exactly is the content of the rule that is being enforced, which is often criticised by subjects that are obliged to produce information.

4 CPI index Transparency International an index International Country Risk Guide (ICRG).

uncovering of corruption practices, which may, in a medium-term perspective, increase public awareness about what constitutes (im)proper procedures and behaviour of public officials and agencies. However, it is also possible that public officials and agencies will try to adapt their behaviour in such a manner that will either limit the access to the information (see examples in part 3), or make the practices of corruption more sophisticated.

For example, Slovak NGO Aliancia Fair-Play ("AFP") [5]is using free access to information to uncover potentially corrupt practices and behaviour in Slovak politics, both on the national and regional level. Some of the cases (public procurement for road maintenance in the Žilina region[6] or the plastic bag donation for a political party[7]) needed limited knowledge and corruption suspicion was established without the need for a complex analysis. On the other hand, in the case of MPs in Banska Bystrica[8], the NGO needed complex fiscal analysis for the 2002–2004 period to prove direct links between the city's budget and MP's businesses worth €6.6 million. Probably the most complicated case of AFP to date is the "bulletin-board tender"[9](2008–2009), that involved the Ministry of Construction and the EU structural funds tender. The tender, worth €120 million, was announced only on the ministry bulletin board, to which members of the public do not have access. Only one consortium of companies responded to the tender and was awarded with the contract, with links to the political party that is responsible for the ministry. After analysing hundreds of documents[10] (memos, invoices, accounting records), the AFP found out that that there had been serious errors in the tender accounting documents and overpriced orders for services from the ministry. The case led, after months of massive media and opposition criticism, to the resignation of the minister, although the contract was not abolished. It is also possible that the EC may open formal proceedings against Slovakia, which may result in the suspension, reduction or withdrawal of assistance from concrete structural funds. When another NGO (Conservative Institute) later demanded information about contracting and draw-

5 The efforts of NGO Aliancia Fair-play to use possibilities of FOIA are more systematic, for example, the NGO provides its own on-line database that combines data gathered from various official databases. The database is available at: http://www.fair-play.sk/zoznamy/.

6 *FAIR-PLAY: Nonstandard tenders for road maintenance in Žilina's region.* SITA, 6. 2. 2006.

7 In its annual financial report the political party HZDS reported a donation of €230,000 from a single person, a retired man, who allegedly donated money in a plastic bag to a party official. See more: *Aliancia Fair-Play, 7 million donation unlawful*, http://www.fair-play.sk/clanok.php?u=3&u1=6&u2=24&u3=336, accessed on August, 8, 2009.

8 *Three Years in One City. Sme,* 18. 7. 2005.

9 See for example: *Slovak Spectator*, *EC demands answers over tender.* http://www.spectator.sk/articles/view/34730/2/ec_demands_answers_over_tender.html, accessed on August, 8, 2009.

10 See the table, compiled by AFP, on all expenses repaid by the ministry, http://www.fair-play.sk/xls/nastenka_faktury_porovnanie_fin.xls, accessed on August, 8, 2009. For detailed analysis of the investigation see video presentation (in Slovak), http://www.vii.sk/video/iam4umqg5/transparentnost-a-efektivnost-vyuzivania-fondov-eu-na-slovensku-zuzana-wienk/, accessed on August, 8, 2009.

ing of EU funds for the 2004–2006 and the 2007–2013 period, the construction ministry refused to provide any information, arguing that *the law does not oblige the subject of a request to create data in the form requested by the applicant, if at the time of the application the data did not exist in that form*.[11]

The Legal History of the FAIA

The FAIA was approved by parliament in May 2000, effective from January 2001. The right to the information was constructed as universal; anyone (a person or a legal entity) can demand information from the state administration, regional and municipal governments, public organisations (such as public TV or radio) and any private entity that has the power to make administrative decisions on the rights and freedom of legal subjects. The information request, if valid, has to be answered within a period of eight working days, or, in the case of a more complicated request, an agency may prolong this period to another eight working days. The legally responsible subjects also have to keep a registry of requests. The law limits the cost of information access to direct costs for reproduction of the information only.

The law defines mandatory information that has to be published by enlisted subjects such as ministries, state administration and public entities. These include information on their structures, powers, procedures and lists of regulations.

The law and subsequent cabinet's decrees also opened up a legislative process. A ministry is obliged to publish draft legislation on the cabinet's website and the public has a chance to review the legislation and propose changes within a predefined period. If a proposal to change legislation is made by a group of at least 500 subjects and the ministry refuses its proposals, the decree enables the group's representatives to hold an official meeting with the ministry. This procedure was successfully used several times since 2001 when a ministry proposed changes to the free access to information law. It makes the legislative process more responsive and transparent, as all the submitted changes are subsequently published in a single document that is attached to the draft when discussed by the cabinet. The parliament is obliged to publish all information on its sessions, reports and attendance sheets and voting records, which also enhances transparency. No involvement of the public in the legislative process at the parliamentary level is, however, possible.

Free access to information can be limited if the requested information is classified as a state or professional secret, personal information, trade secrets (with some exceptions such as environmental info, use of public money), information that was obtained "from a person not required by law to provide information" and who de-

11 For a summary of the access to the information practices in the structural funds area, see for example presentation, http://www.konzervativizmus.sk/upload/prezentacie/Kuhn_ewd.ppt, accessed on August, 8, 2009.

clines to release it, intellectual property, and information relating to the criminal courts and investigations.

The origins of freedom of information are to be found in the constitutional The Rights and Freedoms Charter, approved by the federal parliament of Czechoslovakia in 1991, less than two years after the collapse of communism in the country. In article seventeen, the charter acknowledged the political freedom of expression and accompanied it with a right to the information. Section five of the article declared an obligation of state and municipal authorities to inform adequately on their activities. By defining a general principle to inform, the parliament changed the previous obligation of authorities to inform only if legal norms explicitly said so. The introduction of the publicity principle opened the way for a more open government. Although the Slovak constitution of 1992 replicated the charter's definition of information, it took parliament over eight years to legislate on conditions under which right to information will be exercised in Slovakia.[12]

With a new government in power in 1998, which tried to prevail over the negative image of Slovakia as the only country unable to fulfil the Copenhagen political criteria for countries wishing to join the European Union, a group of coalition MPs, supported by an extensive involvement of NGOs, declared in 1999 the willingness to formulate legal conditions that would make freedom of information effective. The FAIA was a first major policy proposal coming from the non-governmental sector, proof that the NGOs may play more roles in the political system than just to mobilise support for a change in the government as in the 1998 election. Although free access to the information was not an essential part of the acquis communautaire, the EU repeatedly acknowledged its importance for transparency and the fight against corruption.[13]

Two groups, both led by the coalition MPs, declared their intentions to prepare legislation on free access to information. Despite attempts to create a common working group, the MPs were unable to find a compromise on whether to allow access to the information on deliberation in the administrative process prior to the final decision. After substantial pressure from NGOs and the media, only one draft of the legislation was written, supervised by J. Langoš, an MP of the coalition SDK (Slovak Democratic Coalition). On November 8, 1999, the draft was submitted to parliament, with the support of the majority of coalition parties. As J. Langoš emphasised during the first reading of the law, "the realisation of the constitutional

12 With parliament delaying ordinary legislation, the constitutional right in itself was not effective. The same applied to some minority rights defined in the Slovak constitution.

13 For more see 2000 Regular Report from the Commission on Slovakia's Progress towards Accession. Brussels, 8. 11. 2000, s. 17; 2001 Regular Report on Slovakia's Progress towards Accession. Brussels, 13. 11. 2001, SEC(2001) 1754, s. 18.; European Commission, Regular Report on Slovakia's Progress Towards Accession, European Commission, Brussels 1997, pp. 40–41.

right to the information is a key element in relations between the state and its citizens and in the fight against corruption".[14]

The draft itself was immediately criticised by the Legislative Council of the Government as being full of confusing provisions and contradictory to EU legislation. As the role of the council is only advisory, the main discussion was led in parliament. It is possible to identify three main opinion groups. First, the authors of the draft, stressed repeatedly that the law's main principle "what is not secret is public" will not only enable "citizens to control the government, services it provides and how it spends public money, but will in the future enable everyone's participation in public affairs".[15] To ensure the full effect of the legislation, they advocated that the law should include access to information on deliberation in the administrative process before the final decision and it should be a general norm in freedom of information. The second group, represented by MPs of the opposition SNS (Slovak National Party), criticised the majority for limiting the opposition's access to the public media and its refusal to broadcast parliamentary sessions live on public TV. Despite this criticism, the SNS supported the draft in the third, final reading. The last group, represented by MPs from the coalition party SDL (Party of Democratic Left) criticised various aspects of the draft. According to L. Orosz, a legal expert of the party, "it was especially complicated to legislate on access to information without creating tension and conflicts within the legal system". Despite criticism, the proposal was supported by all political parties with the exception of the abstaining opposition HZDS (Movement for Democratic Slovakia) and approved by 80 out of 86 MPs present.[16]

The approval of FAIA influenced the future legislation of various legal statuses, which allowed for the monitoring and screening of the public agenda by Slovak voters. A decree, approved by the cabinet in 2001, allowed voters to monitor directly the legislative agenda of the cabinet. A ministry is obliged to publish draft legislation on the cabinet's website and voters have a chance to review the legislation and propose changes within a predefined period. If a proposal to change legislation is made by a group of at least 500 subjects and a ministry refuses its proposals, the decree enables the group's representatives to hold an official meeting with a ministry. For example, this procedure has been successfully used several times since 2001, when the cabinet proposed changes to the FAIA. It also makes the legislative process on this level more responsive, as all the submitted changes are subsequently published in a single document that is attached to the draft when discussed by the cabinet. On the other hand, ministries often violated the decree, either by not publishing documents for review, shortening the review period or not accepting proposals for

14 Transcript from Day 5, Session 31 of National Council, May 17, 2000.

15 Ibid.

16 Voting No. 92, session No. 31, 17. 5. 2000, 17:24:58. http://www.nrsr.sk/exeIT.NRSR.Web.Webclass/hpo.asp?WCI=HPO_WIKlub&WCE=3004.

review. If cabinet is proposing a draft by fast-track procedure, time limits for review are not kept, which effectively prevents any review possibility. The other example that originates from FAIA is the law on political parties (2004), which obliges political parties to publish annual reports on their financing and constitutional law on conflict of interest, which establishes the legal obligation for public officials (MPs, cabinet members, etc.) to submit annual financial reports. Together with FAIA, these laws allowed the media and watchdog organisations to discover several cases of misconduct of the public authorities and political parties, leading to a better public scrutiny then ever before.

Implementation of the Law, 2001–2008

From early 2001 it was obvious that the FAIA itself would not be enough to change the relationship between the state and its citizens, as envisaged by the authors of the law. Several actors made sure that the law was implemented reasonably well, despite some problems that ranged from local governments' attempts to limit access to the information, through repeated attempts of three cabinets to change the original scope of the access to information, to the reluctance of the ministries to publish information on large scale projects such as privatisations or foreign investment stimuli.

The Office of the General Prosecutor, non-governmental organisations and courts played an important role during the implementation. Prosecuting attorneys are empowered to control the legality of actions of public institutions and local governments. As many local governments decided to limit access to information by approving local decrees that included a broad definition of secret information, the prosecutors pushed for changes and managed to persuade local parliaments to change decrees to be according to the law. Combined with ongoing media coverage, this pressure diminished early opposition to the law, as represented especially by the local government representatives. NGOs organised a massive explanation and educative campaign to inform citizens and bureaucracy on the principles of the law. This was followed by a review process of the implementation, which concluded with publishing yearly reports on major application problems. An important part of the review process was a deliberate attempt by NGOs to create a case law. Several pilot cases were brought before the courts to clarify some of the law's provisions and build sustainable legal arguments when faced with reluctance of public institutions in the law's implementation. Finally, the courts themselves helped to overcome the uncertainty of implementation by repeatedly confirming the basic principles of the law, e.g. by forcing public agencies to provide explanations when they decided not to grant access to information. In 2003, the Constitutional Court reviewed[17] a decision by the local assembly of Považská Bystrica

17 Case No. IV ÚS 40/03.

that decided that a citizen, who was present at the public session of the assembly, was not allowed to take pictures of the MPs. The citizen tried to document the controversial voting of MPs on selling the city's real estate. The court confirmed that the city is not only obliged to publish voting records, but also cannot restrict other ways of obtaining voting records information, such as photo documentation. A series of court decisions[18] analysed the obligation of public agencies to explain whether conditions for limiting access to information were met or not. Courts repeatedly confirmed that public agencies cannot simply deny access to information, but they have an obligation to provide objective reasons (reviewable by the court) that justify any decision to withhold the access.

While it is possible to argue that at the general level the implementation of the FAIA is successful, the same cannot be said of information access to large-scale projects with substantial financial consequences. All three national administrations, two Dzurinda's and current Fico's, were reluctant to publish, or limited the access to information regarding privatisation contracts (Slovak Telecom, Slovak Gas Industry), contracts with large foreign investors (PSA Peugeot Citroën, KIA Motors Corporation a Hyundai Mobis), including information on investment stimuli and the 2007 analysis on financial sustainability of PPP projects. In some cases ministries published all the information; in others they limited the access to some data, and in some cases refused to publish anything. Despite the attempt to unify the cabinet's approach in 2005[19], the actual record remains unchanged. A single common denominator is that a ministry usually uses a "business" secret reason, when refusing to publish some information, pointing to the protection of private parties which are subjects of contracts with the state. Sometimes they react to the verbalised wishes of foreign investors, sometimes they point out to the clauses in the contracts, in which they vow to keep information secret unless ordered by the final and irrevocable ruling of the court.[20] Although courts repeatedly ruled that it is not possible to classify such contracts automatically as "secret" and that ministries have to differentiate what clauses in contracts are protected (and explain why) and which are not, it is possible to argue, with some simplification, that ministries intentionally withhold information unless ordered by the courts to release them.

18 For example Ruling of Supreme Court 7 Sž 97/01 (R. H. v. Industry Ministry), Ruling of Supreme Court 7 Sž 180/01 (XXX s.r.o. v. Transportation Ministry), Ruling of Supreme Court Sž 73/01 (Ľ. T. v. Slovak Nuclear Regulatory Authority)

19 The Justice Ministry Analysis on Publication of Documents for Government's Session, No. UV-11866/2004.

20 According to the daily SME, that claimed to obtain a privatisation contract on Transpetrol, a gas distribution company, the Slovak Republic vowed to keep the contract secret, unless ordered by the final and irrevocable ruling of the court. The Industry Ministry, a party of the contract, admitted the violation of the Free Access to Information Act to protect the interests of the private company. More, SME, 23. 3. 2006, A Continuity of Shame.

Amending the FAIA

Since its approval in 2000, the law on free access to information was confronted with attempts to change its provisions to limit broad access as guaranteed in its original version. This chapter deals only with direct amendments of the law and does not cover several indirect changes that were brought by other legislation[21]. As of January 2001, when the law became effective, the media started to publish stories on problematic implementation of the law at the municipal level. A first case was in the city of Prešov, where the local assembly passed a decree that literally excluded access to almost all information, including information on sessions of the local parliament and city legal contracts on the grounds of being an administrative secret.[22] The example of Prešov was not unique and the powerful lobby organisation of municipalities ZMOS declared its intention to persuade the cabinet to amend the law.[23]

In August 2001, the Education Ministry, obliged by a cabinet resolution, produced a report on the implementation of the FAIA that concluded that the law brought an "improvement in communication between citizens and public organisations and in the quality of the services available to the citizens".[24] The report itself also included several proposals to amend the law, from extending the response period from 10 to 30 days to a proposal to establish an administrative protection against the misuse of information request. Media and NGOs heavily criticised the report[25] and the cabinet concluded that any changes in the law would be prepared in co-operation with NGOs.

In March 2002, only several months before the parliamentary elections, the Education Ministry drafted an amendment of the FAIA. The Ministry proposed massive changes in the scope of the law by proposing to exclude the President's Office, the Parliament and the Constitutional Court from any obligation to inform and to limit access only to the information on the use of public spending. Again the media and NGOs condemned the draft. Several NGOs used a new legislative tool and achieved a review meeting after the minister decided to retract the draft.

The most mysterious amendment to the free access of information occurred in 2004. In March, the Finance Ministry proposed a new legislation on financial

21 Such as the law 553/2002 Coll. of 19 August 2002 on Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939–1989 and on Founding the Nation's Memory Institute (Ústav pamäti národa) and on Amending Certain Acts (Nation's Memory Act). http://www.upn.gov.sk/data/pdf/553_2002_en.pdf .

22 *PREŠOV: The Mayor Kopčák does not think they violated the law.*. SITA, 2. 2. 2001.

23 For example: Kopčák argues in favour of amending the law. *Sme,* 7. 3. 2001.

24 The Education Ministry's Report on Implementation of the Free Access to Information Law, No. 5273/2001, August 2001.

25 For example*: It is necessary to limit access to information*. *Sme,* 15. 8. 2001; *From email to smoke signals*. *Sme,* 16. 8. 2001.

market regulation. After the review process at the governmental level finished, the final draft was discussed and approved, without any changes, in the cabinet's session. However, the draft of the legislation submitted to the parliament suddenly incorporated an attached amendment to the FAIA. It proposed to revoke access to the information from unfinished deliberative administrative processes. As this exact provision was of major importance during the initial debate about the law in 2000, the amendment created the possibility for a serious diminishment of free access without being subject to any debate or review. The law on the financial sector regulation, with the hidden amendment, came through the parliamentary readings in December 2004 without any floor discussion. It took the public and the media several months to realise, that effective from January 2006 free access to information, used especially in environmental and administrative issues, will no longer be available.

In March 2005 the report, produced by the Justice Ministry, argued that despite minor implementation problems, there was no need for further amendments of the FAIA. Despite the report, in August 2005, the Justice Ministry submitted an amendment on free access to information to implement an EU directive. The draft included other changes as well. On the one hand, the ministry proposed more specific rules on public spending information and to limit privacy law protection by allowing salary data of public officials to be released if requested. On the other hand, the ministry did not propose to re-establish the access to information regarding unfinished deliberative administrative processes and prolonged period of response from ten days to ten working days. This was met with a public outrage; within a few days daily SME alone published nine articles and editorials that criticised the ministry's decision.[26] Again, the NGOs used a review meeting possibility and demanded changes to the proposal. The meeting resulted in the return of access to the deliberative administrative processes information and a compromise on extending the request response period from ten days to eight working days. Although the amendment was criticised by local governments, because of the access to the salary data and was vetoed by the President because of a legal technicality, 131 out of 136 MPs supported the amendment in the final vote.

The current administration of Mr. Fico (2006-) continues in its efforts to test the boundaries of the law and its advocates. In February 2007, an MP of the largest coalition party tried to attach an amendment of the FAIA to the law on advertisement, which was discussed in the plenary session. According to the proposal, the public agency was to deny information access if the request was "apparently unreasonable". After massive criticism by the media, NGOs and opposition parties' MPs decided to retract the proposal. The latest amendment dealt with free access to information of people with disabilities, by creating obligations for public bodies

26 For example: *The Access to Information is in Danger. Sme,* 13. 8. 2005; *Free Access to Information Act Toothless. Sme,* 17. 8. 2005.

to make information access easier. Although the draft was the result of consultations with groups representing the disadvantaged, some media and NGO reacted sceptically. They were afraid, not without reason[27], that the draft would not remain unchanged by parliament and that the ruling coalition would use it as an opportunity to introduce more profound changes that would limit free access. However, no changes were introduced during parliamentary readings and the amendment was approved in the way it was proposed by the cabinet in 2008.

Conclusion

Both media, which are advocating the current scope of the law, because it enables them to investigate public affairs more thoroughly and NGOs, which are using the FAIA to review or propose public policies, are unable to stop repeated attempts of the cabinet and parliament to alter the extent of access to information. Since 2001, all three cabinets tried to revise the law, either by changing it directly (2002, 2005, 2007), change it indirectly through another law (2004), or trying to limit its impact by refusing to publish certain information. The implementation experience so far shows that ministries differ when dealing with access to information, the latter being predominantly influenced by the individual minister's position about the law. Despite various attempts to change the impact of the law in the past, the resistance against it never reached institutional level and was represented primarily by individual examples of J. Slota as the mayor of city Žilina (2001–2006), or P. Rusko – the Industry Minister of the second Dzurinda's government in 2002–2004. The current administration of the PM R. Fico shows even more willingness to test the boundaries of the law by refusing to allow access to the audio transcripts from the cabinet's session, a proposal to change the law during the second reading in the parliament in 2007 or through the Justice Ministry's court motion asking for a constitutional review of the 2006 amendment that made salaries and bonuses of public officials accessible.

Each legislative attempt to revise the law on free access to information has a potential to limit profoundly the scope of the law. Procedural stages of the legislative process include several points at which such a proposal could be successful without too much public exposure. It can be proposed without being included in the annual legislative agenda of the cabinet, or the cabinet can submit the draft through an MP to avoid the public review process that is obligatory for every cabinet draft. The most controversial point in the legislative process is the power of individual MPs to propose amendments to draft legislation during the second reading in the plenary session. There is only a limited chance to react to such proposals and the ex post public record of what exactly was proposed and by whom is very limited. The media

27 According to the chair of the parliamentary party group of SNS, a coalition party, "they will use the opportunity to repair certain mistakes that are in the law". (Minister Harabin to Open Free Access to Information Law. *Sme,* 25. 8. 2007.)

and NGOs have therefore a restricted possibility to mobilise against such changes. So far, all these scenarios were tested by administrations, the latest during the second plenary reading of the law on advertising, in which a coalition MP proposed an amendment to the legislation on free access to information, although the law under discussion had nothing to do with freedom of information

The implementation of FAIA remains a permanent challenge as well. Some of the publicised cases of repeated violations of free access at the municipal level are almost comical, but have the potential to diminish the law's enforcement at the regional level. One repeated violation of the law stands out throughout all governments since 2001. It is the public-private co-operation, whether it takes the form of privatisation of state monopolies, foreign direct investment or as recently, public-private partnerships in highway infrastructure constructions. In all these cases, individual ministers, or the cabinet as a whole, were and are reluctant to allow access to the written contracts, by pointing out the clauses in contracts that are protected by business secrets or the explicit wishes of private companies that are part of the contracts. The requests were and are made either by the media or NGOs to review government's decisions and their effect on the public finances. No cabinet has yet been able to sustain this legal position when confronted with a court motion. In all cases, the Supreme Court decided that such contracts have to be made public, with the exception of those sections that include secret information. Although the Justice Ministry confirmed this legal position in its 2005 report, the routine remains that the cabinet plays with time, knowing that by the time the decision of the court is final, the privatisation will be concluded, foreign investment already in place and public-private partnerships formed and legally binding. The latest examples of such behaviour are the decision of the Transport Ministry from the fall of 2007 not to publish a publicly financed analysis on the impact of PPP projects in road constructions in a situation where the state is planning to spend billions of public money over the next decades. And the 2009 case of the sale of excess AAU emission allowances of CO_2, in which the Environment Ministry published a contract that featured no information about the sum, the amount of emissions, the company or its authorised representative.[28]

A completely uncovered territory in free access to information is the domestic process of the formation of Slovakia's positions to EU legislation drafts. The positions are not publicly available, even if a significant portion of the country's sovereignty is exercised at EU level.

It is yet to be seen to what extent the coalition of media and NGOs will be able to defend broad free access to information in the future. The Constitutional Court may provide a partial answer, when reviewing the constitutionality of the

28 See for example: Slovak Spectator, *Another SNS Minister Bites the Dust,* http://www.spectator.sk/articles/view/35223/2/another_sns_minister_bites_the_dust.html, accessed on August, 8, 2009.

2006 amendment. The Justice Minister made a petition in December 2007 before the regional court, arguing that free access to the salary data of public officials violates their privacy rights that are protected by the Slovak Constitution.[29]

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Annual Reports as a Tool for Increasing the Transparency of Public Institutions

Juraj Mišina

Introduction

Easy access to information about public institutions is supposed to increase transparency. This should entail a lower level of perceived corruption. This paper presents a case of annual reports published by central government bodies and institutions established by central government bodies as a tool to increase transparency. Deployment of this tool stems from Audit of Central Government Institutions carried out in Slovakia in 2000 whereby a lack of transparency was listed as one of the major problems of the state administration in Slovakia. The idea behind the tool was to increase transparency by providing the public with more information via compulsory publishing of annual reports of central government bodies and their subsidiaries.

The presented paper begins with a description of the process of enactment of the tool and its design. The second part presents the expected results and confronts them with the fact that the perception of corruption in ministries did not decrease. The third part of the paper discusses the possible explanations as to why the tool did not bring about the desired effects. Here we argue that the design of the tool has several drawbacks – mainly a lack of enforcement. But, there are limits in measurement too, since the corruption perception index – the only available measurement – answers a slightly different question. As part of a comprehensive anti-corruption strategy, annual reports of central government bodies and their subsidiaries can be a very useful tool to increase transparency, if a good quality of annual reports and enforcement are implemented.

1. Annual Reports as a Tool for Increasing Transparency

Outputs of the policymaking process – policies, programmes, acts, regulations, etc – are implemented by means of public policy tools or instruments. A public policy tool is a means by which the desired outcomes of a policy are achieved. A

considerable amount of literature on public policy is dedicated to discussion about this means – tools and instruments of public policy. We will not go into detail on the theoretical background of public policy instruments, but will only describe this particular tool.

1.1 Enactment and Description of Particular Measures

The obligation of public authorities to publish annual reports stems from the results of the Audit of Central Government Institutions carried out in Slovakia in 2000 (henceforth "Audit"). It concerns two kinds of institutions. The first comprises institutions founded by the central government bodies (i.e. their specialised agencies, service companies, etc.). These are obliged to publish annual reports since 2001 based on the Decree of Government of the Slovak Republic No. 29/2001. Based on the experiences of these institutions, the Government, in 2002, adopted Decree No. 698/2002, which institutes a similar obligation for the second type of institution – central government bodies.

Mr. Ivan Mikloš – then Deputy Prime Minister – was responsible for the Audit, and also for drafting proposals of both the above mentioned decrees. To carry out the Audit Mr. Mikloš formed an expert group consisting of experts from the Institute for Economic and Social Reforms (INEKO), UNDP, Phare and the Know-How Fund. The expert group also co-operated with the OECD and experts from several Western European countries. The Audit focused on increasing the effectiveness, efficiency and transparency of the public sector, and reducing duplicity.

According to the Audit, duplicity and fragmentation of the activities of the public sector are richly nourished by insufficient transparency of public sector institutions. Some of the institutions did already publish their annual reports or they published relevant information on their webpage. The Audit recommended widening this activity to more institutions and to make published information more particular and comparable.

1.1.1 Annual Reports of Institutions Founded by the Central Government Bodies

Annual reports of institutions founded by the central government bodies are defined in the Decree of the Government of the Slovak Republic No. 29/2001. The decree was proposed by Deputy Prime Minister Mr. Ivan Mikloš and was discussed by the Government on January 17, 2001. The content of the decree and Mr. Mikloš's role as a submitter stems from the results of the Audit. Based on Decree No. 694/2000 which approved the Audit, Mr. Mikloš was responsible for drafting a regulation providing for annual reports of central government bodies and the institutions founded by them.

According to Decree No. 29/2001 annual reports are to be composed by April 30 and published on the website of the respective ministry by May 15. Together with

a report, a scheduled date for a public hearing should also be published. The Office of the Government is responsible for creating a database of all annual reports and respective public hearings on its website[1] by May 31. Public hearings must be held between May 31 and June 30.

The decree also defines several exceptions. The obligation to publish annual reports does not cover military and security institutions, universities and other educational institutions[2], courts, prosecution offices and health institutions. Annual reports should also not contain any information about classified activities.

Annual reports should include:

- information about the mission of an institution;
- medium-term priorities;
- annual targets;
- products of an institution and their consumers;
- indicators of task fulfilment;
- number of employees;
- expenditures;
- assessment of past development and future prospects.

After the publishing of the annual report, an institution is obliged to hold a public hearing, where the general public, media and representatives of partner institutions can ask questions and submit suggestions. An institution is then obliged to officially respond to such questions and proposals. It is also obliged to inform about any measures taken after evaluation of suggestions submitted at the public hearing. These measures were supposed to create a framework for public and mutual control of public sector institutions.

An institution, or respective ministry, should create a list of so-called "seriously concerned parties", which should include relevant representatives of public, professional and civic associations and also citizens who request to be included in such a list. These "seriously concerned parties", together with representatives of the media, should be directly informed about the date and place of the public hearing.

Annual reports and public hearings were to be one of the means of assessment of the public sector, used not only by the public but also by the Ministry of Finance when allocating resources, and also by central government bodies when assessing their subordinate institutions. This assessment should reflect not only whether an

1 http://www-8.vlada.gov.sk/index.php?ID=914.

