

POOR POLICY MAKING AND HOW TO IMPROVE IT IN STATES WITH WEAK INSTITUTIONS

1. Poor governance

Ever since Romania entered, after 1989, various comparative performance assessments aimed at rating the transition countries, it scored consistently poorly, placing towards the bottom of the table among EU hopefuls. The European Commission's annual reports evaluating the progress of candidate countries put Romania in last place – after Bulgaria, a country that, arguably, began the transition facing harsher adverse circumstances. There is a growing consensus among local and foreign analysis on what the main culprit may be: the lack of capacity to design, adopt and implement public policies, irrespective of their nature. This has created a sense of drift and uncertainty in Romanian society, and has demobilized many social actors that might have taken the hardships of transition of their own, had they only been provided a stable environment.

This policy shortcoming also affected substantially the pace of social development. Most indicators were inherited at reasonably high levels from the previous regime in all ex-communist countries. UNDP measures human development through a combination of education, health state and economic output indicators. If the literacy rate and life expectancy change only slowly in time – and even those marked a slight decline across the region after 1989¹ – the GDP/cap figures were much more volatile and started the '90s with a downwards trend. The lack of consistent and sustainable growth in the past decade is largely attributable to domestic policy failures. Wrong institutional arrangements, lack of political will and missing implementation skills – all can be grouped under the heading *weak governance*, which explains why some countries have fared worse than others. Romania was definitely a laggard in this respect. One of the most comprehensive evaluations of the governance quality in the nations of the world, run jointly by the World Bank and the Stanford University² only confirms with quantitative data what EU, OECD and other international reports have noted before: that there is a deficit of governance in Romania that spans over many aspects of public life (Fig. 1). Two things are of particular concern in this analysis:

