Get the Balance Right: Institutional Change in Slovakia during EU Accession and Membership[1]

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Get the Balance Right: Institutional Change in Slovakia during EU Accession and Membership. This study argues that despite the formal dominance of the Slovak parliament over the government as originally laid down in Slovak constitution, the government manages to dominate Slovak constitutional system at the expense of the parliament. Firstly, this happened through an extensive use of government's legislative powers. Later on, the EU accession of Slovakia - predominantly an executive affair - strengthened this dominance and led to 2001 constitutional amendment. Despite another constitutional change initiated by the parliament in 2003, which was to re-establish the institutional balance, the parliament is still unable to control and influence the government with regard to EU matters.
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Just a few months after the signing of the Association Treaty with Slovakia in 1993, the EU warned the Mečiar-led government to be reliable when it comes to the democratic reforms. A year later, in a second *démarche*, the EU expressed its worries about the increasing powers of the executive in Slovak politics, combined with attempts to limit the control role of the parliament. The EU expressly pointed out the fact that the Slovak government was bound by the Association Treaty, and had to meet the Copenhagen criteria in order to get into the EU. In July 1997, the European Commission published its first views on the applicant countries to assess how individual countries were progressing towards fulfilling the Copenhagen criteria. With the exception of Slovakia, all applicant countries were judged to have met political criterion.

According to the Commission's opinion, the Slovak government did not sufficiently respect the provisions of the Constitution; it frequently disregarded the rights of the opposition and ignored decisions of the Constitutional Court. Concerns were also expressed about the way in which the government was using the police and secret services as well as about the lack of improvements in the treatment of the Hungarian minority and the Roma. By way of conclusion, the Commission stated that although the institutional framework defined by the Slovak Constitution corresponds to that of a parliamentary democracy with free and fair elections, the situation with regard to the stability of the institutions and their integration into political life is unsatisfactory[3]. The Luxembourg European Council in 1997 confirmed the views of the Commission. It decided that although formal accession talks would involve all the candidate countries, individual negotiations would start with only those that fulfil both the political and the economic criteria. Slovakia was not one of them[4].

In other words, the exercise of executive power in Slovakia was causing serious concerns in Brussels. Within just a two year period, however, Slovakia managed, to *fulfil the political criterion as laid down by the Copenhagen summit* (Regular Report, 1999, p. 70) due to a complete change of the government, which agreed to abide by democratic procedures (Bilčík, V., 2005; Malová, D. – Rybář, M., 2004). However, the fact that Slovakia managed to fulfil the political criterion did not mean that the power of the government vis-à-vis parliament, diminished.

The main question of this paper is how, and to what extent EU accession and subsequently EU membership influenced the relation between the executive and the legislature in Slovakia. It is argued that the changes of the executive-legislative relations partly resulted from Slovakia's accession process, however the domestic factors, namely the complicated transition to democracy played an important role as well. The key factor was the continued strengthening of executive power that was the direct consequence of changing formal and informal rules.

The first part examines the powers of the legislature and the executive as laid down by the 1992 Constitution, with specific attention paid to the legislative activity of the parliament. The second section analyses the European dimension of the 2001 Amendment, with specific focus on the executive's decrees, which were to accelerate the transposition of the *acquis communautaire*. The third part explores the reaction of the legislature to this weakening vis-à-vis the executive, as well as to EU membership. Finally, it suggests, that the development of executive-legislative relations coincided with the country's accession into the EU. Between 1994 and 2003 this process led first to the informal dominance of the executive, and later, due to

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[3] European Commission, Regular Report on Slovakia's Progress Towards Accession, European Commission, Brussels 1997, pp. 40-41.

[4] Luxembourg European Council 12th and 13th December 1997, Conclusions of the Presidency, Bull. EU 12-1997, points I.5.25-27.

the changes in the constitution, to the formal dominance of the executive. The parliament reacted with the 2003 constitutional law, which increased the formal powers of the parliament over the executive in EU matters. Despite that, it is still the executive, which dominates EU related affairs.