2 Annual reports of universities were provided for later by other legislation. For more information about the topic see papers (in Slovak) by Renáta Králiková published by the Slovak Governance Institute online at http://www.governance.sk/assets/files/sprava%20o%20vyrocnych%20spravach%20VVS%20o%20cinnosti.pdf or http://www.governance.sk/assets/files/publikacie/newsletter_4_08.pdf.

institution in question met the stated goals, but it should also reflect whether clients of the institution are satisfied with its products and operation.

Mr. Mikloš was also responsible for the composition of a report about the experience with annual reports after the first round of publication. This report was submitted to the Government in December 2001 and according to its outcomes, several alterations were made. By Decree No. 1189/2001 which approved Mr. Mikloš's report, annual reports should not be published earlier then February 1. Also there should be a time period of 14 days between publication of the annual report and the respective public hearing. Also, a new deadline for the public hearing was set – May 31.

Mr. Mikloš's report about public institutions' experience with annual reports after the first year also listed good examples and best practices in elaborating individual parts of annual reports. Furthermore, it proposed recommendations and suggestions concerning the organisation of public hearings (which proved to be problematic). The decree No. 1189/2001 also bound Deputy Prime Minister Mr. Mikloš to draft rules for annual reports of central government bodies.

1.1.2 Annual Reports of Central Government Bodies

Based on the experience of institutions founded by the central government bodies published in the above-mentioned report, Mr. Mikloš proposed that annual reports also be published by individual central government bodies. This proposal was submitted to the Government in June 2002 and passed by Decree No. 698/2002.

In the inter-ministerial review procedure, the central government bodies requested that the structure of annual reports should be analogical to one of the annual reports of their subsidiaries. However, proponents argued that central government bodies are vastly different from their subsidiaries and a different structure was therefore needed. Moreover, since central government bodies would provide a different kind of information, including an account on the fulfilment of specific tasks, they are not obliged to hold a public hearing.

Annual reports of central government bodies are aimed to increase the quality of information provided to the public, media, state and business organisations, improve the coordination of activities and to establish a source of comprehensive information about individual ministries for the Government.

Given the political nature of ministries, annual reports were divided into two documents called "components": a mid-term four-year component and a current annual component. Both should be published on the website of the central government body. The former is to be published 5 months after each change of minister or head of another central government body. It contains basic relevant information about the ministry/institution in the following structure:

- information about the political section of the institution (name, short CV and contact info about political representatives);

- information about the professional section of the institution (organisation structure, all subsidiaries, information about activities of all organisational units);
- mid-term objectives of the institution derived from The Manifesto of the Government and a concurrent account of these objectives.

The second document – current annual component – is more similar to annual reports of central government subsidiaries. It should contain information about:

- main objectives for the year for which the report is submitted;
- planned legislation (including information about comments submitted during the inter-ministerial review procedure to proposed legislation);
- budget;
- human resources of the institution;
- assessment of the institution as a whole, its ability to meet objectives, external influences (positive and/or negative) and possible improvements;
- 20 most-frequently requested kinds of information based on the Freedom of Information Act;
- objectives, planned legislation and budget for current year.

This report is to be composed by April 30 and published by May 31. None of the components should include classified information.

2. Effects of the Tool

2.1 Expected effects

The requirement to publish an annual report may pose a somewhat unwelcome obligation. It can, however, be a useful tool of management. If an annual report provides clear and unbiased information about the activities and budget of an institution, then the public can provide very useful feedback. By publishing annual reports, the institution presents its effort to be transparent and open vis-à-vis public.

The goal of annual reports is not to fight particular corrupt activities, but to increase the transparency of public institutions by preparing comprehensive information material available and easily accessible by the general public and the media. Everyone can easily see what goals were set for a particular institution, how the institution handled its tasks and what amount of public funds was connected with every particular task, policy or programme. It is thus much easier to control public institutions and to hold them accountable, if necessary.

In addition to public control, institutions can be controlled by their partner or superior institutions. In this way, a ministry can come to a decision to abolish

its subsidiary because it simply does not meet its goals, or can demand higher efficiency from partner ministries at governmental level.

2.2 Actual Effects

When trying to measure the impact of obligation to publish annual reports, we have go back to the goals of this tool and try to specify indicators for assessing whether or not the tool met its goals. There were two goals of the annual reports: higher efficiency and higher transparency. Efficiency is not a topic of this paper, so we will not go into detail about this goal.

Transparency can be measured by public perception of corruption in a given area. According to surveys carried out by Transparency International, Slovakia and the Focus agency[3], in 1999, 51 % of respondents said that there was at least some level of corruption in ministries. 27 % of respondents were unable to assess the level of corruption but thought that it does occur. 22 % of respondents did not feel able to say whether or not corruption occurs in ministries. No one clearly said that there is no corruption in ministries. In 2002, the situation was quite similar, with 50 % sure that there is some level of corruption, 27 % not sure about the level of corruption but sure that it occurs, 21 % not sure about the answer and only 1 % of respondents convinced that there is no corruption in ministries.

In 2006, 55.4 % of respondents were aware of some level of corruption, 29 % of respondents were unable to assess the level but were sure that there is some corruption, 13 % not sure about the answer and 2.6 % sure that ministries are free from corruption. This means that the number of people who perceive at least some level of corruption in ministries – although they might not be sure about its extent – grew from 78 % in 1999 to 84.4 % in 2006. See Graph 1 for more detailed numbers.

This evidence suggests that annual reports of ministries and their subsidiaries did not increase transparency in such a way that would lead to a decrease in the perception of corruption. This is true even if we take into consideration that the number of people convinced that there is no corruption at ministries grew from 0 to 2.6 %.

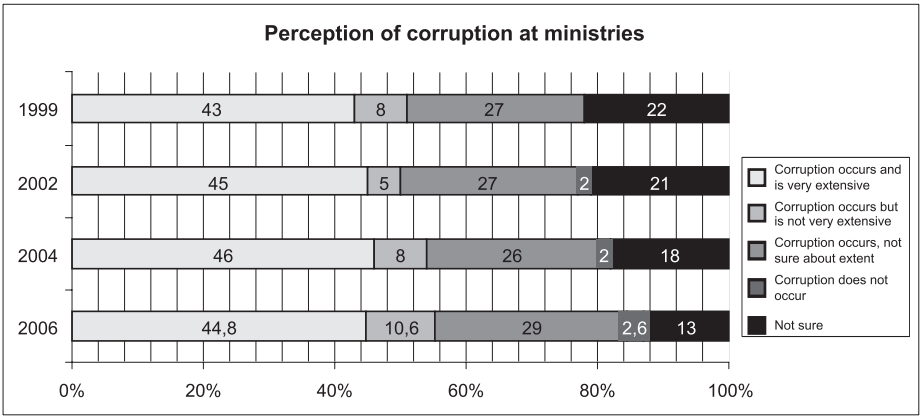
Data for institutions subject to ministries are not available but we can assume that the numbers would be either roughly the same for institutions performing administrative duties (such as Telecommunication Office or Customs Office) or would suggest no corruption in the case of cultural or research institutions (Slovak National Theatre or the Slovak National Library). This is given by Klitgaard's corruption formula: Corruption = Monopoly + Discretion – Accountability[4] (Klitgaard, Ma-

3 Surveys are carried out on a regular basis and published on TIS website http://www.transparency.sk.

4 According to R. Maclean-Abaroa "accountability" in the formula can be substituted by "transparency" (Klitgaard, Maclean-Abaroa, Parris 2000, p. 33).

clean-Abaroa, Parris: 2000, p. 26). The more the administrative duties performed by an institution, the bigger monopoly and discretion and vice versa. Therefore, we can assume that some institutions would show only negligible levels of corruption due to low monopoly and/or discretion performed by them.

Graph 1
Perception of corruption in ministries



Source: TIS and FOCUS: 2006

We need to perceive the expected effects of the tool in connection with the fact that institutions publishing annual reports are part of central government and cannot be easily abolished. Unlike political parties, they do not face a loss of voters' confidence or a financial fine. Annual reports also do not unveil particular corrupt acts of individual officials. Therefore, corrupt public officials are not directly threatened by this tool.

3. Why Annual Reports Did Not Reduce the Perception of Corruption

There are two broad reasons why annual reports did not bring about the expected results based on public perception of corruption. The first reason is given by the design of the tool. Lack of enforcement and insufficient public control limits possibilities of success of this tool. The second reason draws on sources of corruption which cannot be unveiled by annual reports.

3.1 Limits of the Tool

The design of the tool of annual reports limits its results in several ways. First of all, it lacks a system of enforcement. This means that if an institution or ministry

does not publish its annual report, nothing actually happens. While almost every subsidiary of a ministry publishes its annual report, the situation is not so optimistic with ministries. Four out of fourteen ministries did not publish annual reports for 2006. Moreover, ministries are not obliged to hold public hearings where the public and the media could pose questions and propose suggestions. This is a considerable drawback.

There are several issues concerning the mere publication of annual reports. A new annual report usually replaces the older one on the website, rendering older reports inaccessible. Websites of some central government bodies are of a poor quality, making it hard for users to navigate and find the desired information. It often seems that ministries compete in hiding annual reports on their websites. The Office of the Government runs a central register of annual reports. However, this register does not include individual reports, but only links to the websites of the respective ministries. If a ministry changes the structure of its website (which happens quite often in the case of some ministries) the register does not serve its purpose. Some ministries fail to publish scheduled dates of public hearings.

On the other hand, there is a noteworthy example of the Ministry of Agriculture which began to publish its position on individual annual reports in 2006. This position is published, together with the respective annual report and it includes the experience of the Ministry with the institution in question, and also recommendations and/or corrections to an annual report.

The second limit posed by the design of the tool is the questionable quality of annual reports. Standards for composition of the reports are set in the above mentioned decrees; however, since there is no enforcement, the quality of the final products varies widely. As for ministries, some of them ignore the suggested structure of annual reports and adjust them according to their will.

The Slovak Governance Institute published four evaluations of the quality of annual reports – not including ministries – in 2001–2004 under the "Open state administration" project[5]. This is the only available evaluation – apart from Mr. Mikloš's report in 2001 mentioned above – of this tool so far. SGI's evaluation served as a basis for a study about best practices and major drawbacks of annual reports (Rado: 2004).

The third limit stems from the broader context of civil society and concerns the interest of the public in annual reports. Not many people attend public hearings and apart from SGI's monitoring, focused exclusively on the quality of annual reports, there were no attempts to evaluate annual reports on the part of civil society. Better public scrutiny is crucial for this tool to work properly.

Last but not least – indeed most important – annual reports do not reveal corrupt activities of individual public officials. Political parties, for example, need

5 Evaluations can be found online at http://www.governance.sk.

to fund their activities (e.g. election campaign) and therefore may want to "hide" some source of income. This is not true in the case of ministries and public institutions where bribes are going straight into the corrupt official's pocket. Annual reports can, however, indicate areas where corrupt acts occurred. If some activity was unusually expensive (i.e. cleaning services because they are carried out by the company of the minister's brother) or a deadline for a task was not met for no obvious reason (i.e. drafting of an important law because a big corporation with an interest in preserving the status quo bribed a high official), we can see possible room for corrupt activities.

3.2 Sources of Corruption

The second reason why annual reports did not achieve their expected goals draws on sources of corruption which cannot be unveiled by annual reports. It is not the ministry, as such, which is corrupt, but individual officials. The ministry – as opposed to political parties for example – does not need to find extra sources to finance its activities. Therefore, corrupt officials are not motivated to corrupt acts by the ministry as a whole, but only by their own greed. If a citizen gives EUR 1.000 to a corrupt official, this will not be visible in an annual report. The money flows straight into the corrupt official's pocket.

Moreover, citizens (clients of ministries) initiate more than 50 % of corrupt activities. 36 % of cases are initiated by officials (TIS and FOCUS: 2006). This could indicate that the problem with corruption is not within a ministry, but in society as a whole.

We also have to take into consideration the fact that most people do not believe in politics without corruption. Therefore, there will always be some level of perception of corruption at ministries even if ministries are completely innocent.

Conclusions

Annual reports are a good "marketing" tool to increase the flow of information towards citizens, thus increasing transparency. They also have a relatively strong potential to serve as a comprehensive managerial tool for high officials, ministers or the government. However, the impact on the general public was not as high as expected. In fact, there was no improvement in the perception of corruption in ministries.

To improve the effects of annual reports, this tool must be connected with other – more systemic – measures to unveil individual corrupt officials and, possibly, to change the mood within society so that a bribe is not seen as a necessity, but as a fault. However, this is a long-term process. In the meantime, several improvements concerning the quality of annual reports, rules providing for their publication and enforcement should be implemented.

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Public Comments to VZN Ordinances: The Hidden Potential of this Civic Participation Instrument in the Fight against Corruption in Slovakia's Local Governments

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Abstract

Civic participation in decision-making at the local level of government could be realised via many different instruments. Some of them are compulsory, some of them could be initiated by local government itself, and some of them are based on citizen involvement. The "city ordinance" as a fundamental legislative tool at the local level of government and its commenting is one of the compulsory instruments of civic participation. Its main objective is to increase transparency of the legislative procedure in municipalities, which also eliminates potential corrupt acts, as well as preventing potential conflicts between citizens and authority. Consequently, a question arises as to whether this instrument is actually used by citizens, and what its weaknesses are.

Introduction

"Information is the oxygen of a democracy"[1] at both national and local levels, as adequate mutual information between citizens and their elected representatives are prerequisite to effective and transparent administration. The revised Act on Municipalities from 2004 is among the instruments intended to assure the elimination of corrupt practices. This law introduced the instrument of public comments to VZN ordinances, which is the subject of the following case study's research. Its main purpose, besides a clear identification and definition of the instrument, is to chart the status of whether people are making use of public comments to VZN proposals among Slovakia's local councils, and to evaluate the process's efficiency. The study

1 Staroňová – Sičáková-Beblavá (2006), s. 55.

is divided into several parts. The first part gives a detailed description of the instrument, its practical introduction, its actual functioning in practice and its typology. In the second part, the methodology of research undertaken is described detailing how the relevant data was collected. The final part provides research results and their subsequent analysis.

1. Description of Instrument – Public Comments to VZN Proposals

The first chapter of this case study addresses the instrument's introduction, functioning in practice, and typology. The purpose of this chapter is both to familiarise the reader with the issue of public commenting on VZN proposals and to describe the background sufficiently for the analysis and evaluation of the instrument, from the perspective of the goals defined when it was introduced.

1.1 Instrument Introduction – Public Comments to VZN Proposals

First, it is crucial to clarify the basic legislative instrument for policymaking at the local level, the **Všeobecne záväzné nariadenie** (**VZN**, literally "generally binding directive"; Slovak for "city ordinance" in the local context), as this is the subject of the instrument being studied. The VZN is fundamental legislation – a "local law" by which cities and other municipalities regulate various aspect of societal activity within their territories. According to § 6 of the Act on Municipalities, the section devoted to municipal ordinances is as follows**:**

> *(1) In matters related to local government, the municipality may issue ordinances; an ordinance may not contradict the Constitution of the Slovak Republic, constitutional laws, acts or international treaties approved by the National Council of the Slovak Republic, and which were ratified and proclaimed in accordance with the law.*
>
> *(2) In matters where the municipality acts in fulfilment of the state's administration, it may issue ordinances only upon being vested with authority by law and within its limits. Such an ordinance may not contradict the Constitution of the Slovak Republic, constitutional laws, international treaties approved and proclaimed in accordance with the law, acts, government directives, or other generally applicable regulations of ministries or other national organs of state administration.*[2]

The revision of the Act on Municipalities, which introduced the public's ability to comment on VZN proposals, underwent a relatively lengthy development. The idea of introducing this instrument came from the document *Audit of Harmonising Activities and Financing of National Organs of State Administration and Organisations under their Authority.* This initially applied to the procedure of open comments to the central government. In connection with this innovation, the first opin-

2 Act 369/1990 on Municipalities.

ions came out in favour of instituting commentary of legislative documents at the local level as well. At the time, the law, which was intended in some way to involve the public in legislative processes, was put forward, "… there were no provisions that would require central or local legislators to take comments from the public into consideration as they went about their legislative activities."[3] There were only supplemental directives – government resolutions, or legislative guidelines that could be changed by the Government of the Slovak Republic (SR) at any time. "The law only guaranteed the existence of legislative guidelines of the National Council of the SR (§ 69 of Act 350/1996 on Rules of Procedure of the National Council of the SR), though these guidelines guaranteed no procedure for processing the public's comments. Similarly, no public access to the legislative process, or lobbying, was guaranteed at the local level."[4]

Other important documents leading to the introduction of open comments were:

- The Government Manifesto of M. Dzurinda's second government, and
- The National Programme against Corruption.

The result of the analysis on fulfilling the aims of these two documents was the creation of the *Report on the Preparation of Proposed Laws, of Legislative Intentions of Laws, and other Measures for the Fight against Corruption, Arising from the Slovak Republic Government Manifesto*. Among the legislative proposals and measures prepared, aimed at taking on corruption, was the "***law on public access to the legislative process***". This document asserts that the proposal arose "… from certain provisions in the valid rules of procedure of the Slovak Republic government approved on 13th June, 2001, point 512, enabling the public and interested parties to access the legislative process during the preparation of government materials; the opportunities of the public are extended as regards the National Council (if the decision has been made to debate the second reading of the proposed law, submitted by members or committees of parliament), as well as **municipalities** and regions."[5]

In late March, 2003, the Department of the Fight against Corruption of the Government Office of the SR, headed by J. Hrubala, submitted to the Deputy Prime Minister and Minister of Justice, a document with the working title ***Law on Participation of Natural Persons and Legal Persons in Preparing Ordinances (Law on Public Access to the Legislative Process) and on Amendments to Slovak National Council Act 350/1996 on Slovak National Council Rules of Procedure, as Amended, Slovak National Council Act 369/1990 on Municipalities, as Amended,***

3 Explanatory Statement on the Act on Public Access to the Legislative Process. OBPK archives.

4 Ibid.

5 Material from government discussions: *Report on Preparation of Proposed Laws, of Legislative Intentions of Laws, and other Measures for the Fight against Corruption, Arising from Slovak Republic Government Manifesto;*
http://www.rokovania.sk/appl/material.nsf/0/AA0D8EEBB20FB553C1256D1F003340DB/$FILE/Zdroj.html

and Slovak National Council Act 302/2001 on Regional Government (Law on Regions) as Amended.

The law was due for debate in October 2003, and underwent commentary by ministries, but was never submitted for approval by the SR government or the SR National Council. The reason, in the words of the proposal's author, was "… a counter-proposal to adapt it [public access via comments – author's comment] through an opposition law. But the main reason for withdrawing it was because 'other concerns' led to different materials being preferable"[6] and a kind of "…contravention of the natural legislative process".[7] The law was considered difficult to enforce and had insufficiently purpose. In fact, its wording was incorporated into the broader amendment of the law on municipalities in 2004; however, the reasons for this remain unclear, despite several interviews with key individuals who participated in writing the legislation at the time. In the estimation of the last OBPK director, after this law failed to materialise, work soon began on the lobbying law which dealt with the involvement of special interest groups, probably because of the ability to influence local politicians' actions more intensively and boldly. This, though, did not comprise comments to the proposed VZNs at the local level, which logically led to the issue being revived and opening the creation of legislation at the local level to citizens at large.[8]

At the Slovak parliamentary session in March, 2004 the Justice Minister at the time, D. Lipšic, submitted the aforementioned revision of the Act on Municipalities, which included the proposed procedure for the public's commenting on a VZN. The explanatory memorandum states: "The draft law, which amends and supplements the Slovak National Council Act 369/1990 on Municipalities, as amended, and on Amending Other Laws, is submitted within the framework of legislative proposals associated with the decentralisation of public administration. This was at the instigation of the SR Government Decree 370 of 14 May 2003,[9] point B.3, amended by SR Government Decree 566 of 2 July, 2003, points B.1 and C.1.[10] Also involved were preparatory materials on enabling public access to the preparation, writing and passage of VZN at municipal and regional levels."[11]

6 *Pripomienkovať by nemali len privilegovaní (Comments to Come not Just from the Priviliged). Trend,* 8 May 2003;
http://www.transparency.sk/den_tlac/030516_pripo.htm

7 Interview with special judge, conducted by author. Pezinok, 14 April 2008.

8 Interview with former director of OBPK, conducted by author. Bratislava, 8 April 2008.

9 http://www.build.gov.sk/mvrrsr/source/download/566-2003.doc

10 http://www.rokovania.sk/appl/material.nsf/0/8A7246D5A3ECF46AC1256D5900443473/$FILE/Zdroj.html

11 *Explanatory Memorandum on Revisions to Act 369/1990 on Municipalities;*
http://www.rokovania.sk/appl/material.nsf/0/086E041EE741B862C1256EA8003FA4C7/$FILE/dovodova.rtf

The aforementioned draft law on municipalities was passed on 14th May, 2004 as part of the decentralisation, or devolution, of authority to lower levels of government. The author and the Justice Ministry led by D. Lipšic during the second Dzurinda government, states that the main incentive for revising the law was "… **to enhance the degree of public participation in public life, and assure the greatest possible transparency in exercising public power**. The law-making process is one of the most important means of exercising public power; thus it is the ambition of every democratic government to create conditions for this process to be transparent and efficiently effective not only by those in power, but also by various lobby groups, civil society leaders, and the public as such".[12] The revised law took effect on 1st July, 2004.

1.2 Functioning in Practice of the Instrument of Public Comments to VZN Proposals

As mentioned above, the 2004 revisions in the 2004 Act on Municipalities introduced the obligation for cities and other municipalities to allow the public to participate in the legislation that regulates their lives. In practice, the instrument functions as follows.

Upon identifying a problem within the city or other municipality, and arriving at a solution, the city administration's responsible bodies prepare a proposed VZN. However, before the city or other municipal council deliberates the proposal, it must be published by the city or other municipality **"… by posting it on the municipality's notice board at least 15 days before deliberation in council of the proposed ordinance. The proposed ordinance shall also be published for the same period on the municipality's internet site, if the municipality has established one, or by other means customary for the municipality."**[13]

On the day a proposed VZN is posted, a period of at least ten days begins, during which natural persons and legal persons may exercise their right to comment on a proposed ordinance in writing, electronically or orally, to be recorded in the minutes at the municipal administrative offices. A comment submitted within this period may be a proposal for a new text, or recommend supplementing, changing, eliminating or clarifying the original text. Comments must be clear about who is making them. The VZN's author need not consider other suggestions, particularly if they are not accompanied by reasons. In case of natural disaster, general civil disturbance, or disposal of consequences of natural disaster, if the law based on which the VZN is approved was not published in the Legal Code, or if it becomes necessary to avert damage to property, then proceeding according to sections 3 and 4 is not applicable.[14] Subsequently, comments submitted by citizens must be considered.

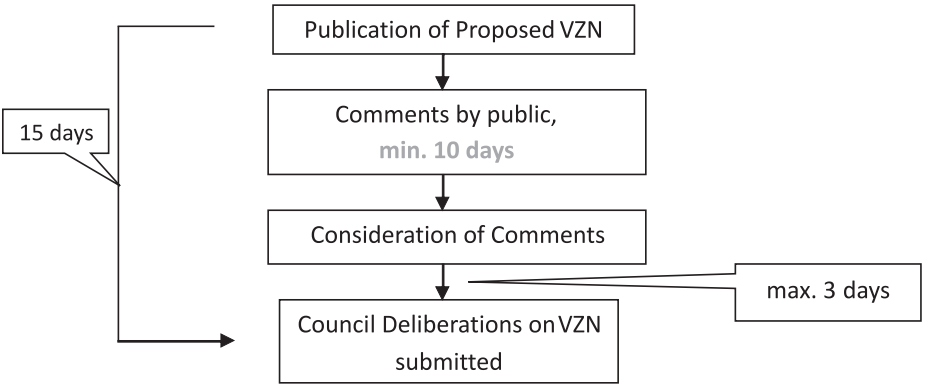
12 Act 369/1990 on Municipalities.

13 Act 369/1990 on Municipalities.

14 Act 369/1990 on Municipalities.

Responsibility for considering comments lies with the proposed VZN's author, who may choose to form a Commission for this purpose. Should any comments be found unsubstantiated, reasons must be submitted to council members (at least three days before deliberations) on why a specific comment was not accepted.[15] Other comments, i.e. those considered worthy, are to be worked into the proposed legislative document. The proposed VZN is then submitted for council deliberations. Upon being approved, the process concludes with the posting of the valid document on the municipality's notice board, which renders the VZN valid.[16]

Figure 1
Description of the VZN Approval Process with Open Comments



Source: author, based on Act on Municipalities.

1.3 Typology of Instrument of Public Comments to VZN Proposals

Expert literature on the issue of analysing public policy instruments identifies several typologies for categorising such instruments, according to different aspects. As stated in Staroňová: "In decision-making, it is important to take into consideration both the limitations and the potential of each category of instruments, and the political consequences or negative effects of the instruments."[17]

15 Ibid.

16 Ibid.

17 Staroňová – Sičáková-Beblavá (2006), p. 40.

The fundamental classification of public policy instruments differentiates them as follows:

Character	**Degree of Requirement**
• Legal	• Compulsory
• Economic	• Mixed
• Informational	• Voluntary
• Administrative/Organisational[18]	

Public comments to VZN proposals can be classified, by applying the above differentiation to the description in the preceding part of the case study, as **informational**, as the instrument helps inform the citizens in a given municipality about impending changes in their local legislation. In terms of the degree of requirement as a second aspect of basic typology, the instrument is categorised as **compulsory**, as every municipality is legally bound to publish the proposed VZN in accordance with specifically established guidelines, and not doing so constitutes an unlawful administrative procedure and thus grounds for prosecution.[19]

Building on this fundamental categorisation of the instrument of public comments to VZN proposals, further typology is possible. Because the instrument under study functions as a means of transferring information from the authority (i.e. the VZN author) to the citizen, and also vice versa, should the citizen make use of the opportunity, it can be considered a "**participative**" instrument, i.e. an instrument that involves the public in creating public policy.[20] Later, this increased opportunity for public involvement had an additional effect, which is to enhance controls on the administration of public affairs, both at local and national administrative levels. In turn, these enhanced controls lead to two outcomes: on the one hand, a decrease in the extent of potentially corrupt practices by various actors participating in public policy creation (mayor, council members and the like), which on the other hand logically results in the instrument's increasing accountability in this process. This means that the instrument of publicly commenting to VZN proposals can be regarded as an "**anti-corruption**" instrument.[21]

However, whether this instrument comes up to its potential in practice is the subject of the next part of this case study.

18 Ibid.

19 Pirošík, p. 48

20 For more, see Staroňová – Sičáková-Beblavá (2006).

21 For more, see e.g. Pirošík (2005).

2. Research Methodology

The following chapter addresses the description of the methodological approaches of the case study's research. Public comments to VZN proposals have been processed in local government policy since mid-2004. When it was introduced, the instrument had a clear goal: on the one hand to enhance the degree of public participation in public life, and on the other to assure the greatest possible transparency in exercising public power. However, no research or monitoring has been carried out since 2004 to discover the extent to which this instrument met its goal, so it is not possible to appraise this. Therefore, the second chapter of this case study endeavours to appraise the instrument's functioning, with the application of selected criteria.

2.1 Evaluation Criteria

Theoretical literature on analysing public policy instruments has noted several varying criteria for the appraisal of functional quality of a given instrument in practice. This case study will use criteria suggested by Salamon (2002), who identifies three basic criteria as follows:

- effectiveness
- efficiency
- equity

Efficiency according to Salamon is "…the most basic criterion for gauging the success of public action".[22] An **efficiency** criterion thus evaluates the extent to which the instrument satisfies the goal for which it was created, but does not take into account the expenses incurred to reach the goal. The criterion of **effectiveness** addresses the analysis of expenses and revenues. For this criterion, Salamon draws attention to the fact that it is important to consider two things: expenses that must be incurred by the state or local administration and appear in the state/local budget and secondary expenses that occur in the actual implementation of the instrument in practice (e.g. in the private or non-governmental sector).[23] The final basic criterion is **equity**, which Salamon explains at two levels. First, equity can be understood in the sense of fairness or justice, i.e. assignment of expenses or revenues that occur in implementing the instrument as equally divided among the target group for whom the instrument is intended. On the other hand, equity can be seen as redistribution, i.e. not dividing expenses and revenues equally to the whole target group, but rather unequally, taking into consideration those who are disadvantaged compared to others.[24]

22 Salamon (2002), p. 23.

23 Ibid.

24 Ibid, pp. 23–24.

The quality of the instrument of public comments to VZN proposals, and subsequently their relationship, can be measured with the aid of the following criteria.

(Effectiveness + Equity) × Efficiency = Quality of Instrument

This equation implies that efficiency is key to quality, i.e. whether the public policy for which the instrument was implemented achieved its goal or not. If the instrument's efficiency is non-existent (mathematically equal to zero), then the other two criteria (effectiveness and equity) can, in principle, not influence instrument quality. For this reason, the analysis below will not go into all three criteria, but rather examine in depth the degree of the instrument's efficiency, i.e. the extent to which the aim that was set out was achieved.