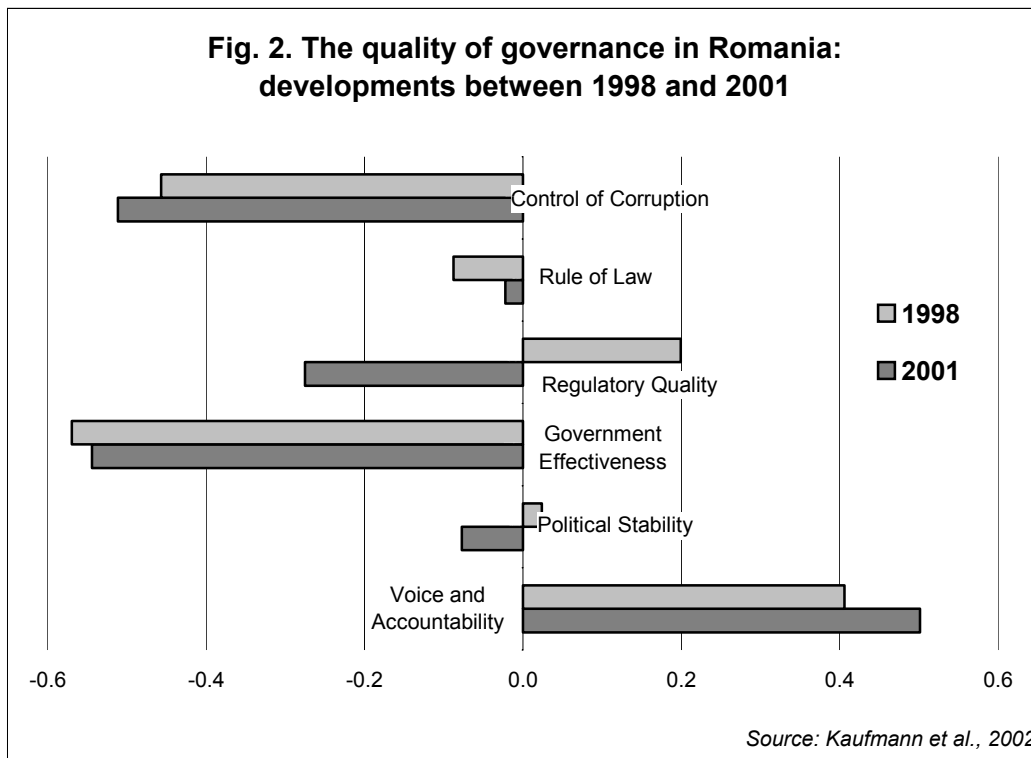
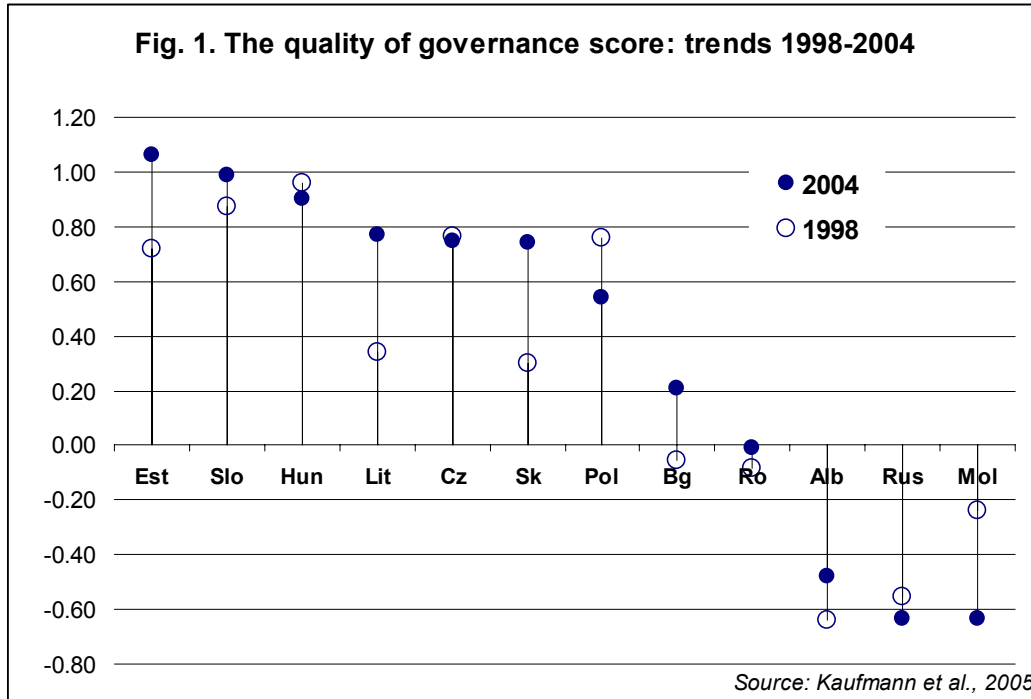
- Romania has, for most part of the transition period, scored last among CEE nations on the quality of governance indicators, being relegated into the second league together with crisis-torn Balkan and CIS countries.
- Not only is the average score is low, but also the quality of governance in Romania improved very little between 1998 and 2004.

No other EU candidate has experienced this combination of unwelcome developments. Disaggregating the total country score shows more precisely where the problem is. While in the political areas (voice, political stability) things look reasonably good, the

¹ True, the pre-1989 figures are questionable in many countries, and in Romania first of all, due to the propensity of the old regime to tamper with statistics.

² Kaufmann, D., A. Kraay and P. Zoido-Lobaton, 2005. *Governance Matters IV: Updated Indicators 1996-2004*. The World Bank and Stanford University, www.worldbank.org/research/growth

policy implementation areas are those that pull the score down: government effectiveness proper and the control of corruption (Fig. 2). In addition, the quality of regulation has worsened significantly between 1998 and 2001. This is an important point to stress when talking about the first decade of transition in Romania: *the country has failed to follow up with sound policies the political liberalization (see voice and accountability in Fig. 2) achieved in the early nineties.*



When something eventually gets implemented and functions, there are usually two reasons why this happens. First, because external conditionality was strong and detailed enough to keep things on the right track. This is the case with certain measures to stabilize and liberalize the Romanian economy, adopted largely in two waves: 1997-98 and after 2001, largely under pressure from the EU. Or, second, when a bad crisis suddenly occurs and forces the implementation of a solution that had been long debated (and lobbied for by local actors) without any political decision being reached. Arguably, this is how some of the most important policy achievements of the last years came about: the passing of the FOIA law pushed forward by a consortium of NGOs in 2001, the local budgets reform, the cleaning up and strengthening of the financial sector after a series of bank and mutual fund collapses which brought the country close to default in 1999. More recently, under strong pressure from the Romanian public a very strict regulation for disclosing personal assets and interests was put in place for dignitaries and civil servants. In some instances a combination of external conditionality and crisis-driven measures may occur, as it was the case with the issue of orphans: strong pressure from Brussels and Strasbourg to do something about Romania's gloomy orphanages, plus a string of scandals related to international adoptions, forced the government into action and a more modern system of foster care was eventually implemented.