1.1 The Basement: The Government and the Legislature in the Constitution: The Paper and the Reality

The approval of a new Constitution and the arrival of independence in 1993 significantly widened the influence of Slovakia's Parliament. The National Council is a unicameral chamber with 150 members, proportionally elected by universal suffrage (over the age of 21) to four-year terms. According to Article 73/2 of the Constitution, Council members *shall be the representatives of the citizens, and shall be elected to exercise their mandates individually and according to their best conscience and conviction. They are bound by no directives*.

A review of the powers conferred to the National Council shows that the legislature carries much more weight than the other institutions. The Parliament selects members of the government and has the right to hold a vote of non-confidence in the Government and in individual ministers, too. Before the 1999 Amendment of the Constitution Parliament also enjoyed the power to elect and recall the President. In the 1992 Constitution the Parliament also enjoyed important powers over the judiciary. The Parliament elects the Presidents and vice-Presidents of the Supreme Court, appoints judges to regular courts[5] (Article 86/j) and proposes twenty candidates to be members of the Constitutional Court (Article134/2). The National Council also elects and recalls the Chair and Vice-Chair of the Supreme Auditing Office (Article 61/1). Other powers listed in Article 86 include proposing referendums; establishing government departments and other government bodies; approving the budget; and giving consent to contingents of troops to be sent outside Slovakia.

The Constitution also granted considerable powers to individual members of Parliament. Article 80 of the Constitution gave each deputy the right to question the Government or one of its members, or the head of another central body of state administration. The MP must receive a formal answer from the subject of interpellation within thirty days. The potential of this

[5] Highly controversial and criticized way of the election of judges in 1992 Constitution. According to the former Article 145/1 the government proposed judges for election by Parliament for a four-year term. After this time, the government may propose them for re-election for an unlimited tenure. The method of re-election exposes judges to potential source of direct political influence. The 2001 Amendment has shifted the nomination of judges to the newly created Judicial Council, and canceled the four-year term of the first election.

instrument to attack the Government is increased by the provision that only 30 members are required to propose a non-confidence vote. A disciplined majority of 76 MPs can however prevent the recall of any Government member. MPs, parliamentary committees, and the government may propose bills. The President's role in the legislative process consists only of a suspensive veto, which in the original constitutional text could be overturned by the Parliament simply by approving the proposal once again. This provision in reality (particularly 1994-1998) strengthened the already powerful position of the parliamentary majority and the second Mečiar government's power as well. The 1999 Amendment has strengthened the presidential veto by requiring consent of an absolute majority, 76 MPs, for the adoption of a returned bill.

The Slovak Parliament possesses extensive formal powers and the first years after the collapse of the communist regime (through 1994), the lack of party discipline and cohesion meant that the governments in Slovakia operated mainly as assembly governments. This was evident from repeated occurrences of: Parliament opposing Government-proposed legislation; deputies voting down ministers from their own parties; quickly disintegrating coalition governments; and unclear accountability. During 1994-1998, the situation changed completely.

The coalition government, composed of three members, led by the HZDS (The Movement for Democratic Slovakia), gained almost full control over the Parliament due to the implementation of strong party discipline. Indeed, party discipline allowed this cohesive coalition to change the political system to the point where the executive was clearly dominant.

Relative to the power of the Parliament, the position of the executive, as stipulated in the Constitution, is rather weak. The Government is constitutionally responsible to the legislature. Therefore, the life of Government very much depends upon the party in power and extent of party discipline. Moreover, Article 86/f confers to Parliament control over setting up government departments and other governmental bodies. The Prime Minister is appointed and removed by the President (Article 110/1). In accordance with this provision, during the period between 1993 and 1996 President Michal Kováč twice appointed the Prime Minister, once after a vote of non-confidence and second time after the 1994 elections. The informal rules accepted by parliamentary parties mandate that the President designate as Prime Minister the leader of the strongest parliamentary party or coalition.

1.1.1 Legislative activity

The basic output of any parliament can be measured by its legislative activity. In Slovakia, the government is the most active of eligible subjects when it comes to the legislative proposals. Altogether, the statistics from 1994-2005 are showing that 80% of approved legislation in the parliament originates as a government's proposal. The legislative activity of the parliament also reflected the stage of the accession; during the third Mečiar's government, the legislature approved 313 bills in total, during the first Dzurinda's government the number increased to 532. As the executive controlled a majority within the parliament (as in 1994-1998), no checks in the constitutional system were strong enough to stop an overall dominance of the executive within the constitutional system. The presidential veto was only symbolic in this period, with the same simple majority in the parliament needed to override the veto.

Table 1: **Legislative activity (1994-2006)**

Governments 1994-2004	Total of approved bills proposed by the government	Total number of bills approved	Short track procedure	Vetoed by the president
III. Mečiar's government	**287**	**313**	**50***	**32**
I. Dzurinda's government	**406**	**532**	**100**	**72**
II. Dzurinda's government	**458**	**550**	**36**	**51**

* Short track procedure available as of January, 1, 1997.

Another power of the president, to initiate a review procedure by the constitutional court, was used more often. However, the length of the procedure (at least several months until court reached the decision) was not to effectively constrain the government's dominance. While the constitutional review was time consuming, the 1997 new procedural codex of the parliament allowed the executive to ask the parliament for the use of the short track law procedure. It enabled the parliament to approve law proposal without time constraints, literally within the space of a couple of days. The last year of Mečiar's government in the office confirms that new possibility was not just a formality. Out of the 142 laws approved, more than a third (fifty) was approved by the short track procedure.

While the leaving Mečiar's government welcomed the new short track procedure by asking the parliament to use it in more than a third of the approved laws, the new Dzurinda's government, which seized the office in late 1998, took the use of the fast track procedure on another level. In 1998, the parliament, when asked by the executive, approved all legislation by the fast track procedure. The following year this number significantly decreased to 49%, but remained relatively high. Of course, the executive responded to the criticism of low transparency of the fast track procedures by using the excuse of the catch up process with the EU, which forces the government for using emergency techniques if Slovakia is to join the EU with the rest of the group. Yet, the executive's reasoning was not a plausible one. The procedural codex of the parliament listed possible reasons for the use of the short track procedure; the EU accession was not one of them. The executive, with acceptance of the parliamentary majority found other reasons for the use of short track procedure (serious economical problems, the security measures or the possibility of human rights violation).

1.2 The 2001 constitutional amendment: The EU dimension

The 1992 Constitution was prepared at the same time as the future of the common federal state of Czechoslovakia was at stake. The way in which the constitution was born speaks for itself. Just a few weeks for the preparation of the document, two days for a discussion about the proposal and only a short reasoning report attached to the constitution. As following years proved, the Slovak constitution was not always able to solve rising conflicts within and between the constitutional bodies. The problem of insufficient constitutional mechanisms was only enhanced by the personal conflict between the Prime Minister and the President during the period of 1994-1998 (Malová, D., 2001). Once the opposition took the office in 1998, it was clear that the constitution has to undergo a serious review. Not only because of "the further fine-tuning of the democracy and constitutional system, but also because of the international ambitions of the country, expressed in the membership in NATO and EU" (Reasoning Report on the Amendment, 2001, p. 1).

In addition, the EU institutions expected the amendment to the constitution. The EC explicitly demanded changes in the judicial system (Regular report, 2001, p. 81), the EP stressed "that the constitutional reform will be an important success for the country by bringing all legal and administrative reforms needed for the EU membership preparation" (EP resolution on Slovakia's application, 2001).

Although most of the changes in 2001 focused on domestic institutions and their mutual relations, the major modification of Article 7 of the Constitution changed the understanding of the Slovak legal system more profoundly than any other. In the situation when Slovakia was close to fulfil the conditions of accession, it seemed inevitable to solve a classic challenge

of a sovereign country entering EC/EU: the relationship between domestic and EU legal order. What door will be chosen for EU law to enter domestic legal doorstep and to what extent that door will be opened to enable unproblematic functioning of EC/EU law in Slovakia? Those were the main questions to be answered.

In a completely renovated Article 7/2, the makers of the Amendment envisaged that Slovakia might, by an international treaty ratified and promulgated by the law, transfer the execution of a part of its rights to the EC/EU. To accommodate EC/EU legal norms within the domestic system, the article stated that legally binding acts of EC/EU should take the precedence over the laws of the Slovak Republic. Those legal acts that needed to be implemented should be carried by a law or by a Government's decree pursuant to Article 120/2 of the Constitution. Furthermore, another change in Article 7/5 stipulated that international treaties, especially those regarding human rights and freedoms, would have precedence over the Slovak law. With related Article 144 it means, that judges in Slovakia are bound not only by domestic law, but also by international treaties according to the Article 7/2, 5.