2.2 Research Purpose, Research Question and Designation of Hypothesis

In the context of measuring the quality (from the perspective of efficiency) of the instrument of publicly commenting on VZN proposals, the research part of the case study intends to:

1. **chart the status of utilising the instrument of public comments to VZN Proposals in Slovakia's local governments**
2. **evaluate the efficiency of the instrument of public comments to VZN Proposals**

The above purpose was to be met by answering the following research question:

To what extent are citizens making use of the possibility to comment on VZN proposals?

With regard to this question, a hypothesis must be stated, which the research part of the case study will test. The hypothesis arises from the fact that the concept of citizen participation (of which, as noted above, the participative instrument of publicly commenting to VZN proposals is part) is very new in Slovakia, and little utilised in practice. Thus, it is possible to suppose that the **instrument of public comments to VZN proposals will be utilised very little by the public**. The reasons for this may lie in two areas. On the one hand, there may be insufficient citizen awareness of possibilities to engage in forming policy and to utilise instruments that enable this. On the other, citizens may not be interested, which arises from a feeling of impossibility to truly influence the decisions and activities of elected representatives.

2.3 Methodological Instruments

To test the hypothesis and answer the research questions, it was necessary to use a quantitative method by which to determine the instrument's utilisation for a certain

period of time. The questionnaire sent to all district seats in Slovakia contained the following questions:

1. How many proposed VZNs were put forward for comments in the years 2005, 2006 and 2007?
2. How many comments were submitted?
3. How many comments were accepted?
4. How many comments were rejected?
5. How many proposed VZN were approved?

The questions were composed so as to capture logically the sequential process of approving a VZN (i.e. from the proposal, through commenting, to the approval of the final legislative document) and also to determine the extent of the utilisation of the instrument being studied, on the basis of ratios of individual data groupings (number of VZN proposals put forward, the number of VZNs, and the number of comments accepted and rejected).

As mentioned above, instrument efficiency is to be measured by the extent the public utilises it. This will be measured from three perspectives:

1. **Ratio of comments submitted to the number of VZNs approved in district seats participating in the research over the entire time period observed (3 years: 2005, 2006, and 2007)**
2. **Ratio of comments submitted to the total population of district seats participating in the research over the entire time period observed (3 years: 2005, 2006, and 2007)**
3. **Ratio of comments submitted to the total population to the total number of VZNs approved in district seats participating in the research over the entire time period observed (3 years: 2005, 2006, and 2007)**

The periods selected for data collection were the years 2005 to 2007, to allow for a sufficient lead time from the revised law's effective date (July 2004). To make it simpler for respondents to enter the data, the questionnaire was designed in an understandable table. With the application of the Act 211/2000 on Free Access to Information, questionnaires were sent out by email (in order to obtain the highest possible response) to all of the city administrative offices of Slovakia's district seats. The sample defined – 72 district seats in Slovakia – was based on the expectation of better and prompter communication with employees of city administration offices; further, the total inhabitants of all district seats in Slovakia can be considered sufficiently representative (up to two million residents live in Slovakia's district seats).

Apart from gathering data from these district seat cities on quantities of VZNs and comments, information was also sought through internet websites concerning the number of residents in individual district seats in Slovakia.

These data constituted the basis for analysing the efficiency or quality of the instrument.

3. Public Comments to VZN Proposals – Research Results and Data Analysis

The following chapter of the case study describes the results of the quantitative research, and the subsequent analysis of data obtained with regard to the given research purpose.

As noted above, quantitative questionnaires were emailed to the city administrative offices in all Slovakia's district seat towns. Out of a total of 72 questionnaires sent out, the return rate was over 50 % (approximately 53 %, i.e. 38 questionnaires[25]). The total number of residents in these cities was about 1.6 million.

The first important figure affecting subsequent analysis is the number of cities (out of the total number of district seats) that did not have or were unable to provide the requested information. There were 12 such cities, and the number of cities in the following analysis does not include them. The number of residents was thus reduced to 1.2 million.

Regarding the remaining cities, i.e. **26 district seat cities**[26], a further interesting detail can be construed as to the number of comments submitted. In the aforementioned number of district seats, a total of **763 comments** to VZN proposals by the public were submitted in the course of three years. Of this total, approximately **73 % (554 comments) were accepted and worked into the proposal**, and approximately **27 % (209 comments) rejected**.

Table 1 below gives an overview of the quantities of cities and comments, grouped into six ranges. In seven cities, not a single comment was submitted; in five there were less than ten comments submitted; in seven there were between 10 and 20 comments; in two cities more than 21 comments but less than 50 were submitted; in four more than 50, and in one city more than 91 comments.

25 Data was provided by: Humenné, Levoča, Lučenec, Poltár, Prešov, Sobrance, Žilina, Skalica, Senica, Hlohovec, Prievidza, Ilava, Pezinok, Revúca, Trenčín, Čadca, Michalovce, Martin, Veľký Krtíš, Snina, Kežmarok, Bratislava, Svidník, Vranov nad Topľou, Bardejov, Banská Bystrica, Dolný Kubín, Dunajská Streda, Krupina, Partizánske, Považská Bystrica, Púchov, Rožňava, Spišská Nová Ves, Trebišov, Trnava, Zvolen, and Žarnovica.

26 Cities which had no data on number of comments: Dolný Kubín, Dunajská Streda, Krupina, Partizánske, Považská Bystrica, Púchov, Rožňava, Spišská Nová Ves, Trebišov, Trnava, Zvolen, and Žarnovica.

Table 1
Number of Cities Categorised by Number of Comments Received

Number of Comments	0	Less than 10	10–20	21–50	50–90	More than 91
Number of Cities	7	5	7	2	4	1

Source: author

One interesting and important comparison, which touches on the extent to which the instrument is used, is between the total comments submitted and the total number of VZN proposals approved. During the three years from 2005 to 2007, 684 VZNs were approved in the relevant 26 district city councils in Slovakia. As noted, a total of 763 comments were submitted, which indicates **an average of about one comment submitted for each** VZN (specifically, 1.11 comments).

Another comparison, no less important than the first, is that which makes it possible to appraise the extent to which the instrument of public comments to VZN proposals is used; this is the ratio of comments submitted to the total number of residents in the 26 district seats. Approximately **1.12 million residents live in these 26 district seat towns**, in which a total of **763 comments** were submitted over the three years. Here, however, it must be pointed out that nearly half of these comments, i.e. 315 of 763, were submitted in the city of Banská Bystrica. Because this is a relatively high number, which could have a significant impact on subsequent interpretations and the data's predictive value, two versions are provided, i.e. (a) data including activity of comments in Banská Bystrica, and (b) data purged of this quantity.

(a) After analysing the aforementioned data (i.e. including Banská Bystrica), it can be concluded that an average of 0.0006 comments per citizen was submitted over the three years, or 6 comments per 10,000 citizens. This equals two comments (2.06 comments) per year, per 10,000 citizens.

(b) After disregarding the Banská Bystrica data, the number of comments went down to 448, and the number of residents to about 1.15 million. This gives an **average** per citizen over the three years of 0.0004 comments made, or **roughly 4 comments per 10,000 citizens**. This equals **about one comment per year** (specifically 1.23 comments) **per 10,000 citizens**.

As the difference between these two results shows (a difference of roughly 100 %), it is important to note that it is more appropriate to focus on data that disregard the extreme values obtained in the city of Banská Bystrica. The effect of this analysis is therefore that **for an average of 10,000 inhabitants, one comment per year was submitted**.

A final fact, which is the most concrete indication of utilising the participative instrument of publicly commenting to VZN proposals, is the number of comments per citizen per one VZN approved. In this, as well, there are two analysis alternatives: (a) including data from Banská Bystrica, and (b) disregarding data from Banská Bystrica.

(a) If total data including that of Banská Bystrica are considered (i.e. 763 total comments submitted, a total of 1.23 million residents, and 684 approved VZNs), it can be concluded that **per million inhabitants, approximately one comment** (specifically 0.904 comments) **is submitted for each VZN**.

(b) However, analysis of data purged of comments in Banská Bystrica (i.e. total comments submitted was 448, total residents were 1.15 million, and the number of approved VZNs was 684), it can be concluded that **per million inhabitants, approximately 0.6 comments** (specifically 0.619 comments) **are submitted for each VZN**.

Despite the fact that in this case the difference between the two alternatives is not close to 100 %, it is again more appropriate in terms of reliability to focus on data that disregards the extreme values obtained in the city of Banská Bystrica.

In addition to the aforementioned results of data analysis, it is interesting to note the connection between city size and the interest in making use of this instrument of publicly commenting to VZN proposals. For this purpose, the 26 district seats were divided into three groups:

- small cities, i.e. those with populations of up to 25,000
- mid-sized cities, i.e. those with populations of up to 50,000
- large cities, i.e. those with populations of over 50,000

For these divisions, the number of comments per 10,000 residents per one VZN was calculated, with results as follows. In small cities, an average of 0.5 comments were made per 10,000 residents per VZN; in mid-sized cities an average of 0.4 comments were made per 10,000 residents per VZN; and in large cities the average was only 0.1 comments. This data is depicted in Table 2.

Table 2
Number of VZN Comments per 10,000 Residents, by City Size

City Size	Number of VZN Comments per 10,000 Residents
Small	0.54
Medium	0.38
Large	0.14

Source: author

This indicates that there is a tendency for the activity of citizens to fall as the size of cities in Slovakia increases; this can be verified in practice by ranking the activity of citizens. The ranking of the top ten cities in Table 3 is based on the analysis of the number of comments per population per one VZN.

Table 3
Ranking of Top Ten Cities by Number of VZN Comments per Total Residents

Rank	City	Number of Residents
1	Svidník	12,428
2	Bardejov	35,000
3	Vranov nad Topľou	23,014
4	Veľký Krtíš	13,773
5	Snina	21,328
6	Ilava	5,416
7	Banská Bystrica	81,281
8	Revúca	13,466
9	Kežmarok	17,241
10	Michalovce	39,922

Source: author

As the table above shows, with the exception of the city of Bardejov, the first five places belong to cities counted as small, according to the divisions on the previous page, i.e. up to 25,000 inhabitants. The highest-ranking from the division of large cities is Banská Bystrica; however, according to the data given earlier, this city is extreme. The next largest city, Michalovce, is ranked tenth. This indicates a certain connection between city size and the engagement of citizens in creating public policy. Another fact, no less interesting, is that the five top-ranked cities for citizen activity are small cities in eastern Slovakia – and this is a part of the country considered as having comparatively high levels of unemployment and poverty. These realities, and the search for their causes and possible consequences, may serve as interesting grounds for further research in this area.

Conclusion

The purpose of this case study was: on the one hand to chart the status of whether people are making use of the instrument of public comments to VZN proposals among Slovakia's local councils; and on the other, to evaluate the efficiency of the instrument of public comments to VZN proposals. The purposes were meant to be achieved through answering the research question: "To what extent are citizens

making use of the possibility to comment on VZN proposals?" At the same time, the hypothesis was tested that assumed the public would make very little use of this instrument.

It can be concluded that the case studies' goals were achieved.

Charting the status of instrument utilisation can be assessed by the relatively high questionnaire return rate (over 50 %). Despite the fact that not all cities were able to provide the necessary applicable data, the number of citizens in cities with available data totalled over 1.2 million, which can be regarded as a relatively representative sample.

The instrument's efficiency was measured and evaluated through various analyses of data collected. The most interesting finding, and most illustrative of the situation of how the instrument of public comments to VZN proposals is used in Slovakia, concerned the number of comments per million residents per quantity of approved VZNs, which came to 0.6 comments. In practice, this indicates that for every approved VZN in a city of one million inhabitants, 0.6 comments will be submitted. This figure in turn supports the stated hypothesis on the studied instrument's utilisation. The instrument of public comments to VZN proposals, according to this research, is, in fact, made use of only minimally; this implies that it cannot realistically satisfy the goals set for it, i.e. its quality is relatively low. Yet its utilisation is not non-existent; thus (in the context of the equation given above, where an instrument's quality depends mostly on its efficiency, i.e. achieving the goal) there is a hidden potential in this instrument. At present, its anti-corruption aspect is notably more theoretical than practical.

The challenge for the future, however, remains: whether the potential hidden in the instrument is utilised, for example, through citizens' awareness of opportunities to affect the administration of public affairs, which no doubt includes the making of comments to VZN proposals.

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Reforming the Financing of Political Parties in Slovakia

Emília Sičáková-Beblavá, Juraj Mišina[1]

1. Introduction and description of an anti-corruption tool

Democratic politics cannot exist without political parties and movements and these cannot develop their activities without financial resources. Financing of political parties and movements is not only necessary, but also desirable. According to Biezen "they [political parties] are essential for the organisation of the modern democratic polity and are crucial for the expression and manifestation of political pluralism. Political parties perform a variety of functions, all of which are to some degree quintessential to modern liberal democracy.[2]" Johnston also refers to the role of political parties: "[s]trong political parties are essential to open, competitive democratic politics, particularly in emerging democracies. Parties need funding in order to survive, compete, and perform their democratic functions, both during and between election campaigns.[3]"

In relation to the operation of political parties, Biezen points to the problem of their financing. The author notices that without an appropriate funding system, many antisocial problems may appear. She indicates that current amendments in many states are taken as a result of corruption scandals. Therefore the rules regulating this area should create mechanisms based on which citizens can call the political parties and movements to account and they should introduce transparency.[4] In their research, Austin and Tjernström elaborate on the issue of transparency in financing political parties. They see the transparency as a crucial right of people to know and

1 We thank Daniela Baťová and Daniel Lupinski for their cooperation in the process of data collection.

2 Biezen, I.: Financing political parties and election campaigns – guidelines, Council of Europe Publishing, 2003.

3 Johnston, M.: *Political Parties and Democracy in Theoretical and Practical Perspectives,* National Democtatic Institute for International Affairs, 2005.

4 Biezen, I.: Financing political parties and election campaigns – guidelines, Council of Europe Publishing, 2003.

judge all activities led by political parties. Nevertheless, transparency without other factors such as: encouragement, public support and supervision – may not be sufficient.[5] The Office of Democracy and Governance also emphasises the importance of a transparent process of disclosing information about the funding system of political parties. The transparency is explained very simply: "[t]ransparency enables citizens to see who gives how much money, to who and where it is spent and for what purpose. It is the presumed antidote to the influence of big money, and to the secrecy that enables illicit funding. Disclosure gives citizens information. Citizens then decide for themselves what it means.[6]"

In all societies, companies, as well as citizens attempt to influence the public's power to make it consider their position and opinions. Lobbying is legitimate, provided that it is open, transparent and that all interest groups are provided with access to the power. If influence and reciprocal services are gained through non-transparent financing of political parties and movements, it often means a kind of bribe, i.e. corruption. Lack of transparency in financing of political parties is often related to such negative effects such as, for example, loss of confidence in the public sector institutions. Deformations can also occur in the business sector, which can lead to companies' activities aiming more at searching for an annuity rather than searching for profit, by means of the companies' domination of the State connected with influencing of legislation, decisions of the Government or courts.[7]

This case study deals with the rules of financing of political parties[8] and political movements, with their development and enforcement from the beginning of the 1990's until present. Concretely, it focuses on increasing transparency in financing of political parties and movements – for example through the introduction of an obligation of parties and movements to publish annual reports, introduction of an obligation of parties and movements to provide more information about expenditures on election campaigns and it also focuses on increasing transparency in the provision of donations to parties and movements.

There were also other changes made in the financing of political parties in Slovakia. Many institutes introduced in Slovakia in this area have their strong, as well

5 Austin, R. and M. Tjernstrom: *Funding of Political Parties and Election Campaigns*, International Institute for Democracy and Electoral Assistance, 2003.

6 Office of Democracy and Governance. Bureau for Democracy, Conflict, and Humanitarian Assistance;

U.S. Agency for International Development, *Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies*, 2003.

7 Sičáková-Beblavá, E. – Zemanovičová, D.: *Political parties and funds: secret or confidence?* Transparency International Slovensko, Bratislava, 2002.

8 Biezen (2003) writes that properly functioning financing political parties has to be based on the balance between public and private sources; clear and fair criteria of distributing public funds and possibility supporting parties with private donations; the existence of external institution, which controls fulfillment of provisions; the existence of sanctions in case of non complying with rules.

as weak points and they do not have a primary effect on the extent of corruption in Slovakia. One example is the increase in the share of the state financial contributions provided to political parties and movements for their activities in return for the votes obtained in elections. On the market of political parties and movements, individual partakers want to succeed and thus they try to obtain sufficient funds from private resources. They try even harder in the situation where there is no limit on expenditures on their election campaigns. With regard to the above, not all introduced institutes can be evaluated as institutes seriously limiting corruption and thus in this case study, we primarily focus on those tools which increase transparency in the financing of political parties and movements in Slovakia and whose relation to the extent of corruption is more direct.

Before mentioning the selected institutes, which increase transparency in this area, let us make one observation. Each regulation has its limits. The effort to regulate this area as severely as possible does not have to bring the desired fruits in the form of decreased corruption. This is a very sensitive area, which deals with the regulation of the tools of the fight for public power, where creativity in circumventing legal restrictions is always present. A good example is the area of regulation of business activities, as stated below in item 1.2., where basically nothing prevents the parties and movements from being personally interconnected with business entities and from having financed their political activities. This is why transparency, above all, is really important in the financing of political parties.

1.1 Annual report

Pursuant to Section 30 (1) of the Act 85/2005 Coll. on Political Parties and Political Movements, each year by the end of April, political parties and political movements have an obligation to submit to the National Council of the Slovak Republic (hereinafter the "*NC SR*") an annual report for the previous calendar year. Annual reports of the parties are published by the Office of NC SR on its web site (www.nrsr.sk) by 31st July of each calendar year. Annual reports had a bridging period – they became effective in 2005, however since 2007 they have been processed in more detail.

The aim of the introduction of this obligation is to enable public control of financing and management of political parties and movements. Annual reports are first evaluated by the Committee of NC SR on Finance, Budget and Currency, which is entitled to request the parties to remove any possible shortcomings. Subsequently, annual reports are published on the above mentioned web site of NC SR and thus they become accessible to the broad public. The broad professional public, as well as the lay public, thus obtain a tool for (at least partial) control of the financing of political parties and movements in Slovakia.

Pursuant to Act No. 85/2005 Coll. and its amendment No.568/2008 Coll., an annual report must include the following:

- Balance sheet for the respective accounting period verified by an auditor (the auditor is determined by the Slovak Chamber of Auditors by drawing lots from a list of auditors); selection (through lottery) has to be done at latest by 28th September in any particular year, with participation of at least two members of the relevant committee of the Slovak Parliament. The Chamber of these auditors selects (through random selection/lottery) auditors who declare, prior to selection, that they have no conflict of interest with the conducting of the expected audit in political parties.
- Information on the party's financial situation for the last two accounting periods;
- Information on a proposal for the allocation of profits or settlement of loss;
- Overview of the party's incomes;
- Separate register of donations;
- Information on fulfilment of tax obligations;
- Number party members as of 31st December of the current year, for which the annual report is submitted;
- The sum of the collected membership subscriptions and their separate register, while the parties must keep a separate register of the membership subscriptions received with the names and addresses of the members, whose contribution for the respective year exceeds SKK 25,000;
- Overview of liabilities after the maturity date (this could provide citizens with information on risky factors, which could exist in the management of political parties);
- Separate register of incomes from loans or credits, including names and addresses of credit providers (this is an area used in the past for evading transparency);
- Balance sheet of any commercial company which was established by the party or of which it became a sole partner, for the respective accounting period;
- Report of an auditor on the annual report, while apart from the balance sheet, the auditor must also verify conformity of the annual report with the balance sheet and legislation;

If a party or movement fails to submit its annual report, the Ministry of Finance of SR will impose on this party or movement a penalty in the amount of SKK 100,000. The same penalty can be imposed on the party or movement if it fails to remove any shortcomings of its annual report found by the Committee of NC SR on Finance, Budget and Currency. Pursuant to the law, this Committee is also entitled to suspend payment of the contribution for activities and the contribution for its mandate if the party or movement fails to submit the report or remove the found shortcomings.

1.2 Business activities of political parties[9]

Parties and movements cannot undertake business activities or enter contracts on silent partnership on their own behalf; however, they can establish a commercial company or be its sole partner. This provision ensures that any possible business activities of parties or movements are separated (by means of such commercial company) from other activities, by which transparency of their management is increased.

As mentioned by Wienk[10] this is the case because if a political party could freely undertake business as a natural person or legal entity, there would be a risk that the respective commercial company could be used for transferring financial flows related to financing of the party's activities through such a private company[11] [12].

The Act simultaneously imposes on the parties and movements an obligation to use double-entry bookkeeping, which can also increase transparency of these entities' management.

A commercial company established by a party or movement (or a company, of which the party or movement is a partner) can perform only certain pre-determined activities. Its activities can include the operation of publishing houses and printing houses, publication and promotion activities, production and sale of items promoting the party or movement, organisation of educational and political events and administration of the party's possessions. An important provision is that this commercial company cannot participate in public procurement, where the purchaser is a state authority, municipality or a higher territorial unit because there is a risk of a conflict of interests.

1.3 Expenditures on elections to the National Council of the Slovak Republic

The Act 85/2005 Coll. imposed on political parties and movements an obligation to elaborate a report on their expenditures. The aim of this measure was to increase transparency of these expenditures.

Parties are obliged to elaborate a preliminary report for the time period starting on the day of the elections' announcement and terminating 30 days prior to election day. The preliminary report must be published on the website of the Ministry of

9 According to www.minv.sk/archiv/strany.htm.

10 Interview with Zuzana Wienk conducted on December 10, 2007.

11 As an example we can state the case of the company Maana and TV Com, where the present Deputy of the party KDH, Peter Gabura, worked as an executive. By means of TV Com, P. Gabura sponsored the party, as well as regional and district officials of KDH, who allegedly worked there as advertising staff. (Daily HN, 12 September 2007).

12 However, the Act does not deal with the transparency of commercial companies established by parties, which leaves some space for machinations, after all: Interview with Pavol Nechala, Národná Obroda, 2 February 2005.

Finance of SR at the latest 21 days before election day and it should be accessible to the public until publication of the final report. The final report must be submitted within 30 days from election day and the Ministry of Finance of SR must publish it on its website within 30 days from its delivery for a period of 6 months.

The report should cover the time period from the election's announcement until election day. It must include the following:

- Overview of the costs of pre-election and election public opinion polls;
- Overview of the costs of advertisements or advertising in the periodical press;
- Overview of the costs of broadcasting of political advertising;
- Overview of the costs of election posters and other carriers of advertising;
- Overview of travel costs of members of political parties within the election campaign;
- Overview of other party's costs of promotion of its activities and programme;
- Overview of the party's incomes;
- Separate register of incomes from loans and credits;
- Separate register of donations.

1.4 Party's incomes

In this part, we will deal with the rules stipulated by the Act for Incomes of Parties and Movements. New rules were adopted, above all, for the receipt of donations. A significant change concerning contributions from the state budget was their increase to approximately double, which should lead to decreased motivation of the parties to generate illegitimate or non-transparent incomes.

1.4.1 Donations

The aim of the Act's provisions concerning parties' incomes is to limit the space for illicit incomes and donations, for example from anonymous and non-existent donors. A well-known case is the case of the party SDKÚ, which stated the names of donors in its annual report; however they claimed that they had not donated any money to the party or that they had donated much less than stated in the party's annual report.[13]

The present Act therefore enables the parties and movements to only receive donations based on a written contract (signature of a donator must be certificated on the day of the signature of the contract or at least on the day of the donation provision; in the case where there is a donation up to the value of 500 euro, an accredited agent of the party can sign the contract of the donation). Receipt or use of a donation contrary to the law can result in the imposition of a penalty in the amount of double the value of the donation.

13 Daily SME, 1 April 2004.

The list of donators should be made public by the party on their official page quarterly, at latest 30 days after the end of the calendar quarter. The Act also stipulates that the party can accept a cash financial donation from one donator only once within a particular calendar year if the sum of the donation does not exceed 5 000 euro.

At the same time, the political party is obligated to have separate evidence of an accepted member contribution which includes the name and surname of the party member and his permanent address, in case it is a member whose contribution reached, in a particular year, 829 euros or more in total. A party can accept member contributions over 5 000 euro only through a money transfer.

1.4.2 Contribution for obtained votes and contribution for activities

A contribution for obtained votes is paid to the parties and movements based on the Act 333/2004 Coll. on Elections to NC SR. Each party which wins more than 3 % of valid votes in an election is entitled to a contribution, for each valid vote, in the amount of 1 % of the average nominal monthly wage in the national economy for the calendar year preceding the year of the elections.

The contribution for activities is the same as the contribution for votes; however it is divided into 48 parts and paid to the party gradually. In the year of elections, a maximum 3 parts are paid, in a normal year 12 parts are paid and the remaining parts are paid in the year of the next elections. In case of premature elections, the number of paid parts is decreased by the number of months by which the election term was reduced.

An important provision in the context of the pressure on increasing transparency is that a party or movement will lose its claim to contributions from the state budget if it fails to submit the preliminary or final report on its expenditures on the elections to NC SR or annual report. Moreover, the use of contributions is limited by law. Parties must not use contributions as loans to natural persons or legal entities, for contracts on silent partnership, as a guarantee for obligations of natural persons or legal entities, donations, for payment of penalties or for business activities of a commercial company.

2. Model of the tool's effectiveness/effect on decreasing corruption

The model of effectiveness of individual tools on decreasing corruption in financing of political parties is based on transparency, i.e. on access to information on financing of political parties and movements. Moreover, it is based on the fact that the biggest sanction for political parties, which are on the political market and solicit the confidence of citizens, is the loss of confidence in them, i.e. a political sanction. We also call it reputation costs. Of course, a formal sanction (for example in the form

of a financial penalty) also has its place and effects in this area and it increases the lack of confidence in political parties and movements. However, a formal financial penalty is not necessary for decreasing the confidence of a potential elector; confidence also has the potential to be formed based on the lack of transparency in the financing of political parties and movements, which is pointed out by the media and/or nongovernmental organisations and vice versa. It has the potential to also be developed through transparency in financing of political parties and movements.

Therefore, the following applies:

The better the transparency, the bigger the possibility is to disclose dirty practices related to financing of political parties and movements and thus also the risk of losing the confidence of a potential elector – and the lower the tendency is to perform corrupt activities in the financing of political parties and movements.

However, this model of decreasing corruption in the public sector applies only if there exists any interest from the individual partakers to monitor the financing of political parties and movements. It implies the interest of the competing parties and movements, interest of the media and non-governmental organisations to work with available information, as well as the interest of an impartial public authority in a given area.

Model's application

Transparency – availability of information

Changes in the legislation brought certain progress in the transparency of political parties and movements required by law.

Information about expenditures on campaigns was increased, concretely by introducing an obligation to publish regular reports and a final report on the financing of campaigns. If these reports are easily accessible to the public, everyone can read them. A citizen or politician from a competing party or movement can pose questions about the costs of the party's activities during the campaign. Thanks to quickly accessible information, electors can see already during an election campaign whether the political party does not burden itself with excessive debt and whether any excessive liabilities arise with respect to a certain person, which are not being paid. The tool's anti-corruption effect is based on exerting pressure on political parties and movements by introducing continuous transparency in the financing of election campaigns and preventing so-called creative accounting (i.e. additional changes made in the accounting).[14]

There was also increased transparency in the incomes of political parties and movements through various institutes. A donation of a value exceeding SKK 5,000 must be accompanied by a written contract and a donation of a sum exceeding SKK

14 Interview with Zuzana Wienk conducted on December 10, 2007.

100,000 must be accompanied by a contract with verified signatures of the contracting parties. This makes it much more difficult to falsify donations compared to the past, when it was sufficient to write a receipt. Information about donations is publicly accessible.

Political parties and movements must also publish information on parties' outstanding liabilities, on the amount of the collected membership subscriptions and on the number of members and they must also keep a separate register of incomes from loans and credits.

Political parties and movements are also obliged to submit annual reports, while the law clearly defines the type of information that must be actively published. The annual reports thus improve the possibilities of control of the management of political parties and movements. Together with the active publishing of annual reports and the obligation to use double-entry bookkeeping, in this context, we can also evaluate positively the Act's provision, pursuant to which the annual report must be verified by an independent auditor. The auditor not only verifies the balance sheet but also the conformity of the final report with the balance sheet and legal regulations.[15] Enforceability of the provision of information by political parties and movements in practice was also improved by the fact that a party or movement would lose its claim to contributions from the state budget if it failed to submit the preliminary or final report on expenditures on elections to NC SR or the annual report.

The Act simultaneously stipulates the obligation of the parties and movements to use double-entry bookkeeping, which can also increase transparency in the management of these entities.

Conditions concerning transparency stipulated by law were also strengthened in the area of business activities of political parties and movements.

Public control

In Slovakia, no institution has yet been established such as the one in Great Britain (Electoral Commission[16]) that would have impartiality guaranteed by law and with the power to inspect the financing of political parties and movements. There were various initiatives in this area, for example an attempt to delegate this power to the Supreme Audit Office of SR; however, they were not put through. The state control of the financing of political parties by NC SR is not sufficient.

A discussion about the situation in the financing of political parties and movements, about changing the rules regulating the financing of political parties and movements and about the monitoring of financing of political parties and movements was brought about by the media and non-governmental organi-

15 Interview with Zuzana Wienk conducted on December 10, 2007.

16 www.electoralcommision.gov.uk.

sations. Several public opinion polls pointed out dirty practices connected with the financing of political parties and movements.[17] In 2000, Transparency International Slovensko (hereinafter the "TIS") organised a professional seminar attended by politicians, and national, as well as foreign experts. The Argentinean branch of this organisation provided the basic know-how for the monitoring of election expenditures in 2002. TIS thus helped to establish a non-governmental organisation called the Fair-play Alliance, which made the monitoring. The Alliance obtained valuable information about the financing of campaigns, which constituted a necessary input for the preparation of further recommendations for the improvement of the existing situation. During the parliamentary elections of 2002, political parties and movements felt for the first time an increased pressure on their funds.[18] The Fair-Play Alliance also pointed out other oversteps of political parties and movements related to their financing. An example is the case of fictitious donors in SDKÚ (Pravda, 20 April 2006).

3. Political economy of the tool going through and being maintained

In this part we briefly describe the situation and rules in the area of financing and management of political parties and movements, which were in force prior to the adoption of the Act 85/2005 Coll., by which we provide a broader framework of development of this issue. We will further focus on drafting and enforcing the valid Act 85/2005 Coll. and on individual partakers in the process of its drafting and approval.

3.1 Situation in financing of political parties and movements before adoption of the Act in force

Before 2005, financing and management of political parties and movements was regulated by the following Acts:

- Act 424/1991 Coll. on Associating in Political Parties and Movements;
- Act 190/1992 Coll. on Contributions for Political Parties and Movements from State Budget of SR;
- Act 239/1994 Coll. on Limitation of Expenditures of Political Parties and Movements on Promotion before Elections to NC SR;

A discussion about the functioning of political parties and movements in the Slovak political system was already going on during the 1990's. However, at the be-

17 See for example the public opinion poll of the agency FOCUS for TIS in 2003; http://www.transparency.sk/kampane/030425_podni.pdf.

18 See for example the Press Release of the Fair–Play Alliance on election costs of political parties at www.fair-play.sk.

ginning, it was focused primarily on amendments of the Act on Elections and their effect on the system of political parties in Slovakia.

Only in 1999, there also began a serious discussion about the methods of financing of political parties and movements. In this time period, society perceived sensitively the issue of corruption and cronyism since the governmental coalition of that time expressed its will to end up with cronyist interconnections between the political parties and powerful economic groups, which functioned at that time. These interconnections could be seen most during the period between 1994 and 1998, during the governance of the coalition of the parties HZDS-SNS-ZRS, when privileged economic and lobbyist groups related to the coalition parties participated in privatisation, which secured the parties with an effective donorship.[19] This interconnection constituted a systematic element of a semi-authoritative regime which it reproduced on its own and resulted in the strengthening of the position of the governing political parties. The rules of financing of political parties in force at that time proved to be toothless.

Two main topics dominated discussions in the years 1999 and 2000: (1) the amount of money that should be received from the state budget and (2) an effective control of the handling of this money. Increasing contributions from the state budget decreases motivation of the parties to search for money from other (often illegal) sources, which decreases the risk of cronyist interconnections. However, this system must be set in order to avoid negative effects on equality, freedom, political competition and possibilities of public control.[20]

According to several authors, the legal regulation of financing of political parties and movements in force at that time (Act 424/1991 Coll., as amended, Act 190/1992 Coll., as amended and Act 80/1990 Coll. as amended) did not create the conditions under which a normally functioning parliamentary political party could survive for a longer time exclusively from legal sources. With regard to the generally low number of members of political parties, it was unimaginable that membership subscriptions sustain the party (an exception was the party ANO at a later date). At the same time, parties had limited possibilities for using profits from undertaking business (exclusively for the fulfilment of the programme objectives stated in their statutes); therefore they could not rely on incomes from business activities either. Contributions from the state budget did not reach the necessary level and donations

19 Mesežnikov, G.: "Social context and the issue of financing of political parties in Slovakia" in: TIS: *Financing of political parties: Seminar Bulletin*, Transparency International Slovensko, Bratislava, 2000, p. 33.

20 Mesežnikov, G.: "Social context and the issue of financing of political parties in Slovakia" in: TIS: *Financing of political parties: Seminar Bulletin*, Transparency International Slovensko, Bratislava, 2000, p. 36.

from legitimate donors were not sufficient to cover the needs of the parties. Therefore, parties also resorted to circumventing or breaking the law.[21]

As for the possibilities of control, whether public or state control, they did not exist. The parties were obliged to publish annual reports, which had to include an account of the state contributions, however the control was very formal and the only sanction was the possible loss of the claim to the state contribution for the respective year.

In 2000, an amendment to the Act 424/1991 on Associating in Political Parties and Political Movements 404/2000 Coll., was adopted, which did not bring the expected results. There was an increased amount of money which could be obtained by the parties from the state budget and in the part regulating the contents and manner of publishing the parties' annual reports it considerably limited the possibilities of the public control by precluding publication of data on donors. Although the institute of an anonymous donor was repealed, this provision basically meant that donors remained anonymous in front of the public and the media.

3.2 Legal regulation in force

A draft of the Act on Political Parties and Political Movements, which is currently in force, was submitted for negotiation of the Government of SR by the Minister of Interior, Vladimír Palko, and the Government approved it by decision no. 939/2004 delivered at its session held on 6th October 2004. NC SR approved it on 4th February 2005.

However, a discussion and preparation of more concrete proposals of amendments to the legal regulation on financing of political parties and movements lasted longer and they also appeared in the first anti-corruption programme of the government of Mikuláš Dzurinda. The National Program of the Fight against Corruption, which was adopted by the Government of SR on 28th February 2000, talks about the need to increase transparency in financing of political parties. As possible measures for achieving this aim, it proposes a consistent control of financing of political parties, above all by means of an obligation to publish receipts of donations and sponsor contributions, then publication of regular financial reports by each political party, legal sanctions for breach of financial discipline of political parties, publication of cases of abuse of authority of politicians and public administration representatives, above all cases of bribery, then securing of transparent financing of political parties through the state budget and the introduction of an auditor's report as an obligatory part of these reports.

21 Orosz, L.: Financing of political parties in Slovakia and possibilities of their public control (the present situation and legislative prospects). In: Financing of political parties: Seminar Bulletin. Transparency International Slovensko, Bratislava, 2000, p. 39.

An important role in initiating a discussion on changing the rules regulating the financing of political parties and movements was played by the media and non-governmental organisations, TIS and the Fair-Play Alliance.

Political parties and movements also conducted a discussion about changing their financing. We will state two examples. At that time, the party SDĽ organised a seminar about the role of a left-wing party in society, where they also discussed financing of their party and the party DS requested TIS for assistance in the preparation of their Code of Ethics.[22]

According to the Submittal report, there existed two proposals for drafting of a new legislation for the regulation of functioning and financing of political parties and movements.

The first one was a decision of the Committee of NC SR on Finance, Budget and Currency issued in June 2002. By this decision, the Committee expressed a need for the adoption of a new legislation on financing of political parties, which would enable updating the list of the registered political entities and deleting from the register those, which did not fulfil the obligations imposed on them by law – concretely submission of annual reports and notification of data determined by law. The requests of the Committee of NC SR on Finance, Budget and Currency were more than justified. The annual report for the year 2001 was not submitted by 40 out of 107 political entities registered at that time (the previous legislation also included this obligation, though in a more moderate form). Out of these 40 entities, written communication could not be established with 15 parties because the addressee was unknown. In 2002, 117 parties were registered, 45 of them did not submit a report and out of those, 19 parties could not be reached by the postal service. In 2004, there were 119 parties registered, 52 of them did not submit a report and 31 of these could not be reached by the postal service[23].

The second proposal of a new legislation was constituted by a decision of NC SR on 6th March 2003, in which a group of deputies expressed serious suspicions of the existence of corruption and cronyist practices in the political system of SR and they requested the Government to submit draft bills regulating areas such as proving the origin of possessions, conflict of interests or financing of political parties. With regard to the above, in May 2003, the Government of SR approved a Report on Concrete Measures for Fulfilment of Policy-Statement of the Government of SR in the fight against corruption, which constituted the Anti-Corruption Programme of the second Dzurinda Government.

22 Sičáková, E.: Basic principles of functioning of a left-wing party in a transforming society. Seminar on programme theses, Bratislava, March 2001.

23 Information about submittal of annual reports of political parties and political movements for the year 2006 available online: http://www.nrsr.sk/default.aspx?sid=financne_spravy_stran/financne_spravy_2006.

Based on these proposals, the Minister of Interior established a working group composed of representatives of the Ministry of Interior, Ministry of Finance, Ministry of Justice, Department of the Fight against Corruption of the Governmental Office of SR and the General Prosecutor's Office of SR. Representatives of the Fair-Play Alliance were also included in the working group. In drafting a new legislation, the majority of the tools were proposed by the non-governmental organisation the Fair-Play Alliance, which established, for this purpose, an expert committee composed of political scientists, advertising experts, media experts, auditors, accountants and independent experts (they dealt with the issue from the civil, as well as philosophic viewpoint). The Ministry of Interior of SR, which was headed by Vladimír Palko from KDH at that time, drafted, in co-operation with the Fair–Play Alliance, gift covenants. In the opinion of the Director of the Fair-Play Alliance, Zuzana Wienk, the motivation for drafting a new legislation was to create stricter conditions for financing and management of political parties in order to prevent dodgy financing of the parties, increasing transparency in their financing so that the public can learn about all risky matters, as well as purging political parties and movements in order to avoid future scandals concerning their financing.[24] This working group prepared a draft bill, which was submitted to a governmental session on 6th October 2004.

Among other things, the Act is also based on recommendations of the Council of Europe on Common Rules against Corruption in Financing of Political Parties and Election Campaigns adopted in April 2003. These Recommendations propose limiting of the state support provided to political parties to exclusively financial contributions, which should be appropriate. Apart from the state subsidies, parties can also accept donations and various other benefits, however conflict of interests must be prevented, transparency must be secured and donations should not be secret. The Recommendations of the Council of Europe also include references to limitation of election expenditures, effective control of the parties' financing and sanctions.

According to the evaluation of an amendment procedure (*Transl. Note:* consideration of proposed amendments), the draft bill originally also included a provision on the limitation of expenditures on the election campaign; however the approved version does not include this. Evaluation of the amendment procedure mentions a collective comment of the public (by means of the Fair-Play Alliance), which requested repealing of the limitation of expenditures on election campaigns. The comment was not incorporated and an adversarial procedure was initiated, at which time the difference was not solved and therefore the draft bill was submitted to the Government with this difference. The submitter justified the comments by stating that limiting of election expenditures was in conformity with the recommendations of the Council of Europe. However, the disputed provision did not appear in the draft bill submitted to Parliament. Disagreements appeared in two more

24 Interview with Zuzana Wienk conducted on December 10, 2007.

issues, which were not approved either. These were the introduction of controls for the financing of political parties and movements by an independent authority (the Ministry refused to admit it) and a totally different principle of financing of political parties and movements, the so-called *matching funds*.

Evaluation of the amendment procedure also includes other interesting points. For example, the Ministry of Finance of SR proposed that the amount of the penalty not be fixed. The comment was rejected with an argument that if the penalty was not fixed, it could raise suspicions of corruption. A comment from the public was also rejected, which requested that the amount of the contribution for activities be the same as the amount of the party's incomes in the form of membership subscriptions, donations and inheritance. According to the submitter, such a provision would exert pressure on the parties to obtain donations (in order to obtain a higher contribution for activities). The public also requested repealing the contribution for mandates. This comment was also rejected, with the argument that it would mean a higher risk of corruption.

On 15th December 2004, NC SR approved the draft bill in the first reading and it submitted it for negotiation to the Committee of NC SR on Public Administration and Regional Development, the Constitutional and Legal Affairs Committee of NC SR, the Committee of NC SR on Finance, Budget and Currency and to the Committee of NC SR on Human Rights, Minorities and the Status of Women. The Constitutional and Legal Affairs Committee was appointed as a coordination committee. The second and third reading was held on 4th February 2005, when the Act was approved. The voting statistics point out that in comparison with the coalition, which supported the proposed Act, the opposition deputies of that time agreed with it less. Only two independent deputies and six deputies of the political party Smer voted against the Act's passing to the second reading. Eight deputies of the party Smer abstained from voting and one deputy voted in favour. Deputies of the Movement for Democratic Slovakia (HZDS) also voted in various ways: three deputies voted in favour and eleven deputies abstained from voting (one deputy did not vote). Deputies of the coalition of that time voted in favour, even deputies of the Communist Party of Slovakia (KSS) voted in favour, except for one deputy, who voted against. The voting on the draft bill, as a whole, was similar. Out of 138 voting deputies, 108 deputies voted in favour. Only 15 deputies from HZDS and 3 independent deputies voted against and seven deputies from HZDS and five independent deputies abstained from voting. Therefore, we can observe a shift of the party Smer from disagreement to agreement and disagreement of the party HZDS. The coalition deputies voted in favour.

International institutions did not have much impact on the Act's enforcement and wording. Apart from the Recommendations of the Council of Europe taken into account by the Ministry of Interior of SR, no systematic pressure was exerted in this area.

As for the enforcement of better transparency in the financing of political parties and movements in Slovakia, we can observe the following:

- In order to introduce better transparency in financing of political parties and movements in Slovakia, an expert discussion with the media, politicians and the non-governmental sector was needed. Public pressure was also needed on politicians, by which a public order for a change in this area was formed; the media also helped. As for the media reflection of anti-corruption tools in financing of political parties and movements, the Fair-Play Alliance and TIS were active in this area. During the Act's drafting and enforcement, the media focused on criticising the existing situation and they provided space to representatives of non-governmental organisations, who pointed out problematic areas in financing of political parties and movements and discussed solutions in broad outline. The Alliance also tried to raise public interest by pointing out concrete cases of how and where the system was failing. TIS also elaborated a set of recommendations and actively participated in the public discussion by publishing opinions and articles in the media. Therefore, apart from the non-governmental organisations, the media also constituted an important partaker, whose critical mass wanted changes in the financing. The public and media support was thus present during the preparation of the tools.
- Introduction of changes in transparency of financing of political parties and movements in Slovakia was also supported by the scandals[25] revealed in this area, which clearly pointed out the weaknesses of the existing system and the need for a change.
- At the time the state contributions to political parties and movements were increased, the contribution for elections in the amount of 1 % of the average monthly wage in the national economy changed. Politicians exchanged the increased financial demands of the political parties and movements for a better transparency in management of their parties and movements.

The political parties and movements had enough time to prepare themselves for the changes introduced by the Act since the Act's effectiveness was stipulated from the year 2005; however, stricter rules concerning annual reports were regulated by interim provisions and became operative only in 2007.

During 1or 2 years from the Act's approval, the Fair-Play Alliance succeeded in proving to journalists, through the monitoring of annual reports of the parties and movements, that annual reports were worth reading and analysing. Nowadays, the media do it themselves and thus they actively use this control tool.

New challenges in the area of financing of political parties include, above all, its stricter control and its transfer to a professional and impartial authority. Atten-

25 The above-mentioned scandal of fictitious donors of SDKÚ. Daily SME, 1 April 2004.

tion must also be paid to the tools' application in practice, where loopholes exist in the present.[26] The issue of financing of political parties and movements must simultaneously be extended to a broader phenomenon, which is financing of the parties' activities. That means, for example, paying more attention to financing of the parties' activities outside the accounting of political parties and movements, concretely through private companies or persons[27] or through public institutions.

The amendment to this Act was adopted in 2008 (Act No. 568/2008 Coll.) which introduced several pro-transparent changes, for example, in the donation policy and in the rules concerning contributions from party members. However, this amendment did not touch the above stated main challenges in the financing of political activities in Slovakia.

4. Hypotheses and conclusions

In the last ten years, the "purity" of public life was subjected to a public discussion as found by Fialová[28]. A discussion about oversteps of political parties in this area has a potential to harm individual political entities and, above all, those whose electors are relatively sensitive to this topic.

The requirement to increase transparency gradually appeared on desks of political parties and movements. Changes in the area of regulation of financing of political parties and movements have been made and enforced in Slovakia from the end of the 1990's. Professional discussions took various forms, for example various professional essays and seminars on this subject. Discussions led to more serious

26 For example, the parties' discipline in publishing of annual reports was problematic. It considerably improved in 2006, for two reasons. On one hand, the number of registered political entities considerably decreased and on the other hand, the sanctions for a breach of the obligation to publish an annual report became stricter. In 2005, there were 127 political parties and movements registered, out of which 44 did not publish their annual reports. However, pursuant to the Act 85/2005 on Political Parties and Political Movements, 85 political parties and movements were put into liquidation. In the year 2006, the obligation to publish an annual report concerned only 42 entities, out of which 40 entities fulfilled their obligation, one political party published its annual report after the deadline and one of them did not publish it at all. If a party or movement fails to publish its annual report or remove shortcomings found by the Committee of NC SR on Finance, Budget and Currency, it risks imposition of a penalty in the amount of SKK 100,000 and suspension of payment of contributions from the state budget (provided that it is entitled to them).

27 In 2004, there was for example the case of SDKÚ – undertaking of the party's obligation by a third party. By this, SDKÚ unburdened itself of an obligation in the amount of SKK 22 million. According to Wienk (2004), the third party de facto donated to the party a considerable amount of money, its identity will remain unpublished unlike identity of donors of smaller amounts;

Wienk, Z.: *Financing of political parties*. In: Sičáková-Beblavá, E. (ed.): *Corruption and anticorruption policy in Slovakia*. Transparency International Slovensko, Bratislava, 2004. www.electoralcommision.gov.uk.

28 Fialová, Z.: *Korupcia vo verejnej diskusii 1996–2007*. Transparency International Slovensko, Bratislava 2007.

commitments, which appeared in anti-corruption programmes of both Dzurinda governments. Based on the second anti-corruption programme, new legislation was drafted regulating the financing of political parties and movements. Its enforcement was also supported by growing public pressure on changes in this area, which was exerted not only by professional discussions on these topics but also by scandals concerning parties' funds.

Several partakers were included in the discussion and enforcement of the changes i.e. the media, non-governmental organisations and political parties. Under the pressure of formal obligations, strong public pressure and scandals, the parties reacted by adopting several changes in the area of financing of political parties and movements in Slovakia, which introduced better transparency. After introducing the changes in 2006, the discipline of political parties and movements in publishing of annual reports improved. In 2006, the obligation to publish an annual report concerned 42 entities, out of which 40 entities fulfilled their obligation, one political party published its annual report after the deadline and one did not publish it at all[29]. Some political parties decided to exceed the obligations stipulated by law, for example SDKÚ published a complete list of membership subscriptions including a hundred-crown or three-hundred-crown subscriptions, although the law requires publishing of membership subscriptions over SKK 25,000. At the same time, this is the only political party, which regularly publishes donors. [30] At present, annual reports are more extensive, which is thanks to provisions of the new Act. Some improvement can also be seen in the approach of the Committee of NC SR on Finance, Budget and Currency, which started to monitor at least the formal requirements of annual reports.[31] According to Rybář, during the last years, practically no control of political parties and movements has changed to minimum control[32].

However, in return for the introduction of at least some rules on public control of financing of political parties, the public paid in the form of an increase in state financing. This is because political parties and movements in Slovakia "compensated" the introduction of the above obligations by increased contributions from the state budget. Since contributions were related to the average wage, political parties do not have to open this issue in future. Several authors point out the high level of de-

29 Information on submittal of annual reports of political parties and movements for the year 2006 is available online at http://www.nrsr.sk/default.aspx?sid=financne_spravy_stran/financne_spravy_2006.

30 Daily SME, 2 August 2007.

31 Interview with Rastislav Diovčoš made on 21 January 2008.

32 Rybář, M.: "Powered by the State: The Role of Public Resources in Party-Building in Slovakia", in: *Journal of Communist Studies and Transition Politics*, Vol. 22, No. 3, September 2006, pp. 320–240.

pendence of parties on contributions from the state budget.[33] In case of HZDS, the average share of the contribution from the state budget on all parties' incomes for the period from 1998 until and 2004 was 63 % and in the case of SMK it was 81 %. ANO is the only party whose dependence on state contributions was less than 50 %. In the period from 2002 until 2004, the average share of contributions from the state budget on all incomes of this party was 26 %[34].

The authors further warn about the consequences of the increase of state contributions provided to parties and movements on political competition. For example, Belko points out that although recently, expenditures of the state budget on financing of political parties and movements have been quickly increasing, the number of entities that obtained these funds was decreasing.[35] "Nationalisation of incomes" of the parties brings along "cartelisation". Consequences of cartelisation are moderated by a relatively even distribution of these incomes among parties. It means that incomes are not concentrated in a cash desk of one party, but they are divided (more or less equally) among all parties that receive contributions.

Rybář considers that the powers of Parliament in this area are one of the biggest problems of the state financing of the parties.[36] The amount of contributions is decided upon by deputies, i.e. members of political parties and movements. Decisions on an increase of contributions to political parties are typical for an extensive support of all parliamentary parties and they are passed by a vast majority of votes. At the same time, deputies are the ones who control the observance of laws by political parties (theirs as well) through the Committee of NC SR on Finance, Budget and Currency.

Rybář further points out that apart from the state contributions pursuant to the Act on Political Parties and Political Movements, he identifies three other types of sources obtained by political parties from the state in the Slovak context: the executive, patronage and parliamentary sources.[37]

The executive sources are the benefits resulting for political parties and movements from the fact that their representatives hold functions in the public sector.

33 Belko, M.: "Financing of political parties in Slovakia" in: *Central-European Political Science*, Vol. VII, No. 2–3, 2005, pp. 127–161;

Rybář, M.: "Powered by the State: The Role of Public Resources in Party-Building in Slovakia", in: *Journal of Communist Studies and Transition Politics*, Vol. 22, No. 3, September 2006, pp. 320–240.

34 However, in case of the political party ANO, it must be stated that this party had "the only owner" who financed it.

35 Belko, M.: "Financing of political parties in Slovakia" in: *Central-European Political Science*, Vol. VII, No. 2–3, 2005, pp. 127–161.

36 Rybář, M.: "Powered by the State: The Role of Public Resources in Party-Building in Slovakia", in: *Journal of Communist Studies and Transition Politics*, Vol. 22, No. 3, September 2006, p. 328.

37 Rybář, M.: "Powered by the State: The Role of Public Resources in Party-Building in Slovakia", in: *Journal of Communist Studies and Transition Politics*, Vol. 22, No. 3, September 2006, p. 324.

It means, for example, privileged access to important information, impact on decision-making, better access to the media, access to the public infrastructure (official equipment, car, telephone…) and also money that can be used for the needs of the parties' activities. According to the author, the patronage sources mean the parties' ability to fill important posts in the public sector. The parliamentary sources include access to information, access to the media, impact on decision-making and also sufficient funds in the form of a contribution for a deputy's assistant and reimbursement of the rent of a deputy's regional office.

According to the author, the above mentioned sources played an important role in the establishment of regional centres of political parties. Deputies commonly rent premises for their offices either from the regional headquarters of their party or from a related company[38]. In this way, the author puts the financing of parties in a broader context of the political system and points out that the rules of financing and the control of their observance constitute only part of the complex issue of corruption in political parties.

Finally, we will mention one more risk related to financing of political parties in Slovakia in the context of transparency: under certain circumstances, pressure on improved transparency can lead to transferring of finances for political activities to less transparent flows, which are not dealt with by the formal control mechanisms in Slovakia. The revealing and increasing of the risk of political sanctions for such conduct can be supported, above all, by investigative media and non-governmental organisations, i.e. the above mentioned public control.

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Anti-Corruption Measures in Slovak Judiciary: The Case of Court Management and Special Court

Katarína Staroňová

Abstract

Corruption within the judiciary was perceived to be very high and one of the most pressing problems at the beginning of 2000 in Slovak society. This article looks at two distinct anti-corruption measures adopted by the Slovak government in the period 1998–2006, notably the introduction of the Court management1 and creation of the Special Court. Both measures have been introduced as a policy transfer from abroad and are administrative in nature as they create a new institutional environment within which judiciary works. This article looks at the basic characteristics of these two administrative measures from an instrumental point of view, assesses their potential on influencing corruption in the system, comments upon the political economy of their adoption and finally on their possible sustainability in the system and factors that may influence it.

Key words: anti-corruption, policy instruments, policy transfer, judiciary, special court, case court management

1. Problems in the Judiciary at the beginning of 2000

Corruption among the judiciary in Slovakia was continuously perceived to be widespread. Studies of public views and attitudes during the years 1999–2004 towards public institutions and corruption in them reflected alarmingly low levels of confidence and trust towards particularly judges and courts (with 60 % of respondents believing in the existence of corruption in courts and only 1 % not believing in corruption in courts)[2]. A specific study conducted in 2001, *Corruption*

1 A system and procedures for assigning cases to judges, and for processing case-specific information within a procedural framework.

2 Transparency International Slovakia, 2004.

in Slovakia[3] measured perceptions of corruption via questionnaires distributed separately to three separately identifiable groups: households, enterprises and public officials. According to this study, justice (including courts and prosecutors), was ranked second with approximately 60 % of households, 50 % of enterprises, and almost 50 % of public officials identifying corruption as widespread. Some 41 % of the households and enterprises participating in the survey reported making unofficial payments in the previous three years. The average court-related bribe exceeded 25,000 Slovak Crowns (SK), and the median was over 11,000 SK. The size of these bribes exceeded that of the other 20 government service providers included in the enterprise survey.

The long-lasting public negative opinion on corruption in the judiciary prevails, mainly due to the ongoing problem of **case processing delays** which negatively affect law enforcement. In most cases they are the result **of** pi**ling up cases** from the past (especially restitutions). The report, *Corruption in Slovakia,* notes that when asked to rate the three most serious obstacles to business development that enterprises experience, "slowness of the courts" was selected by 80 % of the respondents. Of 28 categories of obstacles to conducting business, more than 75 % of the enterprises surveyed listed "slow courts" which ranked as the number one obstacle. "Low execution of justice was ranked fourth. Thirty-five per cent of the responding enterprises reported their court experiences as unfair or biased. With regard to efficiency, 83 % indicated that the process of adjudicating their case involved unnecessary delays. Of the households that reported paying court-related bribes, more than half did so in an effort to expedite their trials. This was proved in an anonymous survey at the Regional court in Banská Bystrica during the early phases of the Court Management Project. The results showed that people gave a bribe in order to speed up the judicial decision of their legal cases and that corruption relates also to the administrative staff and people outside the law courts such as attorneys, commercial lawyers and trustees in bankruptcy.

In the system of those days, the petition was accepted in the filing room, the date of submission and the number of annexes was written in hand on the copy of the petition and it was taken over by the judicial office in charge. The head of office recorded the petition into the relevant register, created a new file with the number of the legal proceeding based on entry in the register and submitted the file to a judge according to the work schedule of the court. The files were assigned to judges on a subjective basis. The date of submitting the file to the judge, as well as the date it was taken over by the judge, was impossible to track down since it was not included in the file. The only traceable date was the date of intake at court and the date in which the judge made the first act. Judges were responsible for ensuring that the file for each case assigned to them included all the necessary documents, from start

3 *Corruption in Slovakia: Results of Diagnostic Surveys* prepared at the request of the Government of the Slovak Republic by the World Bank and the United States Agency for International Development, 2001.

to finish. This included the responsibility for contacting the litigants if a required document has not been filed or if payment for a fee stamp has not been submitted. Judges unanimously acknowledged that performing these administrative file maintenance tasks — many of which were of a clerical nature — consumed considerable time that otherwise could have been spent on researching and interpreting the applicable law, reviewing related judgments from the higher courts, and preparing an informed decision. Analysis of the case processing showed that[4]:

- delays in proceedings may occur without holding the responsible person accountable,
- the work of judges is marked by routine decision-making,
- participants in proceedings lack relevant information on the case.

The quality of courts in terms of possible **biased decisions** and **fairness of their decisions** were also perceived by the consumers of justice as problematic. The results of various surveys on corruption show that **clientelism** is a serious problem.[5] This phenomenon may be described as ties between executive, legislative and judicial power with business interests, media, Slovak Information Service, National Security Authority, etc. It occurs not only at the central level, but predominantly at the decentralised level. This problem was perceived to be connected with the large number of small courts all around Slovakia that was producing specific negative consequences. The small courts do not provide for the specialisation of judges; this increases the risk that a judge will be captured by local interests that will negatively affect the quality of his/her court decisions. The court did not succeed to pass final and conclusive decisions in several serious cases from the past which leads to a significant disproportion between the number of cases of corruption and clientelism and the number of convicts. In order to sever the ties, it requires implementation of radical measures from the side of the repressive force as well as the political will for its endorsement. Given the difficulty to cut completely the ties between the judiciary and various interest groups on the local level there is a reason for a "special approach".

2. Anti-corruption measures introduced into the Judiciary: Court Case Management and Special Court

Two distinct anti-corruption measures have been adopted by the Dzurinda government in the period of 1998–2006, notably the introduction of the Court manage-

4 4 Describtion of the situation is from the Analysis of the functioning of the District court in Banska Bystrica before and after the implementation of the pilot court management, Dubovcová 2002.

5 The public surveys show that according to the entrepreneurs the most common type of corruption behavior is clientelism (39%), which at the level of local services reaches 46% (Sičáková-Beblavá – Zemanovičová, 2004, p. 22).

ment and creation of the Special Court. Both measures have been introduced as a policy transfer from abroad and are administrative in nature as they create a new institutional environment within which the judiciary operates. Nevertheless, they are distinctive in their approach to combat corruption as well in the political economy of their adoption.

Table 1
Measures Introduced

	Court Case Management	Special Court
Year of introduction	Phased introduction: 1999–1901 (pilot in a regional court) June 2002 passing of Act on Judiciary Council (including compulsory electronic filing system)	Immediate introduction with delays October 2003 (May 2004) passing of Act on creation of Special Court and Special Prosecutor Office July 2005 (operation)
Aim	Acceleration and efficiency of the court procedure	Specialization and breaking local ties in combating corruption and organized crime
Policy instrument	Administrative – change in work procedures Economic – random assignment of cases	Administrative – creation of a new body (Special Court)
Inspiration	Policy transfer (Swiss) adjusted to local circumstances	Recommendation of EC Progress Report 2002 Policy transfer (Spanish)

Source: author

2.1 Court Case Management

The Court Case Management project which was carried out by both Dzurinda's governments from May 1999 to 2005 was focused mainly on the acceleration and efficiency of the legal proceedings. Its aim was to examine and improve the working procedure of processing the court file and the organisation of the court's work, leading to a more efficient administration of the file avoiding possible manipulation. Regarding case processing it focuses mainly on the time of the case processing since its intake at the court to the final verdict and simultaneously on the creation of conditions for quality decision-making of the court. From the public policy point of view it is considered to be a compound measure as it consists of various components.

There are two major components of the program. The first is based on economic instrument – the filing room application with the random case assignment generator. The other is administrative instrument – the actual case management/case processing component. It means that the Court Management project dealt with internal factors of efficiency of the court case management – internal organisation of

the court's work (work schedule) and the circulation of the case processing, quality of judges and court staff taking part in case processing.

In the **filing room** there are two computers where experienced clerks receive all filing and enter into the database essential data on the petitioner and defendant. When they do that the case gets assigned to a particular judge by the computer. A confirmation of intake with the judge's name and file number is handed over to the petitioner in about two minutes. **Case management module** provides for actual case processing. After all cases are fed to the system, it provides judges and administrative staff accurate and complete information on the status of each file. Judges and staff see on their monitors all files they are responsible for with all relevant information. Administrative staff can see all the tasks they should do. Judges should ideally receive the file prepared for scheduling of the hearing, free of all administrative errors.

The introduction of the measure was conducted in several phases[6]. The first phase is connected with the conception and piloting of the Court Case Management in the District Court of Banska Bystrica. The project was piloted by Judge Jana Dubovcova, formerly President of the District Court in Banska Bystrica, who was concerned with corruption and efficiency in her own court with the assistance of Swiss experts under SIDA scheme (see Section on International Actors for more detail). The pilot became operational in August 2000.

The second phase relates to the roll out of the system during the years 2001–2003 by the Ministry of Justice and to the introduction of a compulsory filing system into each court by Law. In this phase, several other donors, such as ABA CEELI (American Bar Association) and OSI (Open Society Institute) joined the project. Based on the success of the pilot programme, the Ministry of Justice decided to extend the pilot programme over the next few years. ABA CEELI and OSF worked closely with Judge Dubovcova to develop the necessary internal support. An important component was a training module and video on the principles of the pilot reforms that introduced the reforms in a comprehensive way.

Passing the Act on Judiciary Council the system of random assignment of court cases the so-called electronic filing room became mandatory on 1st June 2002. As the law stipulates Section 26 "in compliance with the work schedule the judges and higher court officials shall be assigned cases randomly with the help of technical and programme equipment" approved by the Ministry of Justice "in order to eliminate the possibility to influence the assignment." There are no exceptions.

EU PHARE invested some 100 million Euros in the project for the purchase of computers for judges and the Slovak Government agreed to contribute a similar amount. Installation of the computers began in early 2002 and training on the ini-

6 4 Description of the situation is from the Analysis of the functioning of the District Court in Banska Bystrica before and after the implementation of the pilot court management, Dubovcová 2002.

tial module began in April. The training consisted of two parts. First, there was an explanation of the rationale and benefits of the new system, including changes in work procedures. Selected judges and staff from Banska Bystrica district court participated in a training-for-trainers so that they could provide this training to other judges and staff. Two editions of JUSTIN (the Slovak Judges Association magazine) explaining the new system and the results achieved in Banska Bystrica were also published and Judge Dubovcova wrote an article for the Slovak Bar Association's journal. By the end of 2002, over 1000 personnel at 61 courts were trained and all district courts had the new system.

In the third phase (2003-now), refinement and rollout of the court management system continues in order to extend the court management project by developing modules for all district and regional court agendas and to prepare for publication of court cases on internet.

2.2 Creation of Special Court

The primary goal of the establishment of the Special Court (and the Special Prosecutor's Office which is not the target of this paper) was to 'sever' the ties on local and regional level between the accused, policemen, prosecutors and judges. The bill giving basis for the creation of both institutions was adopted in 2003; however it came into effect on 1st September 2004. Both institutions apply to the whole territory of the Slovak Republic on given legal proceedings and decisions on serious crime specified by the Penal Code (e.g. criminality of constitutional officials, financial and property criminality, organised crime etc.)[7].

The reason for the establishment of the Special Court was to provide specialisation and coordination of work of all criminal justice agencies in the effort to combat corruption and organised crime. Its objective is to break local and countrywide links and thus improve the prerequisites for independent and determined criminal procedures in this field of criminality as the risk of corruption, pressure and blackmailing is high when tackling organised crime.

In October 2003, after much preparation and discussion, Parliament adopted the Act on Special Court and Special Prosecutor's Office providing a basis for the establishment of these specialised bodies. The Special Court and the Special Prosecutor's Office focus on the investigation of serious crimes:

a) Crimes of corruption under Sections 160 (3), 160a, 160b, 160c, 161 (3), 161a, 161b, 161c of the Penal Code,

b) crimes related to establishing, conspiring to establish or supporting a criminal or terrorist group (Penal Code Section 185a),

7 Section 15a of the former Penal Code (Act no. 141/1961 Coll. as amended) and as provided by the Act no. 301/2006 Coll. of the Penal Code (as amended by the Act 650/2006 Coll.) as of 1 January 2006.

c) especially serious crimes (Section 41 (2) of the Penal Code) committed in association with an organised group (Section 89 (26) of the Penal Code) acting in a number of states, a criminal group (Section 89 (27) of the Penal Code) or a terrorist group (Section 89 (28) of the Penal Code),

d) economic crimes (Chapter Two of the specific section of the Penal Code) or crimes against property (Chapter Nine of the specific section of the Penal Code), if the crime led to damage or acquired benefits amounting to at least ten thousand times the minimum wage of an employee paid monthly 8ab) or if the crime was committed in a scope exceeding ten thousand times the minimum wage of an employee paid monthly, 8ab)

e) crimes that damage the financial interests of the European Communities (Sections 126 to 126b of the Penal Code),

f) crimes relating to the crimes stated in Points a), b), c), d) and e), if they are carried out as part of the same proceedings.

The Special Court is responsible for cases involving:

a) Deputies of the National Council of the Slovak Republic

b) Members of the government of the Slovak Republic,

c) State Secretaries,

d) The heads of central bodies of the state administration of the Slovak Republic,

e) The president and vice-president of the Supreme Audit Office of the Slovak Republic,

f) Judges of the Slovak Republic Constitutional Court

g) Judges,

h) Prosecutors,

i) the public defender of rights,

j) The head of the government office of the Slovak Republic

k) The Director of the National Security Authority,

l) The Director of the Slovak Information Service,

m) Members of the Bank Board of the Slovak National Bank

if they are suspected of committing a crime in relation to their powers and responsibilities.

The Special Court has the status of a regional court and it proceeds in the first instance. The Supreme Court of the Slovak Republic carries out proceedings on remedial measures submitted against the decisions taken by the Special Court. The

entire territory of the Slovak Republic is the judicial district of the Special Court. The Special Court started its operation as of 1 July 2005.[8]

Special Courts' judges are elected by the Judiciary Council for a term of five years. They must undergo scrutiny by the National Security Authority as well as psychological tests. The aim of the scrutiny is to guarantee absolute integrity so the judges cannot become victims of blackmailing for their past. This approach increases the probability to select leading professionals. Judges of the Special Court have the right to a special function surcharge calculated at six-times the average national wage as an anti-corruption measure. Judges are given tight safety measures. Specialisation and safety should enable the judges to hold unbiased positions.

3. Anti-corruption Effects of the Adopted Measures

The efficiency model of these administration measures on the decrease of corruption is to be seen on the following levels:

a) administrative reorganisation of work in court management, new technical equipment and the creation of new positions lead to a more efficient performance shortening the period of legal proceedings (avoiding the possibility of giving bribes in order to shorten the period);

b) random assignment of court cases by a computer programme in Court Management eliminates the freedom in deciding and thus eliminates possible corruption to influence the decision or the time of the proceeding by choosing a certain judge adjudicating the case;

c) possibility to monitor the circulation of the file by the computer makes the entire process more transparent. It is possible to see any delays in the proceedings and eventually adopt measures in order to eliminate them, which leads to a better internal and external control;

d) due to the specialisation of the Special Courts' judges on organised crime and corruption it increases the efficiency in the legal proceedings of complicated corruption cases in which the burden of proof is relatively difficult to prove;

e) creating conditions for decreasing the possibilities to influence the proceedings by isolating and providing higher security of the major actor – the special judge;

f) creation of the Special Court is also of symbolic value since it expresses the government's will and priority to combat corruption.

8 The opening of the Special Court was postponed from May 2004 to September 2004. By September 2004 special judges were not chosen (the Judiciary Council selected an insufficient number of candidates) thus the powers of the special court were taken over by the Regional Court in Banská Bystrica. The Special Court reached the required number of judges in July 2005.

Apart form equipping the courts with new computer equipment, the **new organisation of work** lay mainly in different labour division of case processing and thus streamlined the work of courts and minimised the chances for corruption. The filing room accepts the petition, registers it and creates a file, issues a receipt with the number of the file, name of the judge and receipt for paying the court fee. The case passes to the secretary who, together with the help of an assistant, works on the file until it is ready to be submitted for the judge and the hearing. The assistant partially substitutes the work of the head of office as he/she takes care of the registers of the senate and conducts statistics and reports for the senate. The first act of the judge in 98 % of cases leads to a decision because the judge either sets up the date of the hearing or in some cases decides directly and, only in a few cases, returns the case to the secretary for necessary supplements (2 %). Based on the new working procedure, the case is ready for verdict or hearing when it is submitted to the judge as the time from its filing has been used very effectively. The judge is not bothered administratively and may dedicate his/her time also to other cases. In the former system the file was awaiting acts both by the judge and the administrative personnel. Streamlining the case management system yielded impressive results[9]: administrative tasks were reduced by 78 %; the time between filing a case and having a hearing was reduced by 33 %; more than 50 % of all cases were concluded within four months (compared to 15 % under the old system); and the average number of days to conclude a case was reduced from 123 to 50 days.

In order to evaluate the overall performance of the courts it is more important to look at the ratio between cases coming to court and cases settled as written in the analyses of the state of judiciary by Valentovič – Marušinec – Pilát[10]. In case the number is negative the courts are lagging behind in their work and pile up cases from the past. When the number is, on the other hand positive, it means the courts may lower the number of piled cases from the past and judges can "clean up their desks". According to the authors of the statistic yearbook of the Ministry of Justice about agendas on civil lawsuits, until 1999 the courts could not handle the growing number of petitions. In 2000, in the critical field of civil lawsuits the ratio between the arrived and settled cases levelled off for the first time since 1989 and since then the situation has been stabilising. The turning point was, however, reached as late as in 2004 when the courts started to process cases faster than they were coming to court, thus lowering the burden from the past. The trend tallies the implementation of the Court Management in courts.

Implementation of autonomy, tightening the safety of criminal justice agencies and the increase in resources (financial, human and capital) are considered to be elements which will promote the independence and efficiency in tackling serious crimes as they require specific skills and knowledge. Special judges and prosecutors

9 Report of the Ministry of Justice in the Explanatory Note, 2004.

10 Valentovič – Marušinec – Pilát, 2007.

present a small and strictly defined group and therefore it is easy to equip them with better equipment, human resources and specialisation being essential prerequisites for immediate criminal proceedings in cases of corruption. The efficiency of the fight against criminality as well as the efficiency of the financial resources allocated from public resources depends on the transformation of the Special Court and the Special Prosecutor's Office into effective bodies led by specialised prosecutors/judges in charge. Special police bodies focused on revealing the criminality of this kind would report to them. The most serious crimes would therefore be tackled in co-operation with tax and financial experts.

Based on the statistics reviews on the activities of the Special Prosecutor's Office and the Special Court, the number of corruption cases and cases of organised crime is increasing every year, nonetheless it is important to mention that several cases of corruption and organised crime which attracted public attention have been settled successfully. The establishment of specialised bodies – criminal justice agencies in cases of corruption – has also a symbolic meaning. The government is sending out a message of a resolution to fight against corruption, thus increasing the legitimacy and credibility of the office and encourages the public to report on corruption criminality. According to the *Report on the activities of the Special Prosecutor's Office 2006* people started to contribute significantly in revealing cases of corruption – as whistleblowers of corruption deeds, testimonies in lawsuits or acting in the role of agents. The report mentions examples of district court judges, prosecutors, mayors, chief officers of Land Registry, chief officers of Regional Office, medical doctors, etc.

The extent and degree of corruption before and after the adoption of the anti-corruption measures may be judged only on the basis of opinion polls on the perception of corruption in the field of the judiciary without any direct causality. Transparency International regularly conducts surveys on the perception of corruption in various fields of the public sector. The perception of corruption in courts has been decreasing since 2002 by 13 percentage points (in 2002 60 % of citizens believed that bribery existed and it was widespread, while in 2006 only 47 % of citizens shared this opinion) [11]. Although the perception of corruption in this field is still very high, the trend is positive. The results of the World Bank[12] are even more striking as it conducted a BEEPS survey on the corruption activities in courts of law as well as the perception of business enterprises on the matter. The survey focuses on subjects which often deal with courts. While in 2002 12 % of companies operating in Slovakia stated that giving bribes to judges was a common practice, in 2005 the number decreased to 2 %.

Since no official data on corruption regarding the attempt to influence the judge's decision exist, we have to look at the results from an anonymous survey

11 Sičáková-Beblavá – Nechala, 2006.

12 *Business Environemnt and Enterprise Performance Survey,* EBRD – World Bank, 2006.

which was regularly undertaken at the pilot district court in Banska Bystrica among its visitors. The respondents often stated that the reason for corruption was to secure a judge even though not in all cases there was an attempt to influence the verdict but rather influence the time of proceedings. Gradually, in the course of the two years since the implementation of Court Case Management, the answer to provide a judge in order to modify the decision has disappeared. Also the answer on offering a bribe to speed up the court proceedings has vanished.

4. Political Economy of the Adoption of Anti-corruption Measures in the Judiciary

The fight against corruption was declared to be one of the four priorities of both Dzurinda's governments (1998–2002 and 2002–2006), as declared in the Manifesto of the government of the Slovak Republic in which the government set an objective to "create conditions to exercise the constitutional right for an independent and unbiased judiciary"[13] since, according to the given data, there was corruption in the courts from the side of petitioners in order to accelerate the proceedings. Although the project itself was not included in the election programme but was initiated by judge Dubovcová, the president of the District Court in Banska Bystrica, with substantial help from foreign partners, it found immediate support within the coalition. In the Manifesto (2002–2006) the issue of the fight against corruption was elaborated in great detail. It also stated the foundation of the Special Prosecutor's Office and the Special Court. The government showed a strong will to promote and implement these measures as soon as possible.

Both anti-corruption measures, the Court Management project and the Special Court, became the leading theme of KDH (Christian Democratic Movement) which was in charge of the Ministry of Justice and was strongly supported by all coalition parties. This resulted from KDH's critical attitude to the policy of the former coalition HZDS – ZRS – SNS (1994–1998) in code enforcement and the judiciary, as well as from the negative attitude of Justice Minister Daniel Lipsic, to the idea of increasing the number of judges in order to make the judiciary more effective.

Both measures were supported by legislation in case Court Management made the use of an electronic filing system compulsory for all courts and followed the existing pilots and in the case of the Special Court introducing the measure as a new element in the judiciary system. Thus, both legislations differed in the level of controversy they have raised and also in the time line within which the legislation was passed and ultimately introduced.

In the case of the Court Management, the draft on the Judiciary Council was submitted in parliament in November 2001 and was passed relatively smoothly.

13 *Cabinet Memorandum 1998,* p. 38.

However, President Schuster returned it to parliament as he considered it to be unconstitutional. Although the electronic filing room, as a part of a complex law, was not the subject of debate in Parliament, the law itself (creation of the Judiciary Council) became a target for criticism by the opposition, notably by HZDS and Štefan Harabin, the then president of the Supreme Court. The government decided on a new law and during the governmental session in February 2002 it passed the new draft on the Judiciary Council, which was submitted in summary trial to Parliament. President Schuster did not sign the Act on the Judiciary Council; however it came into effect since parliament approved it again after it was sent back. The President's disapproval of the draft bill was based in the detailed activities of the Judiciary Council, which is not the subject of this case study. The electronic filing room received unopposed reading. Eventually, the Act on the Judiciary Council was passed.

The case of the Special Court is more complicated. The Justice Minister Lipšic, based on the legislative intent in compliance with the legislative plan of the Slovak Government, submitted the **draft bill on the Special Prosecutor's Office and Special Court and amendments** for comment procedure on 25th February 2003 (4 months after the elections). The government approved the draft bill on 28th May 2003 without any major disputes and the law was subsequently introduced in parliament. The draft bill was discussed in a plenary session on 21st October and passed at the third reading. The President of the Supreme Court of the Slovak Republic, Karabín, submitted an amendment to the draft of the new Criminal Code asking to change the status of the Special Court from a regional court into a district court. Remedial measures against decisions taken by the Special Court would not be submitted to the Supreme Court but to District courts, as he feared the Supreme Court would be overloaded. Justice Minister, Lipšic, did not agree, claiming that when handling special cases, the Supreme Court acts as an appellate court as in other European countries. Moreover, Karabín opposed the idea that judges of the Supreme Court be given lower salaries than special judges. Finally, the amendment to the draft bill did not pass. The Act no. 458/2003 Col. On the establishment of the Special Court and the Special Prosecutor's Office as amended was approved in the Slovak Parliament on 21st October 2003 by resolution no. 518 and was published in the Collection of Laws on 25th November 2003. 77 MPs out of 147 voted in favour of the draft bill.

4.1 Domestic Interest Groups

Both anti-corruption measures had their supporters and opponents. There were two views on how to make the judiciary more effective and transparent:

a) Increase efficiency of the proceedings as well as the efficiency of the court network –qualitative solution;

b) Increase in the number of Judiciary Council's members – quantitative solution.

These two opinions on the issue were also reflected in the perception of anti-corruption measures – Court Management and Special Court. A qualitative solution was supported mostly by the MPs of KDH, SDKÚ and SMK – the leading supporter was Daniel Lipšic, the former Justice Minister, Juraj Majchrák, the former vice-president of the Supreme Court, Igor Králik, President of the Special Court and Prosecutor General Dobroslav Trnka.

The most vigorous opponents of both measures and mainly the establishment of specialised bodies were HZDS, SNS, Presidents of the Judiciary Council as well as the Presidents of the Supreme Court (Harabín and Karabín). Opponents were to be found amongst HZDS MP's as the party founded new courts in 1997. An outspoken opponent of these solutions was the former President of the Supreme Court, Štefan Harabín. Objectors of Court Management are also found amongst judges who would rather solve the situation by increasing the number of judges and not by altering the organisation of work, which is more difficult in terms of computer skills and teamwork. The opponents of the establishment of specialised bodies regard the existence of this body as unjustified and anti-constitutional. Another reason for this disapproval is the status of the Special Court at the level of the regional court, claiming that the Act on the Special Court will distort the three-level conception of the judiciary. Opponents believe that the status of the Special Court should by changed from regional into district court as it would cause problems with remedial measures taken against the decision of the Special Court thus raising questions on which court shall act as the appellate court – the District court in Bratislava (another district court in the appropriate districts) or a new court would be set up. In any case, the original intention to sever local ties would be lost. Objectors also protest against the remuneration of special judges regarding it as discriminating to other judges, notably the judges of the Supreme and Constitutional Court. Smer MPs as well as the current Prime Minister, Robert Fico, maintain a neutral position and do not express any view on the issue, voting in favour and against it in parliament.

The Special Court (and Special Prosecutor's Office) faced the first political attempts to be abolished in March 2005 by the HZDS MPs, having been advised by the party's presidium. "Bodies of this kind are not to be found in democratic countries. They may be created only during wars and emergency situations; however, no-one has declared such a situation", said HZDS legal expert Jan Cuper.[14] Karabin, the former President of the Supreme Court supported the view of the opponents and said that: "creation will deform the concept of the organisation of court and rule according to which the district court decides in the first instance and the appeal against judgments should be dealt with in the regional court. The Special Court will be the exception which will deform the compactness of the reform".[15] After being defeated by his opponent in parliament, Ján Cuper, HZDS legal expert, admitted:

14 Borčin, *Hospodárske Noviny* 2005.

15 Karabin, *Hospodárske Noviny*, 2003.

"At the moment we do not see any chance that something like this will pass in Parliament….. However, if we become part of the future government, we will initiate the abolition of these institutions".[16]

When the government changed in 2006, the major critics of the Special Court became the Justice Minister, Štefan Harabin, (HZDS) and the leader of SNS, Ján Slota. The existence of a Special Prosecutor's Office was not questioned. During the first months in office, Justice Minister S. Harabin focused his attention on the Special Court, ordering an audit based on which he asked to dissolve the institution due to the "inexperience of the special judges, unjustified safety measures, undemanding proceedings and the inappropriately high salaries of Special Court's judges." The court's management complained about the audit to the Prime Minister, Robert Fico. The President of the Special Court claimed that Minister Harabin did not have the right to order the audit. "Such an action is not in accordance with the law. The law does not stipulate audits, only an internal revision which can be, however, conducted only by a committee of the Supreme Court" said Kralik. [17]. In his opinion, the action could be taken as an intervention into the independence of the courts.

Another step taken against the Special Court was to impede its functioning when, in spite of having won the job tender twice, Králik was refused the appointment of President of the Special Court by the Justice Minister. Moreover, Harabin did not approve the resources for the Special Court's subsidiary in Banska Bystrica, nor did he approve money in order to increase the number of judges at the Special Court, and the subsidiary of the Special Court in Banská Bystrica was had their rental agreement terminated by the President of the Regional Court, Jan Bobor, who was nominated by Harabin.

The Prime Minister decided not to engage in the dispute between the Justice Minister and the President of the Special Court; however he did not support its abolition at the government session. The Judiciary Council, as the most important justice authority, agreed with the proposal to dissolve the Special Court. The President, Milan Karbin, said that ten out of seventeen members of the council were in favour of the proposal to abolish the court whilst none of them were against. The Supreme Court, on the other hand, did not support this idea. Many public representatives raised their voices against the attempt to abolish the Special Court and the Special Prosecutor's Office. In October 2005 they signed a petition called Verejnost proti mafii (Public against the mafia) in which they asked the government not to ease up the fight against organised crime and corruption. Prime Minister Fico ordered an analysis to be carried out, which recommended dissolving the Special Court or its transformation into a district court or the creation of specialised senates at general courts. Opposition MPs, led by Daniel Lipsic and Gabor Gal, fought for the maintenance of the Special Court. Even though Justice Minister Harabin did not succeed

16 Borčin, *Hospodárske Noviny*, 2005.

17 *SME,* 8.8.2006.

in his efforts to revoke the Special Court after negotiation with the President, he said: "If the Special Court is not abolished it will have the status of a district court".[18] Prosecutor General Dobroslav Trnka said that any change in the status of the Special Court would also affect the status of the Special Prosecutor's Office.

At the end of 2007, Harabin opened the issue of Special Court's judges special function surcharges claiming that they do the same kind of work as their colleagues from other courts and therefore should not be given preferential treatment. By January 2008, 277 actions against inequality in salaries were taken. According to Lipsic, the present Ministry of Justice motivated courts and judges to take action.[19] The courts have so far decided only in one case in the first instance, while the Ministry of Justice did not file appeal. However, according to Lipsic, the general court is not entitled to verify whether the law is in compliance with the Constitution and should end the proceedings and send them to the Constitutional Court. „The General Judge in this case decides on his own salary and therefore is related to the matter. The verdict of the Court in Bratislava would seem to be very strange and therefore it would be nice if it was made public on the internet.[20] There would not be a conflict of interest in the Constitutional Court which would be the only way.

4.2 Influence of International Actors – Policy Transfer

From the theory of public policy (policy transfer) both anti-corruption measures – Court Management and Special Court – present a prime example of transfer of experience from foreign countries. However, in the case of Court Management there was a significant change in adjusting it to the local needs with the help of several donors. The Special Court has not received any substantive technical, financial or any type of assistance as the Court Management project did.

In 1999, the Swiss International Development Agency (SIDA) informed the Ministry of Justice of SIDA's interest in supporting judicial reform in Slovakia. Knowing that Judge Dubovcova was considering various reforms in her court, the Ministry of Justice directed SIDA to Banska Bystrica. Judge Dubovcova presented SIDA with her idea for computerising the Slovak court system and SIDA agreed to support a pilot project at Judge Dubovcova's court. Three Swiss experts, two judges and a systems expert came to Banska Bystrica to look at the existing case circulation system and help to design a new system. The Swiss experts made a number of visits to the Banska Bystrica district court over a 12-month period. They worked closely with Judge Dubovcova and her project team, consisting of three judges, the court administrator, administrative staff and a private attorney. Thus, before any

18 *Hospodárske noviny,* 3. 8. 2006.

19 "The ministry even sent out a template of how the complaint should look. That means the ministry wanted to suit itself", Lipšic, *Sme* 16. 1. 2008.

20 The court decision has not been published with the following justification: "The appendix which is the decision of the District Court Bratislava I, contains personal data of the plaintiff and therefore it is suggested not to publish the annex."

programming began, the team "re-engineered" or "optimised" the processes and file circulation in the court. The software is tailor-made to fit Slovak practice.

The project however, would not have proceeded so quickly without the help of the ABA CEELI (American Bar Association) in 2000 when the support from the Swiss side ended. An ABA CEELI Expert, who conducted the analysis of the pilot project, came to the conclusion that the project was of high importance in the fight against corruption and therefore it should be applied in all courts in Slovakia. The policy transfer occurred in domestic circumstances, which means that experience from the domestic source (Banska Bystrica) was transferred to other courts in Slovakia. Dubovcova, in co-operation with ABA CEELI, conceived a project for EU PHARE, thanks to whom it was possible to purchase the necessary technical equipment (computers for each judge and later also for administrative staff). 100 million Euros have been allocated to the project from PHARE and a similar amount was earmarked from the state budget by the government. Training, which is a key administrative tool in the *transfer policy,* played an important role during the extension of Court Management to other courts. The training was provided by Dubovcova's Court Management team, focusing on forming a team of court's employees, as it was aimed not only at judges, but also at the administrative personnel. The Open Society Institute was another donor joining the project and in co-operation with ABA CEELI, provided training in courts as well as the enlargement of software to the different agenda of the court.