The problem is, these two factors can only work in some policy areas. The external or crisis-motivated push may not function with the same efficiency in other areas of economic or social policy, where standardized solutions do not exist (as they do in banking of local finance, for example). Here domestic expertise is necessary in order to filter and adapt locally the pool of international best practices. If the Romanian policy community continues to be weak and non-committed, things will not change for the better. Right now there are obvious problems in this respect, starting from the very design of the policy cycle.

2. The missing policies model

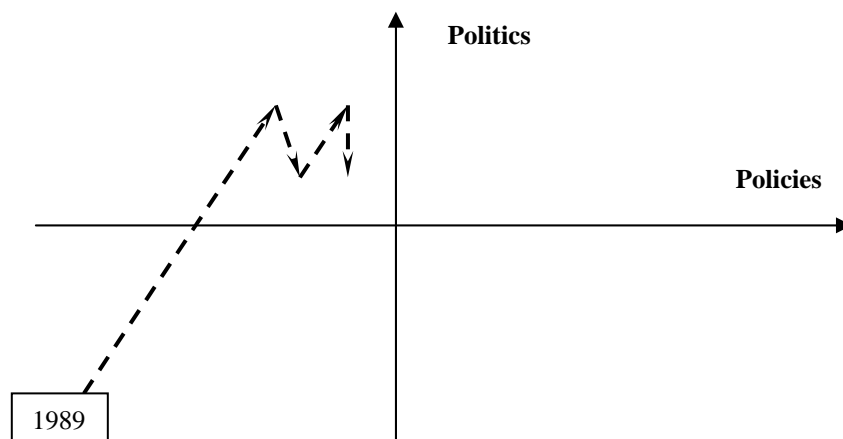
In principle, a robust policy design rests on a rational model of policy making (define the problem, identify and evaluate alternative solutions, choose the optimal one based on explicit criteria, implement it and collect feed back). However, the situation in Romania reminds one of that in pre-modern states, when the lack of data and coherent administrative procedures made large portions of the society "invisible" to the top public officials³. The evolution towards a modern public sector implied a systematic effort to centralize information, categorize and handle data for policy purposes – and hence to "read" the society accurately. However, the attempts to develop rational policies through modern state bureaucracies may be resisted by citizens if there is distrust among them and public officials. The former suspect that every attempt to make social transactions more "readable", record data and measure social processes would lead to more state interference and control, which is regarded as evil. In other words, the citizens' trust in public institutions is not only a result of previous experiences with state intervention, but also a factor that affects the very capacity of these institutions to design and implement public policies. Without measures aimed at enhancing the level of trust in state institutions, it is hard to escape this trap of pre-modernity.

³ JC Scott, 1998, 1998. *Seeing Like a State*, Yale Univ. Press – quoted in Leslie Pal, 2002. "Public Policy Analysis", in Mungiu-Pippidi, Alina, and S. Ioniță (eds) *Politici Publice: Teorie și Practică*. Polirom, Iași, Romania.

After 1989, there has been little progress in this respect in Romania, though the need for effective and rational public policies came to be recognized by all mainstream actors. The consequences are clear. During the communist times both *politics* and *policies*, in the modern, democratic meaning of the terms, were absent. Two simultaneous developments were supposed to take place in the public sphere after the fall of the communist regime, starting from this zero-base situation: the emergence of democratic politics; and the development of design and implementation capacity of public policies. In reality, the evolution on the two axes was uneven (Fig. 3)⁴. After 1989 Romania has been stuck in the upper-left quadrant.

The fall of the old regime determined a rapid move towards political pluralism in the early '90s. The same development failed to occur on the policies axis. If we agree with the distinction that *politics is about getting elected, while policy is about what you do after that*, we can conclude that the main interest has been focused on electoral campaigns, alliances and splits, positioning and re-positioning, and courting the media. All the modest steps towards professionalization in the public life occurred almost exclusively in these areas. That running for office should also involve a competition of programs and policy packages, has still not dawned on Romanian politicians. And, since campaigning is the only proven skill of the political class, it begins shortly after one round of elections are over, consuming financial and intellectual resources which in "normal times" should be at least partially invested in policies. Moreover, every new cabinet has a tendency to downplay the achievements of its predecessors and spend time and effort to re-write a substantial amount of laws and regulations, without running any public program assessment.

Fig. 3. Incomplete development of the public sphere after 1989: the missing policies



One thing the politicians and their advisors have learnt to do decently in the past decade is to use / or discuss about / opinion polls. This is indeed a useful skill in a modern democracy, since poll data, if used properly, are a precious source of feedback on policies. However, in absence of other types of skills and products, the over-reliance on polls reinforces the false impression in politicians that the governing process is only about triangulating and influencing public opinion. This is a natural bias in East

⁴ Following a suggestion by Dorel Sandor, 1999. "Politics versus Policies: How to Succeed in Blocking Reforms", in Rühl and Dăianu, *Economic Transition in Romania: Past, Present and Future*. Cerope, Bucharest.

European elites, made up largely of intellectuals with a soft spot for expressing themselves in public and acquiring the celebrity status associated with it. The whole notion of reform as a list of identifiable steps and procedures, characterized by implementation effort, measurable outcomes and a certain level of efficiency remains still rare, not only among politicians, but also to many in the public. And so does the idea that all the components of the policy cycle are worth studying, not only the initial big idea.

A very important mental barrier that delays the institutionalization of professional analysis is the lack of understanding of the nature of trade-offs in policy decisions. In real life, nothing comes without a cost attached. Well-meant policies have unintended consequences, and some of them may be unpleasant. Good policy researchers always try to make their analysis as inclusive as possible when balancing the costs and benefits of proposed public actions.

The Romanian policy community, irrespective of its professional background, has not yet assimilated this fundamental notion of trade-offs. Which is small wonder: socio-human or engineering subjects were – and still are – taught in universities with the same disregard for the situations when choices must be made between conflicting values that are all legitimate. We still live under the impression that optimal solutions are unique and can be determined by the best experts in the field using the right technical instruments. While one cannot realistically expect that a minister will show the analytical objectivity of an academic in evaluating his/her pet project, independent experts should know better than that. Unfortunately, many times think tank people advance their agenda with the same blindfoldedness of a government official, assuming that incompetence or personal enmity can be the only sources of disagreement. Moreover, for them too policies are mostly about message and positioning in the public space, rather than outcomes.

The “missing policies model” sketched above poses serious problems for the state of social development in Romania. Inconsistent governance creates uncertainty among all social actors, public and private, and shortens their time horizon, with all the consequences that follow: decreased level of trust, proliferation of “hit-and-run” transactions, difficult aggregation of actions that promote the public interest. It has been said sometimes that bad policies can be less damaging than no policies at all. This may not be actually true in many cases, but nevertheless it illustrates the feelings of many Romanian citizens today, after more than one decade of protracted transition: that anything is better than the perceived policy drift, when no party is able to propose a clear course of action. This mood, even if not fully justified by reality, explains why so many voters defect from the democratic camp and begin to vote anti-system. What is sure, though, is that the policy incompetence and/or disinterest of the political class leaves the society in a sub-optimal state, where the total welfare is lower than it could otherwise be.

3. Administrative problems

The Romanian policy community embraces an obsolete, 19th century approach to policymaking, centered mainly in the drafting and passing of legislation. A policy is good or legitimate when it follows the letter of the law – and vice versa. Judgments in terms of social costs and benefits are very rare. This legalistic view leaves little room for feasibility assessments in terms of social outcomes, collecting feed back or studying the implementation mechanisms. What little memory exists regarding past policy experiences is never made explicit (in the form of books, working papers, public

lectures, university courses, etc), but survives as tacit knowledge of public servants who had happened to be involved in the process at some point or another. And since the central government agencies are remarkably numerous and unstable, appearing, changing their structure and falling into oblivion every few years, institutional memory cannot be perpetuated⁵. This, again, is consistent with the other pre-modern features of the Romanian public administration:

- Low capacity to communicate across time and institutions
- Closeness vis-à-vis independent experts and the public opinion
- Learning exclusively by doing, typically in one agency; as a result, there is very little capacity to verbalize and generalize experiences, as well as little capacity to adapt to changing circumstances
- Propensity towards secrecy; by default, information should be kept secret because it constitutes the only comparative advantage of an otherwise dispensable bureaucrat.

The combined action of political uncertainty and low payment – insufficient for sustaining a decent level of life even at modest Romanian standards – creates a civil service which is not only less professional than the one in developed countries, but also, increasingly, displaying a tendency towards *duality*. The majority of its members are old petty apparatchiks or new dropouts from the private sector. Frustrated by their low income but unsure enough of their own skills to cling to their existing jobs, they duly execute daily routines, play the bureaucratic power-games and yield to political pressures coming from above.

On the other hand, a very different strategy is pursued by a small number of people, especially at higher echelons, who regard a stage in the civil service as an investment in their CV, political career, or a step towards a more lucrative job in the private sector or with an international organization; or, sometimes, they may be driven by a less virtuous motivation. Some of them may be educated in the West and thus constitute nuclei of competence in their immediate environment, but their tenure tends to be short and there is no long-term impact on the overall performance of the institutions. These are the persons whom the typical Western donor meet with and talk to, and hence the widespread impression that the situation in the public sector is better than it really is. There may be differences in the level of professionalization and stability between institutions, of course. It has been noted before that the central banks and finance ministries in developing countries, or the Ministries for EU Integration in CEE, for example, are the first to develop “linkage elites” who speak the conceptual language of their Western colleagues. However, their numbers are yet too small to alter the overall picture of the civil service: a mass of disgruntled and ineffective staff punctured with small and transient groups who understand and try to push the reforms forward. Again, giving this dual structure of the Romanian civil service, even Western advisors have a hard time interacting successfully with it. Professional communication and mobility between the two sectors tends therefore to be low.

Some things can be accomplished, especially in the first stages of transition, with uncontroversial measures requiring little administrative capacity of implementation, and thus likely to be promoted quickly by a small circle of senior officials with political

⁵ Ioniță, Sorin, 2002. “Expandable Government: Institutional Flaws of the Central Administration in Romania”, in Mungiu-Pippidi, Alina, and S. Ioniță (eds) *Public Policies: Theory and Practice*. Polirom Publishing House, Iași, Romania.

support and not much help from outside the government (set up of basic democratic institutions, early prices and trade liberalization, dismantlement of old regulatory mechanisms). But as post-communist reforms entered the second stage, where more complex public systems involving many stakeholders should be changed, the coherence of bureaucracy becomes a crucial factor, and inputs from independent knowledge centers may be decisive. In Romania, while the reforms of type one were more or less successfully pressed upon "normal" bureaucracies by the linkage elites and political leaders, the attempts to implement reforms of type two led to bureaucratic sabotage and open backlashes against the initiators. Moreover, when arbitrary and politically-driven purges of the civil service occur, like the one mentioned before, the people who make up the small pockets of expertise are the first to disappear from the public institutions – either because they were the most visibly associated with the political sponsors of reforms or because they are the most professionally mobile anyway.

Entrenched bureaucracies have learned from experience that they can always prevail in the long run by paying lip service to reforms while resisting them tacitly. They do not like coherent strategies, transparent regulations and written laws, but status quo and daily instructions received by phone from above. This was how the communist regime worked, and after its collapse the old chain of command fell apart but the deep contempt for law and transparent action remained a constant of the daily action. This institutional culture is self-perpetuating in the civil service, the political class and society at large. The change of generations is not going to alter the rules of the game as long as the recruitment and socialization follow the same old pattern: graduates from universities with low standards⁶ are hired through clientelistic mechanisms; performance on the job is not measured; tenure and promotion are gained through power struggles.

In general, the average Romanian minister has little understanding of the difficulty and complexity of the tasks he or she faces, or simply judges them impossible to accomplish. Therefore they focus less on getting things done and more on developing supportive networks, because having collaborators one can trust with absolute loyalty is the obsession of all local politicians and the reason why they avoid formal institutional cooperation or independent expertise. In other words, policymaking is reduced to nothing more than politics by other means. And when politics is extremely personalistic, fragmented and pre-modern, as the next section explains, turf war becomes the rule all across the public sector.

4. Elites' habits and values: "amoral familism"

A consistent layer of values and attitudes prevalent in society compounds the previous structural flaws. Personal allegiance is more important than anything else, even the rational self-interest of actors. As a result, the environment becomes even more unpredictable than it would otherwise be. Leaders are supposed to be promoters of their protégées. Clan-based loyalties take precedence over public duties for the salaried public officials. And this behavior can be found not only in the central government, but also in local administration, the political opposition, academia and the social life in general, thus permeating most of the country's elites. Classic studies of Mezzogiorno in

⁶ A problem still underestimated by the Western donors and analysts who are more familiar with other parts of the developing world where, in spite of the social problems and inequality, well-educated elites exist managerial skills up to the Western standards. In spite of the progress of the last decade we are still not in this situation in Romania.

Italy call this complex of attitudes “amoral familism” – when extended kin-based associations form close networks of interests and develop a particularistic ethics centered solely in the group’s survival⁷. This central goal of perpetuation and enrichment of the in-group supersedes any other general value or norm the society may have, which becomes non-applicable to the group’s members. At best, they can be only used temporarily as instruments for advancing the family’s goals – as it happens sometimes with the anti-corruption measures.

Since Romania’s society, like others in the Balkans, still preserves such pre-modern traits, its members are neither very keen to compete openly, nor accustomed to the pro-growth dynamics of modernity. Social transactions are regarded as a zero-sum game; a group’s gain must have been realized at the expense of others. This may be a rational attitude in traditional, static societies, where resources are limited and the only questions of public interest have to do with redistribution. The maximization game in these circumstances is not understood in absolute, but in *relative* terms: a final state may be considered acceptable when everybody loses something, but one’s group loses less than the others. However, this worldview represents a disadvantage in the new circumstances where a positive spiral of growth is possible and the professional success of out-groups should not be regarded as a threat, but a source of general wealth. Designing and implementing welfare-enhancing public policies in this environment – meaning packages of consistent and uniform general rules applicable to everyone – is always a challenge.

In Romania this secular institutional under-development is combined with the inheritance of particular type of totalitarian regime: “sultanistic communism”, as transitologists have aptly characterized the Ceausescu unique blend of Soviet-style bureaucracy and Balkan-style arbitrariness and clannish behavior. The ruling class of the Ceausescu years was made of a number of territorial families fighting for power. Even the formal rules of the communist regime were not consistently enforced. Instead, it was an open secret that the competition among groups consisted in applying skill and power to bend the rules of the games to one’s own advantage. Rent seeking was a generally accepted principle of the organization of public life, and all the individuals down the social ladder were trying with more or less success to replicate the strategies of top echelons. Naturally, the habit of selective enforcement of rules, depending on one’s social position, could not have disappeared without trace in just one decade. In fact, it became one of the main problems today.

After 1990, the newly-appeared political parties were typically made of small groups of people with little or no idea what the task of ruling a country meant. The governing was most often done, more or less routinely, by an uneasy combination of old-time Communist bureaucrats, the only ones who possess the group discipline to accomplish anything, and foreign donors. The emerging civil society has tried to find a place for itself in this equation, while facing more or less the same problems as the rest of the society. As the Romanian communist regime was much closer and repressive than its Central European counterparts, it did not allow the emergence of an alternative elite, or even a decent category of technocrats who could understand and manage policy. In a lagged response to this situation, many civil society organizations appeared in the early ‘90s and tried to make up with their radicalism for the missing dissidence before 1989 – they were, so to speak, intellectuals organizing themselves to oppose a dead tyrant. This was one more factor that delayed the apparition of modern, professional think tanks. And the effect on post-communist politics was also weak, since they did not succeed in discrediting and excluding important political and economic actors linked

⁷ Banfield, Edward, 1958. *The Moral Basis of a Backward Society*. NY: Free Press.

with the previous regime. Researchers of transitions consider this a strong predictor for slow reforms and inconsistent policies⁸.

Pre-modern attitudes towards public affairs do not necessarily mean that one has to be poorly educated or anti-Western. Actually, the correlation is weak between clannish behavior and membership to the old regime's ruling class. The new, post '89 elites, who speak the language of modernity when put in an official setting, can still be discretionary and clannish in private. This disconnection between the official, Westernized discourse abroad and the actual behavior at home in all things that really matter has a long history in Romania. 19th century *boyars* sent their sons to French and German universities and adopted Western customs in order to be able to preserve their power of patronage in the new circumstances – anticipating the idea of the Sicilian writer di Lampedusa that “everything has to change in order to stay the same”⁹. Social theorists even explained along these lines why, before Communism, to be an official, a state employee or a lawyer was much more common among the national bourgeoisie than to become an industrialist or merchant: because, as a reflection of pervasive rent-seeking, political entrepreneurship was much more lucrative than economic entrepreneurship.

This also shows why many times foreign assistance is ineffective in these states, and seldom able to alter the ways of the locals. First, it is no longer an exogenous factor: playing on its interests and provoking specific reactions from the international community has become a component of local politicking¹⁰. Identifying “bad guys” or culprits for non- or simulated reforms ignores the structural problem in these societies and personalizes forces that are deeply entrenched in society. Second, pumping resources through assistance programs without prior analysis of local conditions and networks of influence often ends up not by changing the rules of the local game, but, on the contrary, by raising its stake and consolidating existent power groups. The local elites are tempted to appeal to the international community's interest in local stability (as is the case with the European Union) and stress the presumably destabilizing effects of reduced assistance or tougher conditionality.

5. Policy making problems

Some political will has existed lately to adopt new laws and procedures that can facilitate technocratic policy selection. Much of this seems to have been driven by the carrots and sticks associated with EU accession. But the main problem has always remained the same: a lack of incentives and implementation, at either the political level or in the civil service, geared to strengthening the investment programming and budgeting system to ensure that allocations are made according to appropriate criteria, i.e. criteria that emphasize the consistency of individual projects with high priority national and sectoral objectives. There appears to be a pervasive perception that policy choices remain highly politicized, with ministers who are most powerful and assertive getting the largest allocations and the largest allocations of local counterpart funds for aid-financed projects. Once it is entrenched at the top, this system is reproduced at

⁸ Nelson, Joan, 1995. 'Linkages Between Politics and Economics', in Diamond and Plattner (eds) *Economic Reform and Democracy*, Johns Hopkins University Press, Baltimore.

⁹ "Occorre che cambi tutto perche non cambi niente", in Tomasi di Lampedusa, 1958. *Il gattopardo*. This also explains why diplomacy has been an occupation held in high esteem in our society and practiced quite professionally: because the better you are at it, the more you are able to increase the distance between *pays légal* and *pays réel*, get the fiction accepted by the powerful foreign partners you depend on, and thus maximize the in-group's benefits.

¹⁰ van Meurs, W., 2001. *Risk Reporting 2001/2002 Southeastern Europe*. Bertelsmann Stiftung.

lower tiers of governance. At present, albeit with some notable exceptions, there appears to be weak demand for improved allocative efficiency in the budget process as a whole.

The flawed policy process, probably the most crucial (and ignored) source of poor governance, is characterized by little public consultations, hasty decisions and poor implementation capacity. If at all, the public debates and identification of crucial trade-offs occur *after* policies are (or are supposed to be) implemented, not before, which creates uncertainty, confusion and ultimately mistrust in public institutions. The immediate symptom of this model of governing by default is the large gap between written plans and strategies, on the one hand, and social realities on the other. This flawed decision-making pattern verifies the worst expectations of citizens, as it is very permeable to rent-seeking and typically leads to selective enforcement of rules.

Briefly put, corruption – broadly defined so as to include rent-seeking, state capture, deliberate misallocation of public funds and the exchange of favors that can take even non-monetary forms – is only a by-product of this flawed policy making process. This being so, there is currently little incentive for citizens to participate in making decisions, as long as policies are muddled, inconsistent and ultimately non-binding. Important public actions in society occur mostly by default, by formal laws and regulations being enforced selectively, after different groups struggle for the best possible arrangement (the best menu of rules applicable in their case). What we have is a vicious circle of weak and distrusted institutions and non-participant citizenry.

There is nothing new or peculiar to transition countries in having erratic and opaque policies, an unclear agenda at the top, little public consultation, poor coordination, and a weak civil service overstepping its mandate when making crucial decisions by default in the implementation process. In a book on policies in developing countries, Marilee Grindle argued that one of their obvious characteristics is that the focus of participation and conflict occurs primarily at the implementation or the output stage¹¹. This contrasts with the experience of the US or Western Europe where the focus rests instead on the input or policy-making stage. She identifies two reasons for this difference. First of all, in developing countries there are few organizational structures able of aggregating the demands and representing the interests of broad categories of citizens. When such structures do exist, they tend to be controlled by elite groups. Second, national leaders with influence over the allocation of policy goods tend to discourage citizen participation in the policy process as illegitimate, or at least inefficient. Trapped between weak representation and discouraged participation, citizens/groups are forced to engage with the policy process by presenting individual demands. Therefore "factions, patron-client linkages, ethnic ties and personal coalitions"¹² are the most common mechanisms to access public goods and services.

Mutatis mutandis, the analysis is instructive when translated into the post-communist space. Communism has left behind a tradition of policy making which does not encourage broad and open consultations, considering and costing-out alternative courses of action, or balancing trade-offs. Instead, the agenda is set in a close circle of technocrats and approved by the key political players (who may or may not coincide with the official political hierarchy). However, the formal policy set from the top is merely a basis for perpetual negotiations – vertical and horizontal¹³ – in the public

¹¹ Grindle, M., 1980. "Introduction", in M. Grindle (ed) *Politics and Policy Implementation in the Third World*. Princeton Univ. Press.

¹² *Op. cit.*, p. 18.

¹³ We use here the terminology employed by Janos Kornai in his description of the Communist regime as perfectly unpredictable, where the official plan was in fact only a loose guideline and what happened in

administration and the political system occurring during the implementation stage. Substantial deviations from the original goals are tolerated depending on the informal power of each actor involved. Formal policies do exist, as well as other official norms and regulations, but they tend to be more or less fictional, many times the public institutions being the first to ignore them.

When this system becomes well-entrenched, policies are (i) numerous and volatile (ii) and designed without regard to the feasibility of implementation, since they are not meant to be consistently implemented anyway, but to be used instrumentally as weapons in power struggles among groups. Interests are balanced not during the process of reaching a decision, but in the implementation process, and the most valuable asset in this process is control over the enforcement mechanisms. Horizontal accountability bodies – nominally independent institutions such as the administrative judicial system, public auditors – are therefore weak and politicized. This situation comes close to what has been described in the development literature as *weak governance*, and it is arguably an entrenched reality in many transition countries, particularly in South-Eastern Europe.

Current formal and informal public administrative institutions support ongoing corruption. Public sector corruption in Romania not only consists of the use of a public position for personal gain, but encompasses the widespread infringement of the norms of impersonality and fairness (which should characterize modern public service) to the advantage of more powerful groups. Institutional reforms during transition did not target this discretion specifically, as civil service reform acts prompted by the European Commission include practically no reward or punishment system to promote a change of administrative culture. However, building transparent institutions and a balanced political system in which no group can 'privatize' the administration are the only solution for poor governance.

The political will and management commitment needed to make policy choice more technocratic, i.e. more geared to the strategic importance and economic rate of return of projects, is highly variant across sectors and subsectors. This is to say that the demand for technocratic as opposed to politicized or ad hoc project/program choice at the national level is itself highly variant, but with no strong top-down demand from the highest political levels. On the other hand, incentives to strengthen good public management are generally weak and/or distorted. As in any country, line ministers and other senior political appointees do not appear receptive to new technical approaches that might undermine their own objectives. Thus, at least in some areas, the incentives to staff to identify /prepare /propose high return projects and to prevent bad programs are not high. Briefly put, the constraints to better policy management and evaluation lie mainly on the demand side, both at the national and local levels. The problem is not so much lack of capacity as defined in terms of personnel with adequate technical training (the supply side), though this too may exist here and there, as in lack of demand to use such capacities to "select in" only good policies in the first place. The conclusion is that the poor incentives represent the most important challenge at this stage.

A good test for the quality of the policy process would be to see whether there is in place an adequate strategic framework to guide the line ministries in deciding what program areas to consider in preparing and proposing projects for the budget – which in general is the key area where clashing priorities and trade-offs should be settled. A key challenge for public expenditure management is, of course, how to prioritize competing claims on scarce resources, especially financial resources and implementation

practice was the result of power games and negotiations – Kornai J, 1992. *The Socialist System. The Political Economy of Communism*. Princeton Univ. Press.

capacities, in accordance with national objectives and strategies that should “drive” sectoral and subsectoral objectives and strategies. Individual projects are just tactical instruments that need to be defined in the context of appropriate national and sectoral strