

## Pre-Accession Programmes as Example of EU Influence to Enlargement and New Member States Development: Case Study Slovakia

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The accession process to the EU is connected with the fulfilment of the Copenhagen criteria, which is the *conditio sine qua non* of the membership. The European Commission reviews the achievement of the set rules in area of:

- “a) political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- b) economic criteria: a functioning market economy and the capacity to cope with competition and market forces;
- c) administrative and institutional capacity to effectively implement the *acquis communautaire* and ability to take on the obligations of membership”.

Regarding to principles of the enlargement policy, the EU reserves the right to decide whether and when a candidate country had met these criteria and when the EU is ready to accept the new member (from the institutional and legal point of view).

EU funding has been provided to associate countries, to approximate and harmonise their national legislation, but also to support the development to be conform to EU norms and values. On the other side, the EU pre-accession strategy influences not only the whole political and social development in relation to Copenhagen criteria fulfilment, but it has also the impact on the development of sectoral economies in the associate or candidate countries.

After the collapse of the political regime in the Central European countries in the 1990s, the three countries had applied for membership in 1991 (Czechoslovakia, Hungary and Poland). As these countries were not only in political transition process, but also their economy and legal framework had to be rebuild, the pre-accession funds were the instruments able to contribute to successful transition and fulfilment of the accession criteria. In this article we particularly focus on the influence of the pre-accession programme PHARE and its impact on the development of the judiciary and internal affairs sector in the Slovak Republic, while reflecting the aim of the Slovakia to join the EU together with the common applicants from 1991. The Slovak Republic was founded in 1993, while the application was submitted in 1997.

Our research is focused on the verification of the hypothesis, that the Slovakia and its judicial and internal affairs system without the pre-accession support through programme PHARE would not be so effective and fulfilment of the criteria of independent and effective judicial system as part of the rule of law within Copenhagen accession criteria would not be fulfilled on time. The theoretical basis of the research is the historical institutionalism, which goes beyond the formal institutions approach

by expanding the analysis on which and how the institutions matter.<sup>1</sup> We analyse how institutions, procedures, norms and conventions of formal organizational structure may be used to justify the role of EU institutions (and role of the programmes, funding and projects) in the way to the fulfilment of the accession criteria.

### **Pre-accession programmes in judiciary and internal affairs in Slovakia**

Programme PHARE had been established by the ministers of the European Communities in December 1989 as the support programme to the economic and political changes in Poland and Hungary, later it was spread to other countries of Central and Eastern Europe. The programme had developed and after some changes it was transformed from an instrument on support economic transformation of post-socialist countries to an instrument focused on preparation of associate countries in Central Europe to the European Union membership, mainly by concentration of the support provided to two main priorities in *acquis communautaire* adoption:

a) institution building – approximation and support of strengthening of democratic institutions, public administration and organisations, which are responsible for the implementation and proper exercise of community legislation;

b) investment support – adoption of the *acquis* requested, that candidate countries have to approximate their economic sector and main infrastructure to be conform to community norms and standards. Investments were allocated in amount of approximately 70% of the whole PHARE budget.<sup>2</sup>

According to the Treaty of Accession to EU between European Community countries and candidate countries, signed on 16 April 2003 in Athens, the Slovak Republic became eligible to use financial support from the structural operations (structural funds and Cohesion fund) from 16 January 2004. All pre-accession funds (PHARE, ISPA, SAPARD) would be used by 2006 and Transition fund by 2008.

Effective mechanisms of financial support of these project oriented funds in the EC from different sources, including adequate mechanism of pre-financing or another form of support of final beneficiaries, are the fundamental pre-condition of using

1. On historical institutionalism see a.o. P.A. HALL, R.R. TAYLOR, *Political science and the three new institutionalisms*, in: *Political Studies*, 5(1996), pp.936-957; G JAMES, J.P. OLSEN, *The new institutionalism: organizational factors in political life*, in: *American Political Science Review*, 3(1984), pp.734-749; G.B. PETERS, *Institutional Theory in Political Science: The 'New Institutionalism'*, Continuum, London, 2001; K. THELEN, *Historical institutionalism in comparative politics*, in: *Annual Review of Political Science*, 2(1999), pp.369-404.
2. MINISTRY OF FINANCE, *Concept of financial support of projects from pre-accession funds and Cohesion fund for 2004-2006*, Bratislava, 2016, in: <http://www.finance.gov.sk/Default.aspx?CatID=4470>.

other EU financial sources for implementation of such development activities, which could not be implemented due to the missing of national financial sources.<sup>3</sup>

PHARE is focused on support of many areas of social and economic life in candidate countries. From the point of the particular influence and impact, we focus only on justice and internal affairs and the relation between provided financial flows in relation to achieved goals in this area.