The creation of a Special court was directly mentioned and recommended in the Progress Report of the European Commission[21] and thus became a priority for the Government. The Ministry of Justice looked for existing similar institutions in Europe, and particularly the Spanish model played an important role. The then Minister of Justice, Lipsic, referred to existing possibilities on how to solve the specialisation of the courts in a document named *Model of Special court and Prosecutor's office in other countries* (part of Explanatory Note) where review of other countries' efforts to adopt efficient measures in order to specialise and coordinate the approach of criminal justice agencies in the fight against corruption and organized crime. Opponents of the Special court, however, argue that the models from Spain and Italy do not apply to Slovakia since the Spanish institution was established in order to combat terrorism and the Italian institution was created to fight against the mafia. Harabin, in a political TV show on Slovak Television (STV) *O 5 minút 12,* said that the Special Court has no rational basis and may be compared to Hitler's fascist courts: "Mussolini and Hitler created the Special Court because there were 16,000 judges in Germany and Hitler said that they needed the Special Court because it was easier to influence 16 judges than 16,000".[22]

21 Report of the European Commission on the Progress of Slovakia on its Integration from 9 October, 2002.

22 Program of the Slovak Television *O 5 minút 12,* február 2008.

Nevertheless, with the establishment of the Special Court, the Ministry of Justice declared its efforts to reach the goals of the international agreements, such as *the United Nations Convention against Corruption,* enforced in Slovakia since 1st July 2002, where it is specifically mentioned "ensure the existence of a body or bodies or persons specialised in combating corruption". The creation and activities of special bodies are highly valued abroad, e.g. countries against corruption – GRECO, Committee of the European Council for the fight against money laundering MONEYVAL and the evaluation report of the OECD working committee for the fight against offering bribes to foreign state officials in international business transactions. OECD has directly advised the Slovak government to support the Special Court and the Special Prosecutor's Office in terms of equipment, financial support and human resources. During the official attempts to abolish the Special Court from the side of the MOJ in 2006, the Swiss Ambassador in Slovakia Josef Aregger, initiated a meeting with the President of the Special Court Igor Kralik in Pezinok. The Ambassador was interested in the court's activities and expressed his support. In his opinion the presence of an institution of this kind is necessary and any intervention in the court's activities would not be a positive sign for other countries.

5. Challenges of Implementation and Sustainability of Reform

The anti-corruption measures adopted had a different implementation trajectory. While Court management had a smooth implementation, thanks to careful planning, piloting and technical, financial and logistical support from both the Ministry of Justice and foreign donors, the Special court implementation was delayed, experiencing many technical and logistical problems and support is minimal. This can be a factor that may influence the sustainability of the reforms undertaken after the change in government in 2006.

The Court Management project has received strong support from Justice Minister Lipsic who took office in October 2002. Justice Lipsic appointed Judge Dubovcova who piloted the project in her court in Banska Bystrica as Head of the General Administration Department at the Ministry of Justice**.** Jana Dubovcova was an acknowledged leader in pursuing innovation and in motivating her colleagues and support staff to embrace comprehensive change in piloting court management systems and therefore freeing Judge Dubovcova from her duties as a court president, so that she could turn her full attention to various court reform initiatives, including the court management system which was a necessity and a key factor for the smooth implementation and tackling of any immediate obstacles. Her responsibilities included overseeing the national roll-out and implementing other related judiciary reforms. Judge Dubovcova has organised round-table meetings with Court Presidents to discuss implementation. The Ministry of Justice and IT personnel at courts have organised meetings to discuss and address problems. All of these activities were supported financially and logistically by donor organisations as mentioned in

the previous section. Thus, by government change in 2006, the court management project was already well established in all of the courts in Slovakia, functioning well with concrete results and there was no reason to challenge it by former opponents when they took power (HZDS).

Table 2
Implementation of the Measures

	Court Mgmt.	Special Court
Implement	Phased introduction (pilot – training – modernisation – compulsory electronic filing)	Delayed start due to problems (04 May–July–Sept – 05 July)
Support Dzurinda government	MoJ: financial, technical, hot line, team leader in MoJ, meetings with judges	No (no premises, no finances, no judges: delays in intro)
Support Fico government	None, however, already an institutionalised instrument No objections	Existence jeopardized: MoJ wants to abolish (audit): direct abolishment, hindering operation, decrease salary of judges
Changes	Utilised instrument for further electronic publication of court decisions	March 2005 – SMER (operation) Oct. 2006 – MoJ (HZDS) abolish Feb. 2008 – HZDS to Constitution Court (remuneration) May 2009 – Constitution Court ruling

Source: author

The establishment of the Special Court underwent the opposite experience and faced problems right from the beginning. Firstly, on 15th April 2004, the government passed an amendment to the law on the establishment of the Special Court and Special Prosecutor's Office postponing its formation from 1st May 2004 to 1st July 2004. Justice Minister Lipsic explained that the National Security Authority did not verify all six judges of the court in time (60 days) as stipulated by law. Parliament approved the postponement of the effect on 1st September, as well as the proposal that in case the Special Court cannot perform its duties, the Regional Court in Banska Bystrica will decide in cases of organised crime and corruption. While the Special Prosecutor's Office began operations in September 2004, the Special Court did not manage to commence as planned, therefore its tasks were taken over by the Regional Court in Banska Bystrica. Nonetheless, the institute of the Special Court was confronted with problems in terms of human resources. In the first two competitive examinations, only four judges were selected. Therefore, the Special Court could not set dates of hearings until the end of 2004 nor pass verdicts.

In order to ease the situation, the Ministry of Justice drafted several amendments to the law on Special Court. Decisions in pre-trial proceedings would be

taken in Banska Bystrica even after the creation of the Special Court. However, the proposal was blocked by the Chairman of Aliancia nového občana (ANO) and the Minister of Economy, Pavol Rusko who believed that issues in pre-trial proceedings should also be tackled in Bratislava and Košice. Nonetheless, the original proposal remains valid in which the Special Court in Pezinok deals with cases in pre-trial proceedings.

The leader of Smer, Robert Fico, outlined his own proposal to take away from the workload of the Special Court and Special Prosecutor's Office. He suggested the Special Court and Special Prosecutor's Office would act only in cases where criminal prosecution was initiated after 1st September 2004. The General Prosecutor, Dobroslav Trnka, fully supported Fico's suggestion. Justice Minister Lipšic opposed the idea and the government dismissed Fico's proposal in its March session, even though Parliament approved the draft amendment to the Criminal Procedure Act submitted by Fico. Cases in which criminal prosecution began before 1st September 2004 and were passed to the Special Court should be returned to the regional and district courts from which they were sent to the Special Court. Lipšic proposed to increase the number of special judges and prosecutors by higher remuneration – the special function surcharge was increased from twice the average national wage to six times the national average wage.[23] The amendment enabled temporary assignment of judges to the Special Court and increased the functional surcharge of the Special and Constitutional Court's judges who decided on remedial measures against the decision taken by the Special Court.[24] Not only coalition MPs, but also MPs from Smer and HZDS, voted in favour of an increase in the special function surcharge for judges of the Special Court and special prosecutors (only J. Cuper voted against.) The Special Court began operations on 1st July 2005.

With the incoming new government in July 2006 and a new Justice Minister, Štefan Harabin, (from the main opposing party HZDS) immediate attacks were directed against the existence of the Special court. In November 2006, Harabin submitted a bill which would dissolve the Special Court from 1 April 2007. Harabin came in with the initiative without discussing it either with the Prime Minister or the coalition partners. Harabin claimed that it was not in line with the Constitution since Special Court judges depend on the scrutiny of the National Security Authority. He believed that the President of the National Security Authority, who is always a political nominee, could denude the test. Moreover, it was inconceivable that the tests are based on unverified information from the secret service and police. The Prime Minister opposed the idea as, in his opinion, the Special Court has more

23 Mr. Lipšic in an interview for Sme on 16 January stated that Robert Fico had suggested increasing the surcharge of prosecutors of the Special Prosecutor's Office and judges of the Special Court from twice the average national wage to six times the national wage (Lipšic, 2008).

24 Special Court's judges earn approximately 150,000 SKK a month (in 2005) instead of 80,000 SK as suggested (other judges earn 40,000 SK.)

advantages than disadvantages. The government did not pass the bill and Fico announced changes in the court's activities.

On 16th January, Harabin submitted to the government session a draft to decrease the salaries of special judges and prosecutors – *Proposal of measures to eliminate discrimination in rewarding the judges of general courts.* The plan included three alternatives on how to solve the problem of special judges' and prosecutors' surcharges: apart from decreasing or abolishing the surcharge of Special Court's judges he proposed an increase in the remuneration of other judges. The solution would, however, require several billions from the state budget. Therefore the government, on 16th January 2008, passed a resolution ordering the Justice Minister to prepare a draft to decrease the surcharges. The draft bill suggesting a maximum surcharge of 10,000 SK was in comment procedure in February 2008. The General Prosecutor suggested cutting the special function surcharges down to twice the average national wage.

On 8th February 2008, coalition MPs filed a motion to the Constitutional court to examine whether the Special Court is in line with the Constitution. The motion was signed by 46 coalition MPs mainly from ĽS-HZDS (15 MPs) as well as by SNS (11 MPs) and Smer (20 MPs). According to the motion, the establishment of the Special Court is against the Constitution and its formation "caused significant inequality among judges of the Special Court and lower courts starting with the legitimacy of the judge depending on the decision of National Security Authority as an executive body to the high functional surcharge and the provision of safety."[25] On May 20, 2009, the constitutional court ruled that the Special Court was not established in accordance with the Constitution. In its preliminary opinion, the majority at the court pointed out that the compensation of the judges of the Special Court was disproportionate with its aim and was discriminatory against other judges.

6. Conclusion

The case study of two administrative anti-corruption measures undertaken in the judiciary by the Dzurinda government, notably the Court management system and Special Court, entail major changes in work procedures, the former within a court and the latter within the judiciary system. The case study looked at the phases of their adoption and implementation and the main challenges they faced. The creation and installation of both administrative measures and the related changes in work procedures is a radical change for courts and the judiciary system. Therefore, it must be managed with the same degree of care as any major institutional reorganisation. Nevertheless, only the Court management project was carefully designed and planned, had the possibility to be piloted on one court, was accompanied by enormous support from inside the Ministry of Justice and donor organisations and

25 *SME,* 11. 2. 2008.

had adequate time (two government terms) to be adopted and fully implemented. The results legitimised the existence of the Court management. The Special Court did not have the possibility and time span for a gradual and smooth adoption and had only one year before the elections to show results, which on such a large scale, are nearly impossible.

In terms of the political economy, both measures were strongly opposed by HZDS members which instituted the previous court system in 1997 and whose members favoured a quantitative solution to the judiciary – to increase the number of judges. Interestingly enough, SMER members have an indifferent position towards both measures.

Therefore, when HZDS became coalition partner in the change in government in 2006 and became responsible for the post of the Ministry of Justice, the first steps were aimed at attacking the existence of the Special court – a measure that did not have sufficient time to institutionalise and legitimise itself. The Ministry of Justice does not discuss the Court management and its prospects. Thus, the sustainability of Court management seems to be stable, whereas the sustainability of the Special Court is questionable for the future.

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The Role of Structural Reforms in Active Labour Market Policy in Anti-corruption in Slovakia

Miroslav Beblavý

1. Introduction and description of the tool

This case study deals with the changes in active labour market policy, which happened in 2004 in Slovakia, and with their anti-corruption outcomes. Even if the reform of active labour market policy and the overall change in social policy did not have a decrease in corruption as its most important goal, we will show that those changes had an influence on the lowering of corruption through the lowering of discretion when deciding on the distribution of resources spent on active labour market policy.

In terms of active labour market policy and anti-corruption tools, the reform had three main components:

- Automatic decision – elimination of discretion
- Institutional change
- Method of financing

Automatic decision – elimination of discretion

The new act No. 5/2004 on employment services adopted an automatic decision principle on grants for the creation of jobs and for activation. The new act, unlike the old act no. 387/1996 where no automatic decision was mentioned, separated the unemployment grants into two groups, the first consisted of grants, to which the unemployed were legally entitled after they fulfilled certain requirements. They are thus independent from the will of bureaucracy, and the second group consists of grants to which there is no legal right. Automatic decision grants constitute a larger group.

The goal of Paragraph 49 is to motivate job applicants to become engaged in self-employed gainful activities with the possibility of using a financial grant. The applicant is entitled to the this grant, if he is registered as a job applicant for a stated period of time, if he requested this grant in writing, if he documented his business

intentions, together with the calculation of assumed costs for the start and executing of self-employed gainful activities and concludes a written agreement with the office about the accommodation of this grant. A crucial difference, when compared with the old act, is in the fact that this grant became an automatic decision by law. The amount of resources in the grant is influenced by the degree of unemployment in the region, by the reference to a type of region that is valid for state aid and by the reference of the applicant to a group of disadvantaged job applicants. Unlike the old act, the maximum sum of the grant is not stated as a fixed amount, but is regulated in a way which enables a flexible reaction to the economic environment.[1]

Paragraph 50 created better possibilities of employing disadvantaged job applicants through motivation for potential employers such as grants for employers of up to 100 % of the work costs per disadvantaged employee per created job. The act amends conditions for filling jobs by disadvantaged job applicants, for which the grant is donated, and also a period to derive the grant was given. The goal of this approach was to solve the employment of disadvantaged job applicants and also to significantly motivate employers through the amount of resources to create new job opportunities in regions that are legitimate for receiving state aid. Both mentioned paragraphs also conform to regulations of the European Commission (EC) no. 2204 from 12th December 2002 about the application of ar. 87 and 88 of the Treaty of the European Commission about state aid for employment. [2]

Paragraph 51 dealt with a new approach towards graduate internship. The goal of the act was to create conditions for gaining both skills and practical experience of school graduates at the businesses of potential employers. Compared to the previous act, the grant was increased by 100 % and is conditional to the registration of a job applicant at the registry, which needs to last at least three months.

A new active measure of the employment market was implemented through paragraph 52, whose goal is to retain working habits among job applicants. The forms of activation duty were defined by the act stated smaller community services organised by communities and voluntary jobs organised by non-governmental organisations. A grant was implemented for the refunding of costs necessary for protective work conditions, for refunding accident insurance of job applicants, who are performing an active occupation and for the overall cost of employees, who organise activation duties of job applicants. The amount of granted resources was designed to be dependent on the number of accepted job applicants employed for

1 Úrad vlády Slovenskej republiky (2003), *Dôvodová správa k zákonu č. 5/2004 o službách zamestnanosti a o zmene a doplnení niektorých predpisov,* Bratislava: Úrad vlády Slovenskej republiky.

2 Úrad vlády Slovenskej republiky (2003), *Dôvodová správa k zákonu č. 5/2004 o službách zamestnanosti a o zmene a doplnení niektorých predpisov,* Bratislava: Úrad vlády Slovenskej republiky.

activation duties and on the number of employees, who will organise the activation duties for job applicants.[3]

Another major change in the new act is devoted to the problem of disabled job applicants. The act no. 5/2004 tried to ease the access of disabled people to the labour market. This act instituted employer grants that contribute to the creation of one workshop job for a disabled applicant, which results in 100 % of 24 times the minimum wage, a grant for the creation of a disabled person business, grants for donations expenses, a grant for an assistant, a grant for maintaining a workshop and a grant for transportation to the workplace.[4]

Institutional change

The institutional change of active labour market policy resulted from the overall institutional change in the social area. Three crucial implementation institutions existed prior to 2004:

- The Social Insurance Company as a tripartite governed institution dealing with the extraction of levies and with payments of donations belonging to social insurance (except unemployment insurance)
- The National Employment Bureau as a tripartite governed institution dealing with the extraction of levies and with payments of donations belonging to unemployment insurance.
- The departments of social welfare as a part of integrated state management (a part of district and regional offices)

In 2004, the National Employment Bureau and the departments of social welfare merged into offices of work, social issues and family (the Social Insurance Company became responsible for unemployment insurance). Also the organisational structure of both organisations was significantly tightened. Prior to 2004, the National Employment Bureau consisted of a state office, 8 regional offices and 79 district offices dealing with employment issues and the social welfare consisted of 8 regional departments and 79 district departments dealing with social issues. The reform changed the system to one Central Office of Labour, Social Affairs and Family.

This change meant the end of the tripartite decision-making system, but not completely. New councils for employment were created at the Office of Labour, Social Affairs and Family by act no. 5/2004 Z.z. Those councils have the authority to "approve the using of active labour market policy tools and their financing, when there is no legal entitlement right and they are not financed by the European so-

3 Úrad vlády Slovenskej republiky (2003), *Dôvodová správa k zákonu č. 5/2004 o službách zamestnanosti a o zmene a doplnení niektorých predpisov,* Bratislava: Úrad vlády Slovenskej republiky.

4 Úrad vlády Slovenskej republiky (2003), *Dôvodová správa k zákonu č. 5/2004 o službách zamestnanosti a o zmene a doplnení niektorých predpisov,* Bratislava: Úrad vlády Slovenskej republiky.

cial fund and by projects or programmes under § 54 ar. 2 let. c) and d)." However, council members are representatives of the employment offices and regional self-governments, not of employers or trade unions as before.

As opposed to the past, almost all resources for active labour market policy are either demanded from and/or financed by the European Social Fund (ESF). Thus the decision-making competences of councils are very small.

The method of financing

The change in the method of financing of active labour policy is the third area that the reform touched. The active labour market policy was financed by a combination of funds raised in the system of unemployment insurance and of specific state grants until 2004.

After 2004, considering the entry of the Slovak republic into the EU, the ESF, as one of the structural funds, became the crucial source for financing the active labour market policy. Budgetary resources were mostly used to co-finance projects of the ESF and to co-finance investment incentives for major investors (KIA, Peugeot-Citroen…). The share of projects of the active labour market policy, which did not belong under the ESF or investment incentives, gradually decreased during 2004–2006 with the growing investments from the ESF and since 2006 resources, except those from the ESF, can be considered as negligible.

The ESF resources brought important changes to the organisation of active labour market policy, which together with other mentioned innovations, strongly affected the space for corruption within the active policy.

Funding through the ESF is executed through so-called "national projects", whose receiver was the Headquarters of Work, Social Issues and Family and the funds were provided by the Ministry of Labour, Social Affairs and Family (MoLSAF) as the managing institution for all ESF activities. An individual national project existed for single tools or for groups of tools of active labour market policy (National project I financed the support under paragraphs 49 and 50, which is crucial for this case study).

This structure resulted in a higher level of MoLSAF control over specific aspects of funds granting and even above its competences, as the act designer who decides over the details of the sum of resources. The MoLSAF approves the project text and all its changes. Also the Central Office became stronger at the expense of the local offices through the existence of a uniform project system and through the executive documentation necessary to the project.

The ESF rules, approved at European and national levels, modified various aspects of aid funding, which had an anti-corruption effect over the setting of automatic decisions. Those aspects were for example:

- Strong ex ante and ex post audit/financial control. Even if these checks are executed on all public expenses, the consistent ESF system includes a managerial institution and a payment body at the Ministry of Finance (MF SR) and at the Administration of finance control as institutions of proportional consecutive control of at least 5 %. It is also much more rigorous in the approach to other public expenses. The findings of those specific components showed that they had an important influence on the misuse of resources.
- "Audit trail" is an explicitly set system of specific component's competences in the system and also of the documentation and financial distribution.
- The "four eyes rule" states, that the approval and control of every transaction must be performed by at least two individuals.

Utilisation of tools

The utilisation of specified tools, according to the 2006 Report of the social situation of inhabitants in SR, was:

Grants that directly create work opportunities

- The grant for self-employed gainful activities (§ 49): created 10 477 jobs.
- The grant for the employment of disadvantaged job applicants (§ 50): 4 039 job applicants placed.
- The grant for the creation of protected workshops, protected workplaces and on their maintaining (§ 56): 638 jobs where 570 job applicants were placed.
- The grant for handicapped citizens on executing self-employed gainful activities (§ 57): 405 jobs.

947 million Slovak Crowns were used in 2006 to cover those grants (The Projection of final state expenses in the chapter of MoLSAF SR) (http://www.rokovania.sk/appl/material.nsf/0/A21F3E48DA2B8F05C12572AB0035A817?OpenDocument)

Employability increasing grants

- The execution of graduate internships (§ 51): 14 503 job applicants allocated on a graduate internship.
- Grant for activation duty (§ 52): activation duty was performed by 4 876 subjects, which created 218 071 jobs for activation duty.

873 million Slovak Crowns were used to cover the activation programmes in 2006

Those two groups of expenses made up a strong majority in all expenses used on active labour market policy if we do not count specific investment incentives for major investors.

2. The model of efficiency/influence of the tool on decreasing corruption

The author will describe a model in this chapter, which would explain how the tool contributed to the lowering of corruption and what kind of corruption it decreased.

The model of active labour market policy efficiency on the lowering of corruption comes from the following assumptions:

Corruption = monopoly + freedom of decision-making – transparency[5]

This simplified, though brief conceptualisation, can also be applied in the case of active labour market policy.

The monopoly is used in this case because the case deals with the decision-making of a public institution and with the distribution of public resources. A simple solution would abolish such a monopoly through the elimination of labour market policy tools and through keeping the creation of work opportunities under the sole competence of private subjects. This possibility is not relevant for this case study and we will thus examine only the freedom of decision-making and transparency.

A strong freedom of decision-making, but mostly low level of transparency on central and local levels existed till 2004 in the decision-making process of active labour market policy tool's resource allocation.[6]

The freedom of decision-making at the central level was given to:

- The Director General of the National Employment Bureau with the responsibility for employees of the registry
- The board of directors of the National Employment Bureau

The freedom of decision-making at the local level was given to:

- The Director of District Employment Bureau with the responsibility for employees of the registry
- The steering committee of the District Employment Bureau

The granting of active labour market policy tools was decided by a collective institution (board of directors, steering committee) at both levels, but the office apparatus played an important role. It prepared and submitted drafts to the collective

5 Klitgaard, R. (2000). "Subverting corruption". *Finance and Development*, 37(2), pp 2–5.

6 This freedom of decision-making was lower than between 1991–1993, but was still high. In the period of institutional building in 1991–1993: "only the director of District employment registry could decide on millions of croons used for creation of socially useful work opportunities with an exceptionally big room for corruption." (TIS (1999), ch. II/6, http://www.transparency.sk/studie/pkns/studia_pkns_2-6.htm, downloaded 10/12/2007.

institution, or dealt with the additions and changes in the pact. It is crucial to mention that specific decisions about the active labour market policy were decided at the level of the District Employment Bureaus, on which this study will concentrate.

The criteria, which had to be fulfilled to receive active labour market policy tools, were too general and thus the potential demand significantly exceeded the available amount of financial resources.[7] Before the reconstruction of the Slovak banking sector in 2000–2002, reversible aid was also an attractive tool because of the reduced availability of trusts and of high interest expenses.

This refers to the following tools:

- Grants for employee requalification (§ 84, sec. 3),
- Grants for creation of new work opportunities (§ 87),
- Grants for self-employment (§ 88, sec. 1),
- Soft loan for a business project (§ 95, sec. 1),
- Grant of an agreed sum for covering jobs, insurance and interests for the offered interest (§ 95, sec. 2),

No public access to information about approved decisions existed until 2000 when the new act on free access to information, which made such information available to the public, was approved and came into force on January 1, 2001.

Also no regulation mechanisms of state aid existed till 2004, despite the European Association Agreement (158/1997 Z.z.)[8] and on it was based the Act on State Aid no. 231/1999, which meant that funds of active labour policy granted to private subjects should be considered as state aid and should be regulated by the mentioned Act. The general rules dealing with the granting of state aid in the EU would thus partially limit the freedom of decision-making and thus contribute to the decrease in corruption potential.

Act no. 5/2004 Z.z. on Employment Services changed the principle of granting active policy funds, because it dismantled the councils as the decision-making institution and instituted the principle of automatic decisions on the most important groups of grants. Details are explained elsewhere in the text.

In other words, the change primarily happened through a decrease in discretion.

When it comes to the scale and form of corruption before and after the reform, it's possible to point to the following available data.

The data on the spreading of corruption in ALMP through which we could compare time periods, are not available. The available data only describe the per-

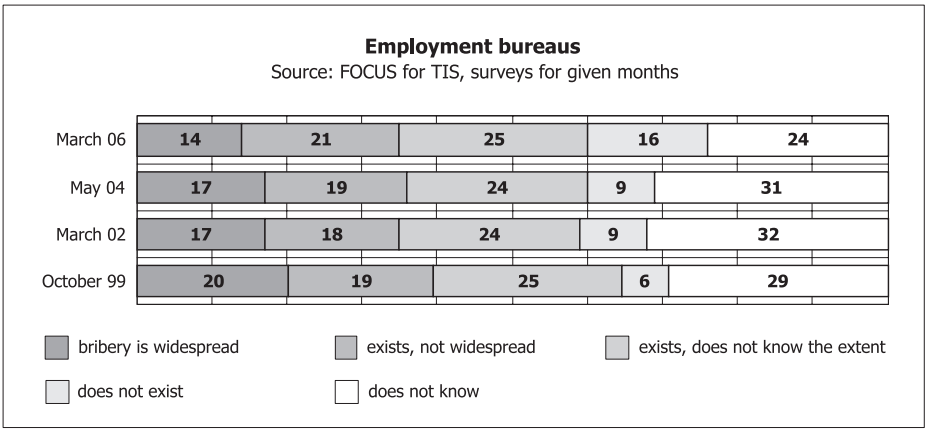
7 TIS (1999). *Podoby korupcie na Slovensku I.* Bratislava: Transparency International Slovensko.

8 The European affiliation threaty signed up between the European communities and the Slovak republic.

ception of corruption in employment bureaux as a whole, which is, with great probability, influenced by the personal experience of citizens with passive labour market policy. Despite that, it is useful to mention this data in Chart 1. There was an increase in citizens who believe that there is no corruption in employment registries from 9 % to 16 % in the period of 2002–2006. However, this happened primarily on the expenses of the group that could not identify corruption in previous surveys.

It is also possible to quote a 2006 survey performed by FOCUS, where only 8 % of citizens identified employment registries as one of three areas with the most corruption. However, there is no comparable data prior to 2006.[9]

Chart. 1
The spreading of corruption in employment registries, 1999–2006, the perception of citizens



3. The political economy of tools enforcement and their preservation

The reform of active labour policy and act no. 5/2004 about employment services, which implemented the reform, were proposed by the MoLSAF. It is necessary to look at the act in the context of the overall social reform, which was strongly prioritised during the second government of Mikuláš Dzurinda.

This government was obliged, by its programme memorandum, to deal with high unemployment as the biggest problem of social policy. This obligation dealt with the following specific areas: "The government decided to prepare measures which will increase the motivation of individuals to find and keep a job, will sim-

9 Focus (2006). *Percepcia korupcie na Slovensku*: *Prieskum verejnej mienky pre Transparency International Slovensko*. Bratislava: Focus.

plify the granting of various social donations, and will promote the principle of automatic decision in the sphere of active labour market policy and in the sphere of project financing. The government also proposes the dissolution of regional employment registries and the tightening of flexibility in the conditions of local labour markets."[10]

The programme memorandum did not thus contain the later executed specific forms of the reform of active labour market policy. These were proposed in the "Strategy to stimulate employment growth through changes in the social system and in the labour market", which was proposed by the MoLSAF and approved by the Government of the Slovak republic on April 30, 2003.

The new strategy represented a policy document, which named mid-term and long-term routing of the social policy, while it defined specific measures that ought to be approved by the government by the end of its electoral period. Its long-term priority was "a reasonable and sustainable lowering of poverty through the growth of employment and the possibility for every job-seeking individual to find employment". The target situation, which the new Strategy ought to achieve, constituted: "creation of a system, which motivates individuals of productive age to seek and keep jobs and to be active when ensuring their social situation. Unemployed individuals will receive effective aid for finding jobs or for increasing their chances to find an employment".[11]

The main slogan of this strategy was: Every meaningful legal employment is better than inactivity and growing employment is the most effective way to fight poverty. Economic idleness, especially long-term, has its negative outcomes for every individual and family. In cases where there is no possibly to find a job for an individual, the Strategy's principle is that any meaningful activity of an individual (voluntary work in the community) is preferred before idleness.[12]

The philosophical basis of the new system was the emphasis on positive motivation, on future opportunities, on the straightening of advantages coming from formal employment and on the restriction of advantages or incomes fixed on unemployment. One of the basic mechanisms of employment growth is the motivation of unemployed citizens to seek and keep employment, or a self-employed gainful activity. With the higher motivation of unemployed citizens, the work opportunities are manned and new jobs are created, which would not exist in the case of low motivation and of low employment potential for possible employees.[13]

10 Úrad vlády (2002). *Programové vyhlásenie vlády Slovenskej republiky*. Bratislava: Úrad vlády SR.

11 MPSVaR SR (2003). *Návrh Stratégie podpory rastu zamestnanosti prostredníctvom zmien sociálneho systému a trhu práce*. Bratislava: MPSVaR SR.

12 MPSVaR SR (2003). *Návrh Stratégie podpory rastu zamestnanosti prostredníctvom zmien sociálneho systému a trhu práce*. Bratislava: MPSVaR SR.

13 MPSVaR SR (2003). *Návrh Stratégie podpory rastu zamestnanosti prostredníctvom zmien sociálneho systému a trhu práce*. Bratislava: MPSVaR SR.

The proposal of the act on employment service was submitted by the MoLSAF in 2003. The proposal was then sent to an inter-ministerial review process on August 4, 2003. The conversion to automatic decision was not subject to criticism from the objecting entities.

The proposal was then unanimously approved by the Government of the Slovak Republic on October 2, 2003 without major specific or political disputes and was then submitted to parliament.

The parliament chairman obliged the Committee on public administration and regional development, the Committee on finances, budget and currency, the Constitutional Committee, the Committee on social issues and housing and the Committee on human rights, nationality and women status to discuss the act by November 21, 2003. The National Council of the Slovak Republic (NC SR) approved the committees and questor committee proposed by the parliament chairman. All committee sessions took place through November 2003 and the questor committee discussed the act proposal on November 28, 2003.

The act proposal was discussed in the second parliamentary reading on December 4, 2003 and was approved for the third parliamentary reading. The proposal was discussed in the third parliamentary reading on the same day and was submitted to the editorial office. From 135 parliament members present, 134 voted, from which 76 were for, 46 against and 12 did not cast a vote. All ruling coalition deputies voted for, while almost all deputies from the opposition were against.

All comments from the joint report submitted by the committees were approved in the second parliamentary reading. However, the report did not contain any proposal that would violate the automatic decision principle of the mentioned active labour market policy grants.

Furthermore, other amendments were proposed in the parliamentary ruling by deputy Hort from the parliamentary representation of SDKÚ, by deputy Bódy from the parliamentary representation of SDKÚ, by deputy Hamarčák from the parliamentary representation of ANO and by deputy Blasko from the parliamentary representation of HZDS. All those amendments were approved.[14] However, those changes did not interfere with the principle of automatic decision, only the amendment of deputy Hamarčák related to this.

Deputy Bódy presented the amendment to article 1 in § 56 sec. 5. The mentioned paragraph modifies the providing of a grant for establishing and keeping a protected workshop or a protected workplace and for executing self-employed gainful activities. However, the previous paragraph did not allow the use of the mentioned grant for buying a car. This was opposed by deputy Bódy because, in certain cases, a protected workshop or a protected workplace provides transportation for its employees to go to work and back home. In such cases it is reasonable to provide

14 transcript of NR SR.

the employer with the possibility to use the mentioned grant to cover the expenses for buying a car, which is necessary for the transportation of his employees in cases where the employees move on mechanical or electric wheelchairs.[15]

Deputy Hamarčák presented a couple of amendments, which dealt mostly with paragraph no. 16. He proposed to change the words in sec 2 "and four representatives of the self-governing district" with: "two representatives of the self-governing district and two representatives of local municipalities." The goal of this proposal was to grant the municipalities the competence to participate in the solution of crucial questions of employment and on the decision-making process of allocating active labour market policy tools. He further proposed to add a new sec 6, which reads: "The representatives of local municipalities are nominated by the representative institution of local municipalities." He also proposed to replace the words in paragraph 17 sec. 2: "of the self-governing district" by: "of the local municipalities", because the local municipality will also have representation in the Committee for questions of employment. Other amendments from Hamarčák were of a technical nature.[16] Simply put, a co-decision competence shall also be granted to local municipalities when deciding on local non-automatic decision tools of active labour market policy. As mentioned above, the practical outcome was small due to the marginal amount of financial resources distributed through this channel.

The act came into force on February 1, 2004. The Ministry issued two edicts before the act came into force, which executed the details of this act. The edict no. 44/2007 Z.z. is crucial for this case study. It specifically stated the conditions which are necessary for the automatic decision principle of active labour market policy tools.

Let us look at the advocates and critics of this act and of the automatic decision principle.

Transparency International Slovakia pointed to its study The Shapes of Corruption I. in bureaucracy in the sphere of active labour market policy. Transparency International concentrated its attention on the competences of district employment registries, which could grant donations for requalification of its employees, could give this subject a delay to return the donation, could grant a disposable donation for the creation of new jobs, could grant a donation of 200 thousand Slovak Crowns for self-employment, could grant a soft loan for a business project, could grant an employer a donation of an agreed sum for covering wages, insurance and interest on granted loans and the directorate of National Employment Bureau can grant a delay penalty for the donation of insurance payers.[17]

The Employment Institute, a non-governmental organisation that conducts research on employment issues, was among the institutions that really looked for-

15 transcript of NR SR.

16 transcript of NR SR.

17 TIS (1999). *Podoby korupcie na Slovensku I.* Bratislava: Transparency International Slovensko.

ward to this reform. The Institute perceived the active labour market policy reforms positively even if it raised specific suggestions in the inter-department suggestion procedure. The act on employment services also received a positive valuation from the assessment commission of the Institute for economic and social reforms. The whole reform of the social system, which led to the support of job activity, is satisfying and economically reasonable according to most of the valuators. New tools of active labour market policy were perceived positively by the valuating experts as a contribution for the lowering of unemployed numbers. [18]

The influence of international organisations on the reform process can be characterised as very weak. The OECD and the World Bank criticised the high unemployment in Slovakia and the previous active labour market policy, but they did not issue any significant pressure or demand a system change. We can mention the OECD Report Jobs for Youth, which, amongst others, valuated the active labour market policy in Slovakia. Despite the OECD's praising of the new reform in Slovakia, mostly of the graduate internship and activation duties, the Organisation pointed at smaller shortcomings. Only a small amount of graduates remain in their employment after they end their graduate internship because employers would rather accept new graduates than keep the present graduates because of lower work costs. [19]

The proposal of the act was supported by almost all ministries and the reform of the labour market was welcomed by many non-governmental organisations.

On the contrary, the Confederation of Trade Unions (KOZ) strongly opposed the proposed reform. The KOZ raised a couple of remarks in the review process. It did not agree with the creation of Agency for temporary employment and with the obligatory reports of the unemployed on employment registries every seven calendar days. However, none of the KOZ remarks were approved.[20] The KOZ also did not agree with the elimination of tripartite decision-making in the case of the act on state administration in the chapter dealing with work, social issues and family.

The elimination of tripartite decision-making was criticised by the Union of cities and towns, whose representatives worked in the supreme tripartite body of the National Employment Bureau and also in district councils, and by the Association of Employers unions which at that time, was the only major institution representing the interests of employers.

18 Zbierka zákonov (2004). *Zákon č. 5/2004 o službách zamestnanosti a o zmene a doplnení niektorých predpisov.* Bratislava: Zbierka zákonov.

19 Svetová banka (2005). *Living Standards Assessment: Slovak Republic*. Washington, D.C.: Svetová banka;

OECD (2007). *Jobs for Youth,* Paris: OECD;

OECD (2005). *Economic Survey of Slovak Republic*. Paris: OECD.

20 Úrad vlády Slovenskej republiky (2003). *Vyhodnotenie pripomienkového konania*. Bratislava: Úrad vlády Slovenskej republiky.

When dealing with political parties, their position can be judged according to their speeches during the act approval ruling in the parliament. The most critical and broad speech against the act proposal was performed during the second parliamentary ruling by deputy Blajsko from HZDS – ĽS. He presented a few remarks such as the absence of an analytical study, which would evaluate the previous impact of the National Employment Bureau as a public institution. Deputy Bajsko also devoted his speech on the 7-day interval of reporting to employment registries, which he did not consider as a crucial change that would bring about a significant improvement of the system. Furthermore, he addressed the grant for employment mobility, which he did not view positively, as he considered the creation of a tenement flat market in places with work opportunities more suitable. His amendment contained a proposal to add the Employment Registry in Kežmarok to the list of offices for work, social issues and family, because Kežmarok belongs to the districts with the highest number of unemployed. As we will see, none of these critiques questioned the principle of automatic decision.

The media reflection of the act did not dedicate itself to the question of the automatic decision principle of grants and the principle was not viewed as controversial, according to the analysis of SME and Pravda newspaper articles during 2004–2006. When criticism came, it was from the authors of the previous employment system (Vojtech Tkáč, State Secretary of MoLSAF (1994–1998), Jaroslav Šumný, General Director of the National Employment Bureau (1997–2003)) or it was related to the elimination of the tripartite decision-making.

The act no. 5/2004 mostly remains in its original form until now even if it was subject to some novelisation since its implementation. The amendments implemented during 2004–2006 did not significantly change the philosophy of the act and the previous philosophy remained in most chapters dealing with active labour market policy issues. The grants were made more generous; various adjustments were made to simplify the administration and the principle of automatic decision remained untouched.

After the governing parties changed in the 2006 elections, the MoLSAF prepared a broad amendment, which it submitted to the government in October 2007. This proposal was approved by parliament in April 2008.

The new act does not deny the basic anti-corruption element of act no. 5/2004, which is the principle of automatic decision.

However, a couple of new grants were proposed in the area of new active measures such as a grant for the incorporation of disadvantaged job applicants, a grant for keeping low-wage employees in employment, a grant for the creation and support of new jobs creation in social establishments, support grant for employing studying job applicants or who are preparing for the labour market, a grant for activation duties in the form of small communitarian services conducted for the community, a grant for activation duty in the form of voluntary service, a grant

for moving to places with work opportunities and a grant for transportation to the work place. The act proposal also redrafts the support for employing disadvantaged job-applicants.[21]

The number of tools, on which there is no automatic decision principle, is increased to new tools mentioned in § 53b, § 53d, §53e, § 55a, § 57a a 65b, but this applies mostly to tools on which there was no claim by law before.

In terms of standard active labour market policy tools described in the act, it can be said that even the change in government did not meant a change in the philosophy of automatic decision.

At the same time, the new government significantly changed the new Operational programme Employment and Social Inclusion compared to the proposal, which was prepared by the government of Mikuláš Dzurinda. The most striking change is the significant increase in funds for specific projects, which will be decided by the MoLSAF and its underlying organisations on the expense of active labour market policy tools.

The percentage of resources available for active labour market policy, which will be realised through automatic decision tools, will thus decrease. This will significantly increase the freedom of decision-taking of state institutions. The system will not be restricted by the tripartite decision-making system as before, but will be put under the sole competence of the relevant state institutions (MoLSAF, Social Implementation Agency).

4. Hypothesis and conclusions

The case study is devoted to the reform of active labour market policy from 2004 as a tool for decreasing corruption in Slovakia. We showed why the enforcement of the automatic decision principle on most important tools of active labour market policy and the financing from the European Social Fund, led to the lowering of discretion and thus worked as an anti-corruption tool at the level of support approval and execution in the sphere of active policy.

At the same time, we showed that the lowering of decision-taking freedom was incomplete, but was applied only to the tools financed by the ESF, where it is technically possible – the creation of jobs, activation duties and graduate work places – but not in the sphere of unemployed education. Besides, a part of ESF resources was distributed through appeals to submit projects, which were then decided on by a commission chosen by the Minister of Work, Social Issues and Family. A part of the national budgetary resources was also distributed by other than automatic

21 Úrad vlády Slovenskej republiky (2007), *Dôvodová správa k zákonu o službách zamestnanosti*. Bratislava: Úrad vlády Slovenskej republiky.

decision principles. However, those non-automatic decision resources constituted a markedly lower share on the overall resources paid through the APTP.

The principle of automatic decision was not legislatively changed, even after the formation of the new government in 2006, but we showed that the new operation programme, Employment and Social Inclusion for the years 2007–2013 significantly increased the share of resources, which will be distributed based on decisions by the MoLSAF and by the Social Implementation Agency and not through standard, automatic decision tools. A significant change did therefore occur.

In terms of political economy, it was a reform against which only subjects who lost their decision-taking freedom when approving the distribution of resources, opposed:

- The management of the National Employment Bureau
- The representatives of employers' unions (AZZZ), of trade unions (KOZ) and of municipal unions (ZMOS)
- The opposition, mainly HZDS, which instituted the previous system

The fact that their discontent did not markedly influence the approval of the reform, was due to various reasons.

Firstly it is necessary to stress that the overall reform of the social system and its active policy had the support of top political elites of the government and it was not subject to inter-coalition disputes. This was connected with the low legitimacy of the previous active policy, which was perceived as inefficient and had a strong corruption potential.

When explaining the low relevance of the resistance coming from the management of the National Employment Bureau, it is important to stress that the management of the Bureau was politically distant to the new government and was much closer to other parties – SDĽ and HZDS-ĽS. When looking at representatives of AZZZ and KOZ, something similar can be said, as the relation between the trade unions and the second government of Dzurinda was bad and numerous social conflicts were taking place between both sides. Thus, the government had no reason to step back in this, since for both sides it was not so important an issue. The ZMOS had a closer relationship with the government, but this question was not so important in the context of overall relations with the government, as there were other much important changes that had to be addressed by the municipalities at that time.

The overall pace of the change and its "packing" into a package of social reforms also straightened the probability of approving the reforms.

After the approval of the active labour market policy reform, the reform was quickly legitimised, mostly through the swift introduction of activation duties (more than 120 000 engaged three months after coming into force) and through

the gradual influence of other tools. Its shortcomings were not connected with the principle of automatic decision from the view of unemployed and market observers, but with the administrative difficulties of financing through the ESF. According to the political management of MoLSAF and of the Central Office of Labour, Social Affairs and Family, this is also a simple and effective tool, which makes the active policy realised at the local level much more legible for the central authorities.[22] On the other hand, the increase in decision-taking freedom at smaller local levels is not politically interesting for the central authorities, because the possible "allowance" would dissolve at the local level.

Therefore, even the change in government did not mean a significant change in the approach to existing standardised and automatic decision tools. The struggle for increasing the freedom of decision-taking of the political management was thus concentrated on transferring the amount of funds to those projects of the ESF, where the decisions are made by the MoLSAF and its Social Implementation Agency. Thereupon, a concentration of decision-taking freedom is concentrated in the hands of political management and its representatives in cases of bigger projects and thus the patrimonial-corruption potential increases.

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22 Scott, J. (1999). *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven: Yale University Press.

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The Protection of Whistleblowers in Romania

Victor Alistar, Andreea Nastase

Introduction

The term whistleblower[1] defines a person who exposes wrongdoing within an organisation. As far as anti-corruption policy is concerned, whistleblowing is extremely relevant for public and private organisations alike, since both face the risk of things going wrong or of unknowingly harbouring corrupt individuals. In addition, it is the insiders – people who work in or with the respective organisation – who are best placed to observe wrongdoing and signal it. However, these people also face sizeable risks of retaliation from those whom they expose, a fact that makes the protection of whistleblowers a must in any anti-corruption strategy.

The importance of whistleblowing in the public sector is widely acknowledged at the international level and is established as best practice in Europe. The *Council of Europe Criminal Law Convention against Corruption*, under Article 22 ("Protection of collaborators of justice and witnesses") and the *Council of Europe Civil Law Convention against Corruption*, under Article 9 ("Protection of employees") both require the existence of protection measures for officials who report acts of corruption in good faith. Moreover, the Council of Europe's Committee of Ministers *Recommendation No. R (2000) 10 on codes of conduct for public officials* states under Article 12 "Reporting" the obligation of public officials to "report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his or her knowledge in the course of, or arising from, his or her employment" and the corresponding obligation of public bodies to protect officials making a such a public disclosure in good faith and on reasonable grounds. At the international level, the *United Nations Convention against Corruption*, under Article 8 "Codes of conduct for public officials" requires the establishment of mechanisms to facilitate and protect reporting by public officials.

1 Originating from the expression *to blow the whistle (on)* [Slang] = 1. to report or inform on 2. to cause to stop; call a halt to (according to Agnes, Michael (editor in chief) 1999. *Webster's New World College Dictionary*, fourth edition, New York: Macmillan).

In Romania, whistleblower protection was introduced in 2004 through *Law no. 571/2004 concerning the protection of personnel from public authorities, public institutions and from other establishments who signal legal infractions*. The passing of the law in December 2004 did not encounter strong opposition from public or private actors. However, nearly four years after its adoption one finds not only a widespread lack of knowledge or even suspicion among its beneficiaries, but also several groundbreaking cases of successful whistleblowers. Nonetheless, all things considered, the law has yet to deliver on the generous promises that fuelled consensus at the moment of its adoption.

The purpose of this paper is to analyse the reasons behind the successful passing of whistleblower protection in Romania, but also the factors leading to its mixed implementation record. In doing so, the authors will explore the context surrounding the adoption of *Law no. 571/2004* with a view to identifying the principal policy actors involved and their respective motivations, as well as the dynamics of agenda setting and negotiation processes. To account for the progress in implementation, the authors will consider, in particular, the process by which regulations of national coverage contained in *Law no. 571/2004* were translated and diffused inside public organisations (thus reaching their beneficiaries) and also the linkages established to other anti-corruption instruments. Equally important, the paper gives an account of Transparency International Romania's[2] advocacy strategy on this issue, in order to provide an example of effective non-governmental involvement in the policy process. Illustrating the manner in which the same key anti-corruption instrument is met with enthusiasm as well as resistance, the Romanian experience represents a source of relevant lessons for other transition countries struggling with corruption.

Conceptual framework

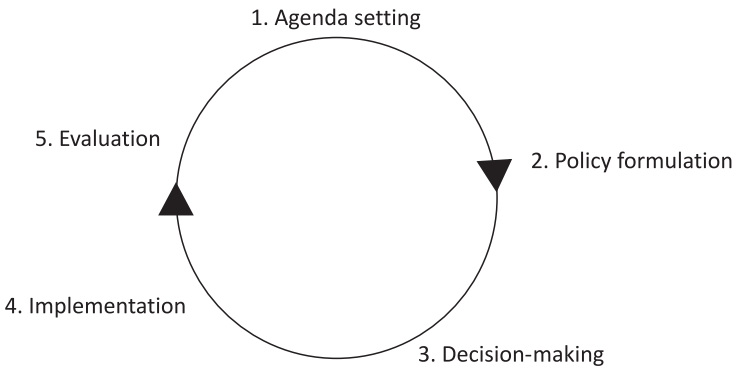
This paper uses the policy cycle perspective[3] (also known as the "stages approach") as a conceptual framework to delineate the phases which are relevant in assessing whistleblower protection policy in Romania. Although commonly contested today, the perspective that depicts public policy as evolving in a sequence of distinct stages has served for quite some time as the basic template in the field of policy analysis. In doing so, it has developed a number of different variations in the stages typology

2 Henceforth referred to as TI Romania.

3 The model is often employed in public policy literature (academic or practice-oriented), for example: Anderson, James E. 1994. *Public Policymaking*, 2nd edition, Princeton, NJ: Houghton Mifflin; Bardach, Eugene. 1996. *The eight step path of policy analysis. A Handbook for Practice.* Berkley: Berkley Academic Press; DeLeon, Peter. 1999. The Stages Approach to the Policy Process: What has it done? Where Is It Going? in: *Theories of the Policy Process*, edited by Paul A. Sabatier Boulder and Oxford; Young, Eoin and Quinn, Lisa. 2002. *Writing Effective Public Policy papers – a Guide for Policy Advisers in Central and Eastern Europe*, second edition, Budapest: Local Government and Public Service reform Initiative, Open Society Institute.

– this paper follows the Jann and Wegrich (2005) article, which argues that today the conventional chronology of the policy process differentiates between agenda-setting, policy formulation, decision-making, implementation, and evaluation.

Figure 1
The policy cycle



As Jann and Wegrich (2005) explain, the policy process is set in motion with the recognition of a policy problem, for which the necessity of state intervention is expressed. The second step is to insert that problem into the government's agenda[4] so that it receives proper consideration for public action. During the stage of policy formulation, the objectives of the governmental intervention are established and multiple alternatives for action (i.e. policy alternatives) are designed, ideally to be mutually exclusive. Decision-making pre-supposes the selection of one policy alternative, based on criteria of effectiveness, efficiency, equity and feasibility, etc. (Young and Quinn 2002). Since not all policies become formalised into distinct governmental programmes, in practice it is often difficult to differentiate between the stages of policy formulation and decision-making. Policy implementation is 'the stage of execution or enforcement of a policy by the responsible institutions or organisations, which are often, but not necessarily always, part of the public sector' (Jann and Wegrich 2005:20). Ideally, this stage should include the construction of programme details (i.e.: specific actions and sub-actions to be executed for accomplishing the policy objectives, responsible institutions, a calendar of implementation, evaluation indicators and monitoring procedures), and the allocation of resources (budget, personnel, technical equipment etc.). Finally, during policy evaluation, the intended outcomes of the governmental intervention are appraised against actual results and the policy is either terminated or adjusted to compensate

4 The governmental agenda is defined as "the list of subjects or problems to which governmental officials, and people outside the government closely associated to those officials, are paying some serious attention at any given time" (Kingdon 1995:3).

for the setbacks. At the same time, policy evaluation leads to the discovery of new policy problems or the redefinition of previous ones, thus feeding back into the policy cycle by initiating a new process of problem definition and agenda setting.

In what follows, we analyse whistleblower protection in Romania with reference to each of the five policy stages identified by Jann and Wegrich (2005). On the one hand, the paper presents the policy development and the relevant contextual factors, which influenced its evolution. On the other hand, the authors put these elements into perspective, by illustrating the non-governmental response through a discussion of TI Romania's advocacy strategies and subsequent actions.

Stage 1: Agenda setting

Whistleblower protection became an issue on the governmental agenda in the context of widespread popular discontent with corruption. In 2004, Romania's score on the *Corruption Perception Index*[5] was of 2.9 on a scale of 0 to 10 (where 0 means "completely corrupt" and 10 – "completely clean"), indicating the existence of systemic corruption in the country. This score is supported by domestic public opinion polls. A survey commissioned by Transparency International Romania[6] in 2004 concluded that most Romanians perceive corruption as being widespread in society – 61 % believed that most public sector employees are corrupt, 52 % considered bribery as a common part of their daily lives and 80 % declared that they knew at least one person who had paid a bribe. At the same time, social support for corruption in Romania was very low, with most respondents considering that corruption is never justified. The massive popular rejection of corruption is perhaps more visible in comparison to other European countries (in a ranking of 32 countries, Romania is placed in the 7th top position). At the same time, popular dissatisfaction with governmental performance in fighting corruption was extremely high, with 77 % expressing dissatisfaction on the matter[7].

However strong, popular rejection of corruption and demand for effective counter-measures should not be considered in itself as a decisive factor in the introduction of whistleblower protection. Rather, this state of affairs has gained key importance in the context of upcoming general elections[8], where (anti)corruption

5 Transparency International's *Corruption Perception Index (CPI)* is a composite index drawing on corruption-related data from expert and business surveys carried out by a variety of independent and reputable institutions. The CPI ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians.

6 Voicu, Bogdan, Mădălina Voicu, Cristina Băjenaru, and Claudia Petrescu. 2004. *Bribery in Romania. What Romanians say and think about petty corruption [Şpaga la români. Ce spun şi ce cred românii despre corupţia mică]*. Bucharest: Centre for Urban and Regional Sociology CURS.

7 Open Society Foundation Romania. 2004. *The Public Opinion Barometer [Baromerul Opiniei Publice]*. Bucharest: The Gallup Organization Romania.

8 Local elections were held in June 2004, while general elections took place in November 2004.

proved to be a huge stake and a significant vote gainer. In this regard, it is illustrative that in 2004, 87 % of voters listed determination in the fight against corruption as the most important quality of the future president[9].

A number of international actors pressing the Romanian government for a more effective anti-corruption policy, with visible and convincing results, backed the domestic mood. The most vocal and important of these was by far the European Union. After the breakdown of communism in 1989, Romania set as a primary objective its foreign policy integration into the European Union. It officially applied for membership in 1995 and began accession negotiations in 2000; by 2005, all 31 negotiation chapters had been closed and effective membership commenced on January 1st 2007. Throughout this period, the European Union has been extremely vocal in requiring Romania's effective action towards the containment of widespread corruption. In every *Regular Report on Romania's Progress towards Accession* since 1998 to 2004, corruption is singled out as a "widespread and systemic problem", undermining the legal system, leading to loss of confidence in public institutions and weakening the economy. Despite acknowledging the gradual development of a rather comprehensive legal framework, the *Reports* remained highly critical of the implementation potential displayed by newly created institutional structures in charge of the fight against corruption. As shown by the Government's *Head Note* to the draft law[10], but also during debates in Parliament[11], the introduction of whistleblower protection was, like many other anti-corruption measures, closely connected to Romania's calendar of accession to the European Union – more precisely, the closing of the "Justice and Home Affairs" negotiation chapter.

European pressure was supported by other international factors. By 2004, Romania had already ratified at least two international anti-corruption conventions, which provided specifically for the protection of public sector employees who report illegalities at their workplace, namely the *United Nations Convention against Corruption* (Article 8.4) and *Council of Europe's Civil Law Convention against Corruption* (Article 9). While the former requires merely the establishment of "measures and systems to facilitate reporting", the latter goes a step forward and explicitly provides for "appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicions". The ratification of these conventions in April 2002 and November 2004, respectively, obliged Romanian authorities to operate a harmonisation of the internal legislation. The introduction of whistleblower protection fell squarely within the scope of this commitment.

9 According to *The Public Opinion Barometer* 2004.

10 http://www.cdep.ro/proiecte/2004/600/50/1/em651.pdf

11 Transcripts available online at http://www.cdep.ro/pls/steno/steno.stenograma?ids=5768&idm=15

Beyond the contextual factors, the introduction of whistleblower protection responded to a number of gaps in Romania's anti-corruption policy framework in force at the time. In 2004, the legal and institutional framework did not allow public sector employees to signal breaches of the law at their workplace without significant retaliation risks. Limited safeguards were available in the form of witness protection measures (introduced by *Law no. 682/2002*), applicable nonetheless to judicial proceedings only. The introduction of whistleblower protection would compensate for this shortcoming, by adapting and extending the mechanism to the everyday workings of public administration bodies, thus becoming a key element in the prevention of corruption. More specifically, the instrument would respond to the need to shield public employees who refuse to execute illegal orders (although refusal was regulated by previous civil service legislation[12], in practice, opposition often resulted in elimination from the public system). Added to this, the draft law prescribed a multitude of receptors of public interest disclosures, therefore doubling the internal channels of complaint (i.e. disciplinary commissions, hierarchical superiors and ultimately the prosecutor's office) with more responsive and effective exterior ones (civil society organisations, mass media etc.). Whistleblower protection would also shield the professional reputation of public sector employees, by allowing honest individuals to make a stand against corrupt fellow workers. Finally, whistleblower protection would facilitate a break with the tradition of silence and complicity in the Romanian public sector.

The context outlined above illustrates a rather fortunate combination of factors, which aided the introduction of whistleblower protection on the governmental agenda and supported a positive outcome of the public decision-making processes. The combination of internal and foreign pressures shaped the policy problem as one of non-conformity to international standards, but also as a political opportunity to boost the Government's anti-corruption credibility on the eve of national elections. Moreover, it created a sense of urgency among decision-makers, which ensured rapidity and smoothened conflicts in the policy formulation and decision-making stages.

Under these circumstances, the window of opportunity for non-governmental advocacy was extremely favourable. Transparency International Romania used it to strike a memorandum of co-operation with the Romanian Government regarding a common platform for the fight against corruption. Supported by this formal agreement, a team of legal and policy experts in TI Romania worked to identify and prioritise the principal weaknesses in the Romanian national integrity system, which were, thereafter, addressed through a package of draft laws presented to decision-makers. *Law no. 571/2004* was part of this package, together with another six proposals:

12 According to *Law no. 188/1999 on the Statute of Civil Servants* refusing the accomplishment of a work-related task was punishable as disciplinary misconduct; the aggrieved person was allowed to file an administrative action for reversing the sanction.

- the ratification of the *United Nations Convention against Corruption*, which had the responsible public structures conduct an impact analysis and design an implementation plan and associated calendar (became *Law no. 365/2004*)
- the enlargement of the sphere of offences punishable as corruption crimes to cover all forms of abuse in office for private benefit (became *Law no. 521/2004*)
- the extension of the provisions of the *Code of Conduct for Civil Servants (Law no. 7/2004)* to other categories of state employees, thus creating a uniform ethics regime in the public sector (became *Law no 477/2004*)
- the enhancement of transparency and accountability in the activity of prosecutors by instituting an obligation to transmit to all interested parties the decisions for commencement, suspension or non-commencement of criminal pursuit (became *Law no. 480/2004*)
- the establishment of a specialised agency to control officials' wealth and sanction conflicts of interest and incompatibilities, together with the improvement of the legal definition of conflict of interest, the establishment of a unitary regime of incompatibilities in the public sector and the introduction of a more detailed format for interest and wealth declarations (TI Romania's proposals were, to a large extent materialised by *Governmental Ordinance no. 14/2005*, which introduced a new format for wealth declarations, and through *Law no. 144/2007*, which established the National Integrity Agency).

Targeted specifically at bringing the Romanian legislative and institutional framework closer to international standards and requirements, the technical expertise provided by TI Romania matched the Government's needs and proved to be a rewarding advocacy strategy, which allowed for significant improvements in the Romanian anti-corruption legal framework.

Stage 2: Policy formulation

The introduction of whistleblower protection coincided with the implementation of Romania's first national anti-corruption strategy of the post-communist period[13], whose principal purpose and merit was to lay the building blocks of an anti-corruption legislative and institutional infrastructure. As Freedom House (2005:160) concludes in its assessment of the strategy, the period 2001–2004 has brought "an impressive arsenal of legal instruments of transparency, accountability and anti-corruption in Romania". Some of the most important are: the creation of the Na-

13 The "National Programme for the Prevention of Corruption" (henceforth referred to as the National Programme) and the adjacent "National Action Plan against Corruption", covering the period 2001–2004. The National Programme was updated in December 2002 by a set of measures aimed at accelerating its implementation ("Combating Corruption in Romania. Measures for accelerating the implementation on the national strategy").

tional Anti-corruption Prosecutor's Office in 2002[14]; the introduction of wealth and interest declarations for public officials and the regulation of conflict of interest and incompatibilities[15]; the introduction of codes of conduct for several categories of public sector employees[16]; the regulation of public procurement[17]; the introduction of legislation ensuring access to information[18] and the transparency of decision-making processes in public administration[19]. The legislative overflow, which characterized anti-corruption reform in Romania between 2001 and 2004, facilitated the acceptance and eventual adoption by decision-makers of yet another draft law, focusing on the protection of whistleblowers.

Added to this, whistleblower protection was entirely congruent with the objectives of the National Programme, despite the fact that the measure was never explicitly stated in governmental programmatic documents. The field of public administration had been repeatedly identified as highly vulnerable to corruption, and, connected to this concern, civil service reform was constantly prioritised in the government's anti-corruption efforts. In this regard, it is important to point out several lines of action established by the National Programme and reiterated or further developed by the 2002 supplementary measures: enhancing administrative efficiency and clarity through a reorganisation of the civil service system; de-politicising the administrative apparatus by establishing mandatory methodologies for competitive personnel recruitment and evaluation, and setting up internal disciplinary commissions and the so-called "parity commissions"[20]; and, finally, introducing, monitoring and enforcing codes of conduct for public sector employees. By the end of 2004 most of these measures, which contextualise and support whistleblower protection, had already been adopted and their implementation was well underway.

The draft law on whistleblower protection was formulated to respond to the gaps in the anti-corruption policy framework, whilst blending with reform measures already implemented in the field of public administration. Thus, the protection

14 *Emergency Ordinance no. 43/2002 on the National Anti-corruption Prosecutor's Office*.

15 *Law no. 161/2003 on measures to ensure transparency in public positions, in the private sector, and on prevention and punishment of corruption* (the so-called *Anti-corruption Package*).

16 *Law no 7/2004 on the Code of Conduct for Civil Servants* and *Law no. 477/2004 on the Code of conduct for contractual employees in public institutions and authorities*.

17 *Emergency Ordinance no. 60/2001 on public procurement*.

18 *Law no. 544/2001 on free access to information of public interest*.

19 *Law no. 52/2003 on the transparency of decision-making in public administration*.

20 The disciplinary commissions are internal bodies established in each public agency, tasked with investigating disciplinary misconduct and establishing the corresponding penalties. The "parity commissions" are internal bodies as well, which review the implementation of accords between civil servants' labour unions and heads of institutions, and participate with a consultative role in the negotiation of such accords. Both institutions have been established by *Law no. 188/199 on the Statute of Civil Servants* and regulated in detailed by *Governmental Decision no. 1210/2003 on the organization and functioning of disciplinary commissions and parity commissions in public authorities and institutions*.

measures have national coverage and addresses civil servants and contractual employees working in virtually all public sector entities. The draft instituted a sound protection regime for public sector employees and also contained several strong provisions which discourage abuse of the mechanism.

The broad inclusive scope of the law is immediately visible in its generous definitions. Thus, Article 3 defines a pubic interest disclosure as "the disclosure made in good faith with regard to any action which involves a breach of the law, of the professional deontology or of the principles of good governance, efficiency, effectiveness, economy and transparency". The reference to general principles is especially salient, as it ensures that the law indiscriminately covers grave criminal offences, as well as contraventions and disciplinary misconduct. The fact that the whistleblower is defined by reference to the definition of public interest disclosure[21] and not vice-versa also ensures maximum law coverage.

Added to the encompassing definitions, the law has extensive coverage of illegalities which may be signalled by a public interest disclosure (as enumerated in Article 5): corruption and fraud offences, breach of legal provisions on conflict of interest and incompatibilities, preferential and discriminatory practices, abuse, incompetence or negligence in office, breach of the legislation governing access to information and transparency in public decision-making and fraudulent or deficient administration of public assets etc. Article 5 should not, however, be interpreted as exhaustive – the principles which govern the law, listed under Article 4 (especially the principle of legality, the principle of the supremacy of public interest, the principle of good governance and the principle of proper conduct) provide coverage for other types of illegalities not named specifically in the legal text.

The Romanian whistleblower protection law is active on both the administrative and judicial tiers, thus guarding against reprisals in the form of both disciplinary sanctions and judicial verdicts. If undergoing disciplinary investigations as a result of blowing the whistle, the employee is assumed to be of good faith, until proven otherwise, which effectively means that the burden of proof for demonstrating ill faith lies with the investigators. In addition, at the request of the whistleblower under disciplinary inquiry, the disciplinary commission or any other similar body is obliged to invite the media and a representative of the whistleblower's trade union or professional association to its sessions. The sessions are public and should be announced at least three working days before they are convened. Otherwise, the report or the disciplinary sanction is null and void. Added to this, when the reported subject is a hierarchic superior of the whistleblower, or is entitled to supervise, control or assess him/her, the disciplinary commission or similar body must assure the whistleblower's protection by concealing his/her identity. The provisions

21 "A whistleblower is the person who makes a public interest disclosure in accordance to letter (a) and is positioned in one of the public authorities, public institutions, or other budgetary units provided for by Article 2" (Law no. 571/2004, Article 3 (b)).

of *Law 682/2002 regarding the protection of witnesses* automatically apply to the whistleblowers in public interest. In addition, in case of labour or working relations' litigations, the court can repeal the disciplinary or administrative sanction given to a whistleblower, if that sanction was decided following the reporting of breaches of the law and in good faith. Finally, the court must compare the extent of the sanction passed against a whistleblower with other sanctions passed in similar cases within the same authority, public institution or budgetary unit, in order to avoid future and indirect sanctions against whistleblowers.

Added to the two-tier protection approach, the law shields employees by taking precedence in its application over any contrary deontological or professional norms (likely to be contained by general or sector-specific codes of conduct, the Labour Code – *Law no. 53/2003*, or the Civil Service Charter – *Law no. 188/1999*).

A commonly voiced concern in connection to whistleblower protection is the danger of abuse by malicious individuals seeking to denigrate their fellow colleagues or the public institution in its entirety (for example, Kinsella 2005). The Romanian law safeguards against the danger of highjacking by conditioning the receipt of whistleblower protection on the existence of good faith. The fact that the good faith is presumed does not render the whistleblower unaccountable – in accordance with the principle of responsibility (Article 4 (c)), any person making a public interest disclosure is required to uphold it with concrete data or clues he/she may have, the lack of which overthrows the presumption of good faith. On the other hand, in accordance with Romania's Criminal Code, the submission of false evidence is punishable by prison from 6 months to 3 years.

Stage 3: Decision-making

The draft law presented by Transparency International Romania to the representatives of the Romanian Government in June 2004 was adopted by Parliament in November 2004 with little, if any, changes to the original text. Key to this achievement was the political homogeneity within the Government and Parliament, both of which were controlled by the Social Democratic Party. This power configuration was decisive in structuring TI Romania's advocacy efforts, which targeted primarily the Executive as the key actor in the decision-making process. The non-governmental experts engaged in a sustained direct dialogue with representatives in the Government, thus ensuring a firm consensus of the parties on the final text, eventually sent for adoption by Parliament. It should also be noted that the requirement of legislative harmonisation to international anti-corruption conventions left little room for bargaining on the draft legal text.

All of these factors have significantly shortened the period for negotiation between decision-makers and ensured that the law suffered minimal modifications during parliamentary debates. Plenary debates in both the Chamber of Deputies

and the Senate were marked by almost no divergence of opinions, which was clearly reflected in the final vote – the law was adopted with 211 votes for and 3 against by the Chamber of Deputies and 78 for and 1 against in the Senate[22].

Stage 4: Implementation

In the case of whistleblower protection policies, successful implementation is very much dependent on the beneficiaries knowing and correctly understanding the measure. Blowing the whistle is essentially an individual choice, which by no means can be coerced by legislation, but merely incentivised through the institution of proper safeguards against retaliation. It is therefore an imperative prerequisite that policies in this field contain a strong awareness-raising component. *Law no. 571/2004* provides for this appropriately – according to Article 11, each public entity has an obligation to harmonise their *Interior Order Regulations* to the provisions of the law. Unfortunately, the complete lack of penalties for failure to comply with this measure has severely impeded the implementation of the law. A recent research report[23] focusing on the state of integrity in Romanian local governments shows that most public entities at the local level have not harmonised their internal regulations to cover issues of whistleblower protection, despite the fact that *Law no. 571/2004* – and, implicitly, the requirement for harmonisation – has now been in force for almost four years. Moreover, interviews with public employees have indicated widespread ignorance on the provisions of the law, suspicion and the recurrence of preconceived ideas. Apart from a lack of sanctions, large-scale unawareness can also be explained by the absence of government-sponsored campaigns to familiarise public sector employees with the provisions of the law and the specific mechanisms of protection.

Implementation of *Law no. 571/2004* was additionally hampered by the lack of an institutional structure to coordinate the process. Being closely connected to the area of ethics and conduct, the most likely institutional candidate for this function was the National Agency for Civil Servants[24]. According to *Law no. 7/2004 on the Code of Conduct for Civil Servants*, NACS is tasked with monitoring implementation and conformity to the *Code* in public institutions, developing studies on this subject and collaborating with NGOs whose mission is to protect citizens' legitimate interests in relation to civil servants. NACS issues a yearly report on the management of the civil service corps, which contains a distinct section on compliance with conduct standards and disciplinary sanctions incurred for failure to do

22 As shown in the transcripts of the parliamentary debates in the Chamber of Deputies and in the Senate.

23 Stan, Valerian, Adrian Sorescu, Andreea Nastase and Gabriel Moinescu. 2007. *The Integrity of Local Public Administration [Integritatea administrației publice locale]*. Bucharest: Didactic and Pedagogic Press.

24 Henceforth referred to as NACS.

so[25]. More importantly, NACS is empowered to investigate breaches of the *Code of Conduct* in public institutions (at its own initiative or at the request of an aggrieved person) and to recommend solutions, including the application of disciplinary sanctions. NACS's attributions of investigating and reporting on ethical breaches could have easily been extended to cover the area of whistleblower protection – unfortunately *Law no. 571/2004* does not include such a provision in its text and the institution was reluctant to supplement the deficiency through its own subsequent regulations[26].

Implementation of whistleblower-protection measures at agency level is also weak. Little, if any, on-the-job training has been delivered to cover this issue with employees. Moreover, until recently there was no ethical guidance available at agency level in the Romanian public system. The situation changed with *Law no. 50/2007,* which introduced an obligation for all public entities employing civil servants to appoint a so-called "conduct councillor", who would provide assistance and advice on conduct norms, would monitor implementation of the *Code of Conduct* and report periodically on the level of compliance. The existence of a conduct councillor can definitely improve ethics policies at institutional level. Unfortunately, the legal provisions have several shortcomings that may limit the utility of this newly established position. First, the absence of a transparent and competitive appointment procedure, including clear, relevant and impartial selection criteria is liable to compromise the councillors' objectivity and credibility from the very beginning. Second, application of *Law no. 50/2007* is inexplicably limited to civil servants, leaving uncovered the equally important category of contractual employees, who are subject to a code of conduct very similar to that of civil servants[27]. Third, the law makes no reference whatsoever to the protection of whistleblowers, which is bound to be a crucial coordinate in the councillors' activity (they can offer information and guidance to employees regarding whistleblower protection measures; they can become recipients of public interest disclosures or be whistleblowers themselves).

The significant deficiencies in the implementation framework explain the general ineffectiveness of whistleblower protection regulations in Romania. Without a coordinated awareness-raising effort and strong institutional mechanisms to oversee implementation, both in central government and at agency-level, the law is not used and therefore not reaping results, despite its tremendous anti-corruption potential. Unfortunately, this state of affairs is not peculiar to whistleblower protec-

25 The reports are issued on the basis of mandatory reports received form public institutions around the country. They are available at http://www.anfp-map.ro/strategii_rapoarte_studii.php?sectiune=Rapoarte&view=23.

26 The most obvious option would have been to require disciplinary commissions to specify in their annual reports cases of whistleblowers. The manner in which these bodies operate is regulated by means of a Governmental Decision, drafted at the initiative of NACS.

27 *Law no. 477/2004 on the Code of conduct for contractual employees in public institutions and authorities* is nearly identical to *Law no. 7/2004*. The similarity is explained in the *Preamble* as necessary to achieve uniformity of ethical standards throughout the public sector.

tion policies, but characterises other anti-corruption instruments as well, and is symptomatic of a purely formalistic approach of the Romanian government, which proved interested only in fulfilling international commitments and less so in the actual impact of an anti-corruption measure.

Soon after the passing of *Law no. 571/2004* TI Romania has engaged in a series of activities aimed at assessing and supporting the implementation of whistleblower protection policies. This has been a constant concern of the organisation in the following years as well.

After the 30-day deadline for harmonisation of the *Interior Order Regulations* (i.e.: January 20th 2005) had passed, TI Romania sent out to all ministries information requests soliciting copies of their internal regulations, where the articles adapted to the provisions of *Law no. 571/2004* would be distinctly indicated. In the same request to the ministries, Transparency International Romania solicited information on the harmonisation of interior regulations in all institutions and authorities subordinate to those ministries.

Only 13 of the 15 Romanian ministries answered our request. The analysis of the answers regretfully showed that the law was only partly implemented in the best of cases. Several ministries[28] simply had not operated any changes to their interior regulations, nor informed their personnel of the protection measures contained in *Law no. 571/2004*. Others[29] had simply quoted formally the law in the preamble or first articles of the *Interior Order Regulations*, without actually changing the contents of these documents. As few as five ministries[30] had actually operated amendments to the regulations and introduced new legal provisions to meet the requirements of *Law no.571/2004*, although only one – the Ministry of European Integration – had done so before the official deadline. More importantly, however, no ministry had actually proceeded to the implementation of the law, by informing the employees about the provisions of the new regulations, mentioning the procedures meant to ensure the protection of whistleblowers and asking the subordinate units to adapt their own interior order regulations.

Apart from assessment activities, TI Romania has supported the implementation of whistleblower protection measures through its *Advocacy and Legal Advice Centre (ALAC)*, mandated to offer legal assistance and counselling to victims and witnesses of acts of corruption, concerning the administrative and legal procedures of complaint. Since 2005, the Centre has set as a priority granting assistance to whistleblowers who notify breaches of law in good faith.

28 The Ministry of Defence and the Ministry of Administration and Internal Affairs.

29 The Ministry of Labour, Social Solidarity and Family, the Ministry of Education and Research, the Ministry of Transports, Constructions and Tourism.

30 The Ministry for European Integration, the Ministry of Culture and Religion, the Ministry of Environment and Water Management, the Ministry of Communications and Information Technology, and the Ministry of Health.

The activity of the ALAC is subject to a set of rules which limits strictly its engagement with clients. Thus, the Centre keeps and monitors only the intimations regarding exclusively acts of corruption or with a high potential of corruption in the public sector. It takes notice of the evidence presented, advises the petitioners, sends the cases to the competent authorities and monitors their solutioning, draws up periodical reports, and makes public the cases monitored. However, the ALAC does not grant legal assistance and counselling to the cases being judged in courts and cannot decide, instead of the criminal investigators or prosecutors, on the existence or non-existence of the acts of corruption, or on any other violation of the laws. The Centre does not mount campaigns against individuals or institutions. In addition, the Centre is not entitled to represent its clients in court and does not draw up procedural documents on its clients' behalf. Moreover, it does not perform criminal inquiries or expert surveys. However, for clients who meet the legal requirements to be considered whistleblowers, the Centre applies a slightly different procedure, namely it issues a document which certifies that the respective person has notified an issue of public interest[31]. This document can subsequently be used by the ALAC client in front of a disciplinary commission or/and a court of law to prove his/her status as whistleblower and therefore benefit from the specific protection measures.

Since 2005, the number of whistleblowers who visited the Centre and were willing to continue the procedures, by offering evidence in support of their petitions, has increased (29 in 2005, 11 in 2006 and 18 in 2007, compared to 2 in 2003 and 3 in 2004[32]). The majority of the petitions submitted to the Centre are made by people who have suffered directly from the abuse or disrespect of the laws or rules of conduct. They are forced to choose between their fear of retaliation and the need to solve a pressing personal problem. In 2005, the Centre had obtained permission to use publicly two successful cases of whistleblowers, which were repeatedly presented in the public awareness campaign run that year by TI Romania, convincingly demonstrating the existence of successful precedents and thus boosting the credibility of the new instrument among public sector employees. In the following years, more cases of success followed[33], some of which are presently used in a new advocacy campaign centred on the issue of whistleblowing[34].

31 See Annex 1.

32 According to ALAC internal records. In the period 2005–2007 around 5 to 10% of total caseload in the Centre was represented by whistleblowers.

33 For a brief presentation of several whistleblower profiles processed through TI Romania's ALAC, please see Annex 2.

34 The campaign, entitled *"Think you can't fight corruption? Now you can make the difference!"* unfolds principally at local government level, and is supported by monitoring reports on the implementation of the law, a series of training sessions with public sector employees, journalists and NGOs, and a dedicated website (www.avertizori.ro). The project is supported by the European Union, through PHARE 2005.

Stage 5: Evaluation

To date there has been no official policy evaluation of whistleblower protection measures in Romania. This was to be expected, viewing the lack of viable institutional structures to coordinate policy implementation and the government's disinterest with the concrete impact of anti-corruption instruments.

The principal avenue by which TI Romania has evaluated the impact of whistleblower protection policies is the experience of the Advocacy and Legal Advice Centre. As shown before, the number of clients who come forward with complaints about illegalities at their workplace is increasing. However, many are unaware of their rights as whistleblowers and learn of these only when they reach the Centre, a state of affairs that only confirms that the implementation of whistleblower protection policies is practically non-existent at agency level. The several groundbreaking cases of success hosted by the ALAC over the years demonstrate clearly that the legislative instrument is correctly constructed and can work successfully in practice. Therefore, decision-makers should prioritise the adoption of subsidiary measures with a potential to increase the impact of whistleblower protection policies.

To improve implementation at agency level, several actions are in order. First, a set of criteria should be developed to be used by the public institutions to harmonise their internal regulations with the provisions of this law, in order to avoid the preferential implementation or reference to certain articles, while passing over others. Moreover, institutions should be obliged to organise training sessions presenting the provisions of *Law no. 571/2004* and promoting the social values defended by it. Furthermore, the new office of conduct councillor, established by *Law no. 50/2007*, should be tailored to have consistent attributions in the area of whistleblower protection. More specifically, conduct councillors should be empowered to receive public interest disclosures and offer assistance to future or actual whistleblowers, while respecting strict confidentiality terms. The reports sent by these councillors to the heads of their respective institutions and to the NACS should include detailed information about pubic interest disclosures, including the follow-up on these cases.

Another reason for critical deficiencies in implementation is the lack of a strong central institution to coordinate the process. The National Agency for Civil Servants can accomplish this role in relation to the civil service corps. More specifically, it should include in its periodic reports consistent information on the state of agency-level implementation of *Law no. 571/2004* and on cases of recorded whistleblowers. Going a step further, NACS could be empowered to supervise and eventually sanction the public institutions, which do not amend their internal regulations according to the provisions of *Law no. 571/2004*. Moreover, NACS's attributions of investigation of ethical breaches should be extended to cover the area of whistleblower protection.

Apart from these measures, several improvements to the legal text are also in order. First and foremost, clear and compulsory administrative responsibilities and sanctions should be established for the public institutions that do not implement the provisions of *Law no. 517/2004*, for example by not harmonising their internal regulations. Sanctions and legal consequences should be established for other instances as well. For instance, if the disciplinary commission or any similar body does not publish the invitation for the media and a representative of the trade union, the law now stipulates that the report and disciplinary sanction given are null and void; it should also stipulate sanctions for the members or chairman of that commission who did not observe the law, as well as the sanctioning procedure. Were such provisions included in the law, the whistleblower would feel safer, knowing that those guilty of violating his rights would be punished. The law should also include clearly defined administrative sanctions for the heads of public authorities who "hunt" minor errors made by the whistleblowers, but do not sanction similar errors made by other employees. This does not mean the whistleblowers cannot be given disciplinary sanctions; it only avoids discriminatory treatments or exaggerated disciplinary measures be taken against the whistleblowers.

Conclusion

In Romania, whistleblower protection measures were relatively easy to introduce, principally owing to a remarkably favourable political context, both inside the country and internationally. The advocacy strategy adopted by TI Romania relied heavily on these contextual advantages, linking the measure tightly to Romania's calendar of measures for EU accession and the harmonisation with international anti-corruption conventions, especially the United Nations Convention against Corruption. Reliance on favourable international pressures, coupled with a direct and sustained dialogue with decision-makers proved to be a profitable advocacy strategy, since the law on whistleblower protection was adopted by the Parliament with almost no modifications less that seven months after TI Romania first presented it to experts in the Ministry of Justice. However, the high hopes generated by this very promising start were not confirmed during policy implementation. Today, whistleblower protection measures are virtually unknown to potential beneficiaries as well as receptors of public disclosures. The lack of appropriate institutional structures charged with overseeing implementation, as well as the absence of sanctions for non-compliance are the main causes which explain the present regrettable situation. More importantly, however, the evolution of whistleblower protection policy in Romania confirms the lack of genuine domestic political will to fight corruption. It demonstrates that although the establishment of an appropriate legal framework is certainly a crucial gain, it is only the first step in building an effective and sustainable anti-corruption effort.

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Annex 1

Document issued to whistleblowers by the Advocacy and Legal Advice Centre at Transparency International Romania

TRANSPARENCY INTERNATIONAL ROMANIA

CENTRUL DE ASISTENŢĂ **ANTICORUPŢIE**

Str. Horaţiu, nr. 12, Bucureşti, cod 010834, România Tel/fax: +4(021) 222-2812
email: centru@transparency.org.ro; http://www.transparency.org.ro

To_____

On _____2005, you forwarded to the Advocacy and Legal Advice Centre the intimation filed under no. _____/_____2005, and notified our Centre according to the provisions of Law 571/2004, Articles 5 and 6, letter i.

In your intimation, you presented cases of violation of the laws, of the ethical and professional code, of the principles of good management, efficiency, effectiveness, economy and transparency. Thus _____
_____
_____
_____

If you wish to continue the efforts meant to increase public integrity in the _____ system of _____, we invite you to the **Centre's office, following scheduling by phone, no. (021) 3177170, Mondays to Thursdays, from 10:00 to 12:00 and 16:00 to 18:00**, for assistance and counselling, according to the enclosed mandate.

From the point of view of the Advocacy and Legal Advise Centre of Transparency International Romania, Protection of whistleblower program, your intimation represents a notification of public interest, according to Article 3, letter a of Law 571/2004.

Counsellor,

_____

Annex 2

Profiles of whistleblowers counselled at the Advocacy and Legal Advice Centre at Transparency International Romania

The Public Radio

Immediately after the entry into force of *Law no. 571/2004* a group of editors working in the Romanian Public Radio signed a protest which was brought to the public's attention. The editors complained of maladministration, inadequate use of financial resources, the breaking of deontological regulations by censorship and preferential and discriminatory practices in the human resources policy. As a consequence of the public protest a parliamentary inquiry commission was set up. The commission finally decided to dismiss the President and the entire Board of Administrators of the Public Radio. The editors who had signed the protest received no disciplinary sanctions whatsoever.

The National Administration Institute

In July 2005, a group of over 30 civil servants of the National Administration Institute within the Ministry of Administration and Internal Affairs drafted a memo, which was sent to the head of the Ministry as well as the ALAC. Following the inquiry ordered by the Minister of Administration and Internal Affairs, the head of the National Administration Institute was dismissed from his position. Despite the organisational culture based on hierarchy and confidentiality, none of the 30 civil servants received any disciplinary sanction, as they were protected by *Law no. 571/2004*.

The Ministry of Public Health

An engineer working at the Technical Office for Medical Equipment within the Ministry of Public Health notified the ALAC with regard to a number of offences perpetrated by the manger of this unit– negligence in office, preferential and discriminatory treatment, abusive and fraudulent use of public patrimony etc. The manager had given the whistleblower a subjective personnel evaluation and had applied successive disciplinary sanctions, ending with dismissal, but also reverted to threats, blackmail and breach of correspondence. The ALAC gave the whistleblower a certificate and assisted him through the legal action brought against the institution for abusive dismissal. The court recognised that the engineer was in fact a whistleblower and consequently annulled all disciplinary sanctions and had him reinstated in his previous job.

The Ministry for Small and Medium Enterprises, Commerce, Tourism and Liberal Professions

A civil servant notified the ALAC of irregularities perpetrated during a public contest for the occupation of several posts within the Ministry for Small and Medium Enterprises, Commerce, Tourism and Liberal Professions. This person had participated in the respective contest and observed that all viable candidates, including himself, were under-evaluated in order to install pre-determined persons in the vacant posts. The ALAC issued a "whistleblower certificate" to this person and is supporting him through the legal action to have the contest annulled. At the moment, the case is still being judged in the administrative courts of law.

NISPAcee Press Information

NISPAcee Press Call

Opportunities for Publishing

NISPAcee Press was established in 2008 by decision of the NISPAcee Steering Committee. NISPAcee Press reflects needs of NISPAcee member institutions and all other non-members institutions form the field of work to publish books in the field of public administration and policy. The publishing program of NISPAcee Press focuses on issues of the region covered by NISPAcee (new EU member countries, non EU member countries in Eastern Europe, countries in the West Balkans, countries of Central Asia, countries in the Caucasus).

The NISPAcee Press acts as a forum for authors internationally, as well as locally and regionally, interpreting problems of the region, and issues of political and economic transition more widely, for an international readership.

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All manuscripts appropriate to the publishing program (should be prepared according to the NISPAcee Manuscript Guidelines available on the NISPAcee web site) could be submited to Mr. Juraj Sklenar, e-mail: **sklenar@nispa.org**.

Recent, upcoming and other relevant NISPAcee publications

Recent NISPAcee publications

Public Policy and Administration: Challenges and Synergies, Selected Papers from the 16th NISPAcee Annual Conference, Bratislava 2008, Eds. Katarina Staronova, Laszlo Vass

These proceedings attempt to provide new and interesting perspectives on the subject for use by both academics and practitioners. This volume brings together new perspectives from a wide range of thinkers - from academics to government officials, from young to more experienced –on the challenges of public policy and administration. This book brings together original and high quality research connected to the main conference theme, but also selected papers from panels and working groups.

The Story behind Western Advice to Central Europe during its Transition Period, Iwona Sobis & Michiel S. de Vries

Approximately 40 billion US $ went to the Central and East European countries in the form of technical assistance during their transition between 1990–2004. This book argues that much of this assistance was ineffective and traces the causes thereof. It follows the money and blame through the aid-chain of recipients, foreign advisors, donor-organizations and responsible politicians. Based on in-depth case-studies it concludes that it is due to the structure in which technical assistance is embedded, that professionals who care, listen, and have clients' interests in mind, flee away, while professionals, who just want to do their trick and make money, without caring about the impact of their work, have entered this business. Because this book combines the research into this problem with an overview of relevant social science theories, it is not only of interest for practitioners in the field but also for bachelor and master students in development studies, public administration, political and social sciences.

Upcoming NISPAcee publications

NISPAcee Journal of Public Administration and Policy, Volume II, Number 2, Winter 2009/2010, Special Issue: Citizens vs. Customers, Guest Editors: Steven Van de Walle, Isabella Proeller, Laszlo Vass

The special issue contains papers from the second Trans-European Dialogue (TED2) organised by EGPA and NISPAcee.

State and Administration in a Changing World, Selected Papers from the 17th NISPAcee Annual Conference, Budva 2009, Eds.: Juraj Nemec, B. Guy Peters

Other relevant NISPAcee publications

Public Integrity: Theories and Practical Instruments, Eds: Patrycja J. Suwaj, Hans J. Rieger

Different theories, mechanisms and instruments supporting public integrity have been put forward in this book. The book collects different approaches to public integrity for better understanding of the concept, ideas, mechanisms and instruments supporting public integrity. The book contains collective work and findings within the NISPAcee Working Group on Integrity

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