The reactions to the amendment approval varied, with both the President and the PM stressing the integration dimension of the amendment. For the Prime Minister Dzurinda the amendment "enabled the move to the EU and NATO"; for the President "it was to positively influence the accession into Euro Atlantic structures"[6]. On the other hand, the opposition parties criticized the amendment, with HZDS describing it as "unprofessional" and against the national interest of the country. The party also warned that in the future it would initiate "such a change of the constitution that will guarantee not only accession ambitions of the Slovakia, but also basic national interest of Slovakia and its citizens"[7].

The spokesperson of the EC welcomed the amendment and said it would increase the speed of the passing and implementation of the EU legislation. The same reaction came from the EC commissioner for the enlargement Verheugen, who said that the amendment is important "because of the need to approve future legislation, which itself is the condition of the legal harmonization"[8].

[6] SITA, 23.2.2001, DZURINDA: Novela ústavy umožní ťah na EÚ a NATO (The Amendment will influence our EU and NATO accession); SITA, 24.02. 2001, PREZIDENT: Novela ústavy pozitívne ovplyvní proces integrácie (The Amendment is to positively influence our integration)

[7] SITA, 23.2.2001, FICO: Vyhlásenie poslanca NR SR R. Fica k novelizácii Ústavy SR (The MP statement on Amendment)

[8] SITA, 24.2.2001, EÚ: Novela Ústavy SR povedie k urýchleniu prístupového procesu (The Amendment is to lead to faster accession)

1.2.1 The Government's Decrees

Another significant change to the Constitution brought by the 2001 Amendment, with a profound impact on executive-legislative relations, has to do with the authorization of the Government, if stipulated by the law, to issue decrees in order to execute the European Agreement on Association and to execute international treaties stipulated in Article 7 section 2 of the Constitution. Another article of the 2001 Amendment stated that duties may be imposed by this type of decree, which changed the classic concept according to which only the Parliament, as a representative body, can impose duties on the persons and legal entities.

The article was implemented by the law[9], which laid down the conditions for the issue of Government approximation decrees. According to the law, the Government can issue decrees in areas such as customs and banking law, financial services, consumer protection or nuclear energy. The two amendments to the law in 2002 (just after few weeks from its passing) and in 2004 enlarged the Government's power to regulate also in the realm of the agriculture and the environment. The 2004 amendment also prolonged the use of the decrees, citing the need of EU legislation implementation as the reason.

How was the new power of government translated into the legislative activity? In 2002 the Government issued 29 approximation decrees, in 2003 177, with 2004 numbers going down to 55. It is clear that the urge to legislate one year before the EU membership was the strongest, mainly because of the agriculture chapter.

Table 2: **Approximation decrees 2002-06/2005**

Year	2002	2003	2004	2005
Approximation decrees approved by the government	29	177	40+15	49

The constitutional amendment from 2001 therefore reflected, not necessarily intentionally, a changing role of the executive in the pre-accession phase. Simply put, the relationship with the EU is to be considered as a foreign affair, therefore within the competence of the Government. The Association Treaty forced an institutional design that naturally laid more weight on the Government, because of the financial and human resources available to the Government, which the Parliament has always lacked.

Another major obstacle for a more active role played by national Parliament in the pre-accession period is the non-negotiability of the *acquis*

[9] The law on Approximation Decrees of the Government No. 19/2002 Col.

package. The "take it or leave it" approach makes it virtually impossible for the Parliament to enter the process (Sadurski, W., 2004). There is also one specific domestic reason for this silent acceptance of the Government's dominance. The Slovakia fell behind significantly in the EU accession during the late 1990's, having been described as unsuitable for membership in the first report by the EC in 1997. The political turnover in 1998 resulted in a radical change in the country's position toward the EU and made it virtually impossible to criticize the catch-up strategy of the Government, which meant to sacrifice the means to the end. With less legitimacy, but more efficiency, the country was able to catch up and join the 2004 wave of the enlargement[10].

Even if the Parliament gave up its legislative power to a certain degree, it did not accept its changing role that easily. One thing is to lose a certain degree of influence to the Government in a situation when it was the most reasonable and efficient solution in order to approve everything needed to implement the *acquis*. The other thing is to cope with a situation, when the majority of legislative decisions are made outside the power of the Parliament, on the EU level. There are several mechanisms of how to ensure the participation of the national Parliament in EU affairs. The opinions in Slovakia varied, moving from the Danish model with a strong Parliament controlling the Executive over the EU affairs, to no role attached to the Parliament over the Executive. The compromise, passed in a form of the constitutional law, enables the Parliament to issue resolutions, which are to constrain government member[11].

1.3 The Parliament Strikes Back: The constitutional law on cooperation between the government and the legislature in EU matters.

According to the constitutional law, the Government is obliged to have its position in EU-related matters approved by the Parliament, or its EU committee (PCEU)[12]. It took more than a year for the Parliament to pass the law, which was to regulate the details of the committee's operation. A

[10] In 2004 the Parliament approved two additional constitutional amendments. The shortest possible amendment to the Constitution was adopted by the overwhelming majority of 133 MPs, removing from the Constitutional text the only existing protection against the defamation by a MP. That leaves MPs with an unlimited freedom of speech while in Parliament session. The second amendment came out as a compromise between Justice Minister and MPs, arguing about the scope of Constitutional change. The main reason for change was caused by the EU membership and the forthcoming EP elections. The Constitutional Court's powers were extended to review EP elections and the Constitution provided for incompatibility of a national Parliamentary mandate and that relating to a seat in the EP.

[11] The constitutional act No. 397/2004 Coll. on the cooperation between the government and the National Council in EU-related matters.

[12] The EU committee consists of MPs from all Parliamentary parties, who are elected proportionally according to the Parliamentary party's group size. However, so called independent MPs were excluded from the committee.

member of the Government informs the PCEU about every proposal of EU legislation and is obliged to attach a preliminary position of the Government about this legislation. It is the committee's decision whether it wants to discuss the position proposal or not. If it decides to discuss it, it can change the Government's position and oblige the Government to follow its opinion. The Parliament is usually left with no role at all; only if it chooses to step into the process, it can discuss and change the position proposal instead of the PCEU.

Although a minister is obliged to follow the opinion approved by the committee or the Parliament, s/he can modify that opinion, but has to inform the committee immediately about the change and reasons behind it. More than a year after its creation, the parliamentary committee for EU matters was still operating without a legal background. It took the parliament more than 12 months to reach the compromise on specifics of the bill. The first year of the committee's existence was guided by the informal rules. From its creation that, after the meeting of the parliamentary party groups, left out of the committee independent MPs, the PCEU managed to operate on provisional, yet functional basis. Paradoxically, these informal rules served as basics for legal provisions regulating the business of the PCEU. Thanks to that, the current legislation enables possibility of substitute members or possibility of a member of the government to send his junior college to attend the PCEU meeting.

The constitutional law and subsequent legislation are, to some extent, replicating the decision-making model used by the government. Every single government member is deciding on matters, which are subsequently binding for the government as a whole. Similarly, the PCEU is approving the opinions in the name of the parliament. On the other hand, the government's decision-making tends to incline towards "resortism", which makes the coordination of government's activities complicated. The PCEU is actually good in concentrating the power; on the other hand, the possibility that it will lack enough material and intellectual resources to be able to review government's positions properly still exists. The key factor for the future of the PCEU will be its ability to cooperate with other parliamentary committees. The cooperation is troubled by another factor, which has to do with the lack of party stability and cohesion. The PCEU was created exclusively as a "party club", which left every fourth MP out of the game. The majority of the parliament accepted the principle of governing of political parties and excluded independent MPs from decision-making when it comes to the EU matters. Yet, such a position is in contradiction with constitutional mechanism of free mandate, which allows MPs to leave their election party and remain within the parliament for the rest of the term. This

problem, however, is more complex and is to be solved only by stabilization of the Slovak political parties.

After first two years of PCEU's existence, we can offer only a preliminary evaluation of newly created mechanism of dealing with Slovakia's membership in EU. First, for an extensive period the PCEU was forced to operate under a preliminary status, due to the inability of the parliament to adopt procedural rules to execute constitutional law. It happened twice that the parliamentary obstruction marred the possibility of procedural approval, the fact that seems to suggest no one was that interested in real execution of constitutional law. Because of missing procedural rules, the PCEU was left with good will of the individual ministers to show up during PCEU's meetings. On November 3, 2005, the committee voiced its dissatisfaction with the ministers' practice to send their junior colleagues in to the committee's meetings without excusing themselves[13]. Finally, the PCEU rarely changed draft position of Slovakia, proposed by the respective ministry. It is yet to be seen, whether the new composition of PCEU, which resulted from 2006 parliamentary elections, will be able to influence the content of the draft opinions proposed by the ministries. Second, the discretion over the EU draft legislation, which is to be subject of PCEU scrutiny, was left on individual ministries, which limits the control role of the committee[14]. Each ministry is to identify priorities on which PCEU will deliberate. Third, more than in discussions on draft legislation, the PCEU was involved in political decisions, especially in areas of future EU enlargement and the European Constitution proposal. Within a few months, the PCEU approved the government's position over the accession of Bulgaria and Romania and on opening talks with Turkey and Croatia. Without extensive discussion, PCEU approved the EU Constitutional Treaty proposal in March 2005 and its ratification in the parliament.

1.4Conclusion

If in late 1990s Slovakia faced the problem of an over-powerful executive, not always keen to respect the formal and informal rules as laid down by the constitution. The following period forced the government "to go to the mattresses", i.e. use fast-tracking legal procedure in order to keep up with the process of EU accession. During 1999-2002, the Slovak government focused on "catching-up" and implemented many legal changes without the

[13] Resolution of PCEU, No. 26, 03.11.2004.

[14] There were only minor concerns expressed by two of the PCEU members. PCEU's report, 22.4.2005.

participation of legislature. The fast-tracking procedure decreased the legitimacy of the accession process. Although EU pressure on the good transposition record of acquis did not disappear after accession, the fear of real sanctions against the country is gone for good.

The 2001 constitutional amendment authorized the government to issue binding decrees in order to execute the European Agreement on Association and to execute international treaties stipulated in Article 7 section 2 of the Constitution. That modified the very nature of parliamentary democracy in Slovakia, as previously - in accordance with the traditional concept of the supremacy of Parliament – only the National Council as a representative body could impose duties on persons and legal entities. This change illustrates the process of erosion of the separation of powers and the weakening of parliament, which lost its exclusive power to legislate by imposing duties.

The Slovak legislature reacted to this fact by approving new constitutional rules, which are set to guide the relations of the executive and the parliament when it comes to EU matters. The solution was influenced predominantly by the type of the legislative-executive relations, the party system model in which the coalition faces the opposition. Because of the disarray of the parliamentary party groups and minority position of the executive, the conflict between the parliament and the government increased in significance and mainly influenced the discussion about the control of the government's members. Much more, this conflict escalated by the opposite positions of two of the coalition parties, SDKU and KDH. While SDKU vehemently pushed forward the limited role of the parliament, the latter was keen on the effectiveness of parliament's decisions on government members. The parliamentary slogan of the opposition these days is "more control over the executive". The question, however, is how the legislature used its prior powers to control the executive. During the current election term, the National Council has never succeeded in recalling a member of the government, even though the government spent most of the election term as a minority government. That confirms a low institutionalised position of the opposition in Slovakia, which is keen to have formal positions and a share in power, but is unable to use its control powers effectively and influence for example regarding national positions within the EU.

The accession and EU membership lead inevitably to tensions between the executive and the parliament. The strengthening powers of the executive, not necessarily just because of the accession, are not unique for Slovakia. The accession only supplements this strengthening with a new reason for existence (Malová, D. – Haughton, T., 2002). Right from the beginning, the accession is about the government, and that is further strengthened by the

nature of accession negotiations. If the EU could be described as a predominantly elite-driven project, such a model is well replicated in the new member countries through the strengthening of the government vis-à-vis directly elected legislatures.

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