*Table 1: Justice and internal affairs priorities and spending in PHARE<sup>4</sup>*

PHARE	2000		2001		2002	
National programme	in mil. €	priorities	in mil. €	priorities	in mil. €	Priorities
Justice and internal affairs	6,5	Fight against corruption and drugs	1,0	Strengthening of judiciary independence	13,1	Schengen Action plan, Custom Office of the SR Dublin convention, efficiency of investigation proceedings and judicial proceedings

### ***PHARE institutions building and the area of justice and internal affairs***

One of the main challenges the candidate countries are usually facing, is the need to strengthen administrative capacities necessary for implementation and application of communitarian, today European Union law. That was also the case of Slovakia, missing personal capacities able to contribute to the achievement of the Copenhagen criteria and especially the rule of law and democracy principle implementation. It was even harder for state administration, while the previous administration had experience from the central oriented institutional system, without specific relation to international obligations. In 1998 the European Commission had proposed to mobilise important personal and financial resources with the aim to help candidate countries through twinning process while using reports and agencies capacities. Huge number of the experts' knowledge, information and experience of EU the member

3. MINISTRY OF FINANCE, *Concept of financial support of projects from pre-accession funds and Cohesion fund for 2004-2006*, Bratislava, 2016, in: <http://www.finance.gov.sk/Default.aspx?CatID=4470>.
4. OFFICE OF THE GOVERNMENT, *From pre-accession instruments to EU structural funds in the Slovak Republic*, Bratislava, 2003, in: <http://archiv.vlada.gov.sk/phare/data/files/498.pdf>, p.31.

states were shared with candidate countries staff through short term and long term traineeships, in total number of spent 29 million EUR in the period of 1998-2000.

Institutions building through twinning projects were stated as main priorities in pre-accession phase. Partnership for Accession in the part “Strengthening of institutional and administrative capacities of candidate countries” was focused on building of modern state administration and increasing of efficiency of public administration, as precondition of next economic development. The core of twinning projects was in ensuring of more effective implementation and application of *acquis communautaire*, particularly on the same level as in the other EU member states. According to this, institutions building represented an important and non-divisible part of the integration process.

Within the Financial Mechanism 1999 there were implemented in period by 2002 four twinning projects in the area of justice and internal affairs. Two projects were governed by the Ministry of Interior of Slovakia and another two by the Ministry of Justice of Slovakia. Twinning project Management and border control was focused on strengthening of the Slovak Republic state borders control and also on the improvement of operational capacity of police corps. This was later reflected in adoption of the new legislation in relation to foreigners, concretely in 2002 there was adopted a new Act No. 408/2002 Coll. of laws on foreigners’ residence and on changes and amendments of some acts.

*Table 2 – Institutions building support in Slovakia<sup>5</sup>*

Twinning projects	1998	1999	2000	2001	2002
Number of projects	14	21	9	8	11
Amount in EUR	7.436.937	16.588.494	4.820.000	6.220.000	8.415.000

### ***Concrete projects implemented in area of justice and internal affairs***

a) Implementation of Action Schengen plan and continuity in infrastructure quality building on future external EU borders were the main objectives in the twinning plan (mainly placed on the Presidency of the Police Office of the Slovak Republic).

The main objective was to focus on strategic and operative assistance in Schengen questions, management of future EU external borders, asylum and visa agenda, revision of information and communication system and delivery of training modules.

5. OFFICE OF THE GOVERNMENT: *From pre-accession instruments to EU structural funds in the Slovak Republic*, Bratislava, 2003, in: <http://archiv.vlada.gov.sk/phare/data/files/498.pdf>, p.43.

Within the project implementation there was financially supported buying of the software for National information system Schengen (and its training centre), SIRENE, for central visa office – FADO equipment (European archive system), including also financial support for buying of night perception instruments and special equipped monitoring cars for the control of the green border. There was also financed equipment buying for the protection of health and security of migrants and foreign and border police corps (specialised equipment and technology for the mobile operative health unit establishment) and some constructional work on international airports in Bratislava, Košice and Poprad (financed by the Slovak Republic government) as well as the providing of the equipment for explosive detection and information technologies.

b) Information system for administration supporting law enforcement in the Customs Office of the Slovak Republic

The PHARE support had focused on the law enforcement and fight against crime in the area of illegal import, export and transit of drugs, psycho-trophic drugs, toxicants, precursors and other dangerous materials, in the area of trafficking and of economic criminality and fraud, which are in the competence of the Customs Office of the Slovak Republic. The support financed from PHARE was delivered to concrete customs offices and there was also financed development and using of the software application and implementation.

c) Support to Dublin Convention implementation

Support was provided through twinning cooperation and was focused on the advice to Ministry of Interior of the Slovak Republic in the area of establishment of independent and second instance body in the asylum proceeding, from the point of the most proper organisational structure conform to the Dublin Convention. PHARE had financially supported delivery of some technical components necessary for the proper implementation of the Council Regulation No. 2725/2000, which governs the establishment of EURODAC system for comparison of fingerprints and achievement of effective implementation of the Dublin Convention.

d) Strengthening of procedural effectiveness in investigation and prosecution

The Twinning team revised the proposal of the Ministry of Interior of the Slovak republic on establishment of the general office of judicial police within the structure of the ministry and preferably within the National office of the Judicial Police (NOJP). Short-time mission of experts had provided file of training modules for implementation of the action plan on strengthening of the work, structure, administrative proceedings and methods of investigation by NOJP. The main objective of the PHARE support as to contribute in financial remuneration was to increase the prosecution procedures effectiveness (through technical assistance and investment support) and also to support development of the effective system of allocation and exchange of information between bodies acting in criminal proceeding, preparation and starting of the work of information system within the General Prosecutors Office.

Table 3 – PHARE sub-programme implemented projects<sup>6</sup>

Sub-programme	Investment support (IP)	Institutions building (BI)	SUM (BI + IP)
Implementation of Action Schengen plan	5,29	0,51	5,8
Information system for administration supporting law enforcement in Custom Office of the Slovak Republic	1,6	2,4	4,0
Support to Dublin Convention implementation	0,59	0,61	1,2
Strengthening of procedural effectiveness in investigation and prosecution	1,2	0,9	2,1
SUM (in mil EUR)	8,68	4,42	13,1

Once using the official interim evaluation, we can see how the PHARE programme in the area of justice and internal affairs was delivered:

„Effectiveness of most of the implemented projects shows good results, especially for the 2004 Sub-programme, where concrete effects could be reported from the Justice Academy twinning light delivering a complex training for judiciary staff and the Justice Academy trainers, the Mediation in raising awareness about mediation when reaching more than 2,000 people, the Prosecution upgrading the Information System of the General Prosecution or the Fight against Drugs via more than 50 activities supporting the implementation of the National Programme for the Fight against Drugs. The 2004 Schengen assistance also brought some tangible outputs, such as in the fight against documentary fraud and inputs into the Schengen Action Plan and the future National Plan for Border Protection in the field of internal borders. The 2005 Schengen intervention managed to provide some first outputs too, such as the audit of Sobrance and a legal study related to illegal immigration and illegal entry. Predictions of implementation of 2005 projects are positive mostly due to their design“.

European experts also predict, that

„the vast majority of the Transition Fund/Facility interventions will contribute to the fulfilment of their respective Wider Objectives and consequently will have a positive impact, also due to their rather broad definition“.<sup>7</sup>

Experts had evaluated also, that there has been successfully delivered a comprehensive training to the relevant target audience on the selected fields of EU Law. The focused training has clearly improved the knowledge and skills of judges, prosecutors, higher court officials in implementation of the EU acquis, as defined in the respective

6. OFFICE OF THE GOVERNMENT, *From pre-accession instruments to EU structural funds in the Slovak Republic*, Bratislava, 2003, in: <http://archiv.vlada.gov.sk/phare/data/files/498.pdf>, p.54.
7. OFFICE OF THE GOVERNMENT, *CEEN Economic Project and Policy Consulting and Euroformes being contracted under the Transition Facility programme*, Bratislava, 2007, in: [http://archiv.vlada.gov.sk/phare/data/att/15281\\_subor.pdf](http://archiv.vlada.gov.sk/phare/data/att/15281_subor.pdf).

Immediate Objective (IO). Also within the training of trainers element had prepared a group of Judicial Academy staff trainers who are now able to lecture on the EU topics. The recently completed Promotion of Mediation should contribute to the respective IO aimed at reduction of court proceedings, as mediation is one form of alternative dispute resolution, which has a potential to decrease the workload of courts. As the project has managed to reach directly more than 2,000 people, especially via its lecturing activities, experts had also predicted the future realisation of the effects of the Transition Fund/Facility intervention in the more frequent use of mediation in practice. The design of the sub-projects focused on the Evaluation of the Workload of Judges and also Arbitration has a potential to decrease the present long proceedings of courts as defined in the respective IO, especially once the network of the Slovak arbitration courts starts to be used for solving, for instance, relatively small cases, and thus diminishing the workload of standard courts. Also the implication of a complex evaluation of judges, including the qualitative ones, should lead to a more even and fair split of judges within the country, and thus decreasing the back-log of cases, especially in big cities (in the case of the former).

Both priorities implemented in the area of justice and internal affairs – institutions building and capacity (instruments, equipment) delivery had been implemented successfully and led to initial and successful start of transformation of the judicial area in Slovakia.

As confirmed above, PHARE was the biggest programme of support in Central Europe, which provided expert help and investment support as the support to pre-accession process and fulfilment of Copenhagen accession criteria. In the period from 2000 to 2006 this mechanism was complemented by two another pre-accession instruments: ISPA and SAPARD. ISPA was oriented to the area of transport and environment and SAPARD for the agriculture and country development. The objective of all pre-accession programmes was to support and help associate countries to fulfil membership criteria as well as to be ready from the point of institutions and infrastructure for proper and effective using of structural funds.

Once Slovakia became EU member in 2004, the programme PHARE had been terminated. The final support provided within the programme was agreed in the Financial memorandum of 2003. Spendings from this program were admissible also in 2004, up to the final fulfilment of individual programme objectives.<sup>8</sup> The money allocated by the Transition Fund used in 2008 also helped to finalise ongoing processes in different areas of social and political life in Slovakia.

The impact of the pre-accession projects to Slovakia in the area of justice and internal affairs has to be evaluated in that times in a very positive way. There were implemented effective know-how transfer, there were installed modern equipment in judicial system and internal affairs system (also in other areas). Support from PHARE had expressively helped Slovakia in transforming to market economy, to achieve

8. OFFICE OF THE GOVERNMENT, *From pre-accession instruments to EU structural funds in the Slovak Republic*, Bratislava, 2003, in: <http://archiv.vlada.gov.sk/phare/data/files/498.pdf>.

defined characteristics as democratic society (from the point of law enforceability, access to justice, proceeding without unnecessary delay etc.) and also in the fulfilment of Copenhagen criteria. Especially without financial support, technical assistance as well as capacity building, this process would be definitely longer, as the allocation of money for transformation in the state budget was lower than the support provided from PHARE.

In area of justice and internal affairs PHARE was mainly focused on support of development of courts all around in Slovakia, preferably its electronisation, development of effective management of border controls including migration control as well as the improvement of police liability to public.

In 2002 Slovakia significantly stepped forward to strengthening of independence and effectiveness of judicial power. Project “Strengthening of Justice” played a crucial role in initiating of electronisation of courts and electronic communication network building. It was focused on modernisations of the courts through software applications and particularly by the implementation of the two following measures:

1. Court administration reform, with the objective to shorten the judicial proceeding length, while introducing effective control mechanism, working system of complaints submission etc.;
2. Installation of new technologies and improvement of existing network of communication between Slovak courts.

In 2002 there were provided and installed ‘1.458 computers, 1.200 printers, licences to server and special software in total amount of 3,4 million EUR in courts all around Slovakia. Installation of information technologies to the judicial system, financially supported from PHARE, had provided the possibility to install and also to use specialised software as the System of judicial management, which helps to improve efficiency of judicial administration and should lead to shortening of the judicial proceeding’.<sup>9</sup>

Even though we evaluate the PHARE impact positive from the point of the Copenhagen criteria for accession of Slovakia to the EU, from the point of the sustainable development this support was only an initial one to changes and transformation of the judicial system in Slovakia. Institutions building was successful however the judicial power is facing especially in last years the new challenges, mainly in the form of decreasing of trust by public and effective using of court administration regarding to quick IT development.

9. OFFICE OF THE GOVERNMENT, *From pre-accession instruments to EU structural funds in the Slovak Republic*, Bratislava, 2003, in: <http://archiv.vlada.gov.sk/phare/data/files/498.pdf>, p.36.

## Sustainability of rule of law beyond the membership?

The historical institutional approach based on ‘the premise that the past influences present-day politics through a variety of mechanisms (Kathleen Thelen and Sven Steinmo), should help us to evaluate not only achievement of the rule of law criteria before the EU membership, but also provide us justification for its sustainability within the time of membership’.<sup>10</sup> In the European Union, especially after the financial crisis (in relation to the fiscal debt of Greece, monetary crisis) and also in relation to the so-called “crisis of values” (rule of law and constitutional crisis in Poland, media restriction and migration crisis in Hungary), the ‘Tavares Report increased debates about the sustainability and review of the fundamental criteria, which were reviewed in the accession process’.<sup>11</sup> As it is implicitly readable in the text of founding treaties, member states are obliged to implement EU law and values upon which the EU is created (Article 2 of the TEU). Once applied the sustainability in relation to the rule of law principle, we need to analyse also on current situation in judiciary in Slovakia as well as the mid-term and long-term impact of the pre-accession programmes on efficiency of judiciary and proper implementation of the rule of law in this sector.

In this relation, there was in 2011 elaborated Analysis of judiciary in Slovakia and its efficiency by 2010.<sup>12</sup> After almost 7 years of EU-membership of the country, the authors had identified still existing several problems of the judiciary, especially in relation to its efficiency, transparency and equality (as the wider interpretation of the rule of law principle). These problems may be divided into two main categories:

- a) independence and impartiality of judiciary;
- b) quality of judges.

In relation to the independence, authors had followed problems identified also by the European Association of Judges (EAJ Istanbul resolution),<sup>13</sup> mainly the interconnection of judicial and executive power in the Slovak Republic and the missing guarantee of independence in exercise of the judicial and later executive power position or vice versa.

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10. K. THELEN, S. STEINMO (eds), *Historical Institutionalism in Comparative Politics*, Cambridge University Press, Cambridge, 1992, p.2.
  11. EUROPEAN PARLIAMENT, *Tavares report on the situation of fundamental rights: standards and practices in Hungary* (pursuant to the European Parliament resolution of 16 February 2012), (2012/2130(INI)), in: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0229&language=EN>.
  12. MINISTRY OF JUSTICE OF THE SLOVAK REPUBLIC, *Analysis, 2011. Analysis of judiciary in the Slovakia and its efficiency by 2010*, Bratislava, 2011, in: [www.justice.gov.sk/Stranky/Sudy/Statistika%20sudy%20a%20sudcovia/analyza\\_sudnictva2011.pdf](http://www.justice.gov.sk/Stranky/Sudy/Statistika%20sudy%20a%20sudcovia/analyza_sudnictva2011.pdf).
  13. EAJ Istanbul resolution, 2011. Resolution concerning the conformity with international standards of judicial independence of the amendments / proposed amendments to the status of judges in the legislation of the Slovak Republic, 2011, [online] <http://www.iaj-uim.org/iuw/wp-content/uploads/2013/06/AEM-resolution-on-Slovakia-2011-eng.pdf>.

The quality of judges as the second area of criticism refers to the setting clear framework for criteria of high moral credibility of candidates to judges, set as one of the obligatory conditions for judge's appointment. The high moral credibility is not enumerated and there is no revision procedure. Once someone is appointed as judge, it is a position with tenure, up to 65 years of age.

Final part of the Analysis identified recommendations to the improvement of judiciary in the Slovak Republic. These recommendations were set to conceptualised the judiciary improvement in two ways:

“1.strengthening of mechanisms for the guarantee of high expert and moral credibility of judges;

2.measures and instruments for effectiveness of judicial management”.<sup>14</sup>

Both identified recommendations were taken seriously, however the time spent for preparation and adoption of necessary legislation was quite long, in comparison to the other EAJ countries. Improper exercise of the power in judicial branch led to a decrease of the public's trust in judiciary.

The regular public opinion surveys confirm increasing tendency to distrust to judiciary, especially in relation to personal qualities of judges, while in many times the same persons served as judges in previous political autocratic regimes.

One of the non-governmental organisations focusing on the transparency in the public sector, especially in judiciary, uses to organise public opinion surveys to identify gaps in perception of the problems in the public sector. In relation to the research topic, the following question was asked: “How much do you not believe in these institutions: courts and judiciary”? The table presents the outputs of the last two surveys, both before the legislative amendments and adoption of new rules in judiciary. They confirm the previous statements on distrust in judiciary in the Slovak Republic and decreasing trust tendency.

Answer	2015*	2013**
I do not believe at all	37%	29%
I probably do not believe	37%	40%
I probably do believe	20%	24%
I definitely do believe	2%	
I do not know	5%	7%

\* the public opinion survey organized as representative quantitative research of the Slovak Republic citizens at age 18+ by VIA IURIS with Focus agency, implemented in term of 1<sup>st</sup> to 9<sup>th</sup> September

14. MINISTRY OF JUSTICE, *Analysis of judiciary in the Slovakia and its efficiency by 2010*, Ministry of Justice of the Slovak Republic, 2011, p.73, in: [www.justice.gov.sk/Stranky/Sudy/Statistika%20sudy%20a%20sudcovia/analiza\\_sudnictva2011.pdf](http://www.justice.gov.sk/Stranky/Sudy/Statistika%20sudy%20a%20sudcovia/analiza_sudnictva2011.pdf).

2015 (1003 respondents, the sample was selected as quota selection based on socio-economic factors: gender, age, education, nationality, municipality, region).<sup>15</sup>

\*\* the public opinion survey organized as representative quantitative research of the Slovak Republic citizens at age 18+ by VIA IURIS (1028 respondents, the sample was selected as quota selection based on socio-economic factors: gender, age, education, nationality, municipality, region).<sup>16</sup>

The distrust to judicial power is connected to the non-reflecting system of court administration. As the reform in 2002 supported from PHARE was at that time very introductive and efficient, the system today is not referring the need from practice. The judiciary in Slovakia is not properly exercised in relation to partial implementation of e-justice system. However the new instrument, as electronic communication is present in new codes of 2016, we have to mention that the whole system which had started to build in 2002, is not finished yet. The biggest identified problem is missing e-file system. Many cases are of hundreds and thousands of pages solely in the written form. There exists not only a threat of loss of some pages, but it also influences the length of procedure in case of judge change or substitution. It is also impossible to review the process, to fulfil the time limits set by law and also to guarantee the implementation of all judicial principles. Our recommendation is oriented on the immediate public procurement and implementation of e-file system, to prevent damages on rights and property, and also to effectively guarantee the whole judicial process in a transparent way. The legislation containing with e-file instrument, however the implementation is postponed. The rule of law principle is then again under threat in the country, but not in such a serious way as meanwhile in neighbouring Hungary and Poland.

## Discussion and conclusion

Within the proposed analysis we had focused on the role and importance of the pre-accession funds and programmes. The Slovak Republic's starting position in the EU enlargement process was complicated. However the application was submitted while Slovakia was integral part of Czechoslovakia in 1991, the split of the country and two governments led by Vladimir Meciar (1993-1998) caused the postponing of the individual country application. The new one submitted by the sovereign country was delivered to the European Commission in 1997. Complicated internal political times and the autocratic regime of Meciar contributed to the postponing of Slovak accession

15. VIA IURIS, *Trust in Judiciary, public opinion research, 2015*, in: <http://www.viaiuris.sk/aktualne/568-dovera-voci-sudom-opat-kl.html>.

16. VIA IURIS: *Trust in Judiciary, public opinion research, 2013*, in: <http://sudcovia.sk/sk/dokumenty/externe/1154-prieskum-pre-via-iuris-sudnictvo-na-tom-este-nebolo-horsie>.

to NATO as well. This delay also influenced and complicated the process of Copenhagen accession criteria achievement and accession to the EU.

As stated in the 1997 Opinion on Slovakia's application for EU membership, the Commission concluded that:

"Slovakia does not fulfil in a satisfying manner the political conditions set out by the European Council in Copenhagen, because of the instability of Slovakia's institutions, their lack of rootedness in political life and the shortcomings in the functioning of its democracy".<sup>17</sup>

The rule of law and the area of judiciary was also criticised in the following way:

"There have been no major changes in this area since the opinion. The number of judges decreased from 1.198 to 1.136. The Constitutional Court continued to play the important role of balancing and preserving the powers of the different organs as defined in the Constitution. However the rulings of the court have not been followed in a number of important cases, and in particular in the follow up to the case, reported in the Opinion, of a Member of Parliament whose mandate was removed in December 1996 and of another, belonging to the SNS party, who was deprived of the seat to which he was entitled following the death of a Member of Parliament and in the case on the decision of the Ministry of the Interior not to include the question on the direct election of the President of the Republic on the ballot paper in the May 1997 referendum".<sup>18</sup>

Similar criticism was presented also in relation to the anti-corruption measures, minority policy and others. Several times the Commission mentioned failing of the institutions, missing capacities and political pressure as obstacles of a regular accession process.

Decisive changes came with the new government elected in 1998 led by Prime Minister Mikulas Dzurinda, who was European and international integration oriented. His governmental programme was based on the pro-integration approach connected with the acceleration of the integration process including the use of all possible mechanisms in the approximation process. The pre-accession programmes and funding not only contributed to the process of country transition, but particularly in the area of justice, rule of law and democracy helped to catch other countries and Slovakia joined the European Union in 2004 together with the other nine applicants. This would not have been possible in the time framework set for the first enlargement of the CEE countries, without the contribution of the pre-accession programmes, mainly in the form of capacity building and institutions strengthening. As the European Commission announced in the Regular Report on Slovakia's progress towards accession in 2001: "Slovakia has achieved stability of institutions guaranteeing democracy and

17. EUROPEAN COMMISSION, *Regular Report from the Commission on Slovakia's progress towards accession*, 1998, p.7, in: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/archives/pdf/key\\_documents/1998/slovakia\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/archives/pdf/key_documents/1998/slovakia_en.pdf).

18. *Ibid.*, p.10.

the rule of law”.<sup>19</sup> It was confirmed several times already from 1999 and finally in the report of 2002 it was clearly concluded that in the area of political criteria, while failing in 1998, the country was now able to manage changes with the strong support of pre-accession programme PHARE and the rule of law was adopted in the requested way in Slovakia.

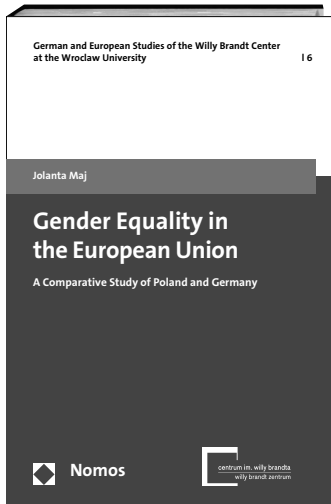
The political criteria for accession to be met by the candidate countries, as laid down by the Copenhagen European Council in June 1993, stipulated that these countries must have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”.<sup>20</sup>

The Slovak Republic fulfilled criteria for accession and became with the strong political support in the country and economical support of the European Commission mainly, the member of the EU from 1<sup>st</sup> May 2004.

Copenhagen criteria are not only explicitly a set of minimum requirements for the membership, in its wider interpretation they represent fundamental values and principles of the EU. These were explicitly stated in the Article 2 of the Lisbon treaty. The analysed rule of law as pre-condition for membership should be overviewed during the entire membership, however without particular support of additional funding from the EU. However it is very complicated, the national governments are liable for the proper implementation of the fundamental principles and values set in the EU founding treaties. These should not be terminated with the termination of the pre-accession support.

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19. EUROPEAN COMMISSION, *Regular Report from the Commission on Slovakia's progress towards accession*, European Commission, 2001, p.15. in: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/archives/pdf/key\\_documents/2001/sk\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/archives/pdf/key_documents/2001/sk_en.pdf).
  20. These were also confirmed in the text of the Charter of the fundamental rights of the EU, proclaimed in the form of common Declaration of the European Parliament, Council and Commission on Nice Summit 2000.

# Gender Equality Policy and the Transformative Power of the European Union



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This book describes the transformative power of the European Union in the area of gender equality policy in Poland and Germany from 2004 until 2012. It gives the readers an insight into the process of implementing EU law and the major actors and variables which influence this process and its outcome. The book includes an analysis of national law from the perspective of the implementation of EU directives as well as interviews with experts in this area. It iden-

tifies the main actors that support or block the law's implementation as well as the sociocultural conditioning of the process of implementation and its final outcome in both countries. This shows that every Member State, due to its unique configuration of national actors and conditions, develops a different final way of implementing the same EU law, and therefore the transformative power of the EU leads to divergent outcomes in different Member States.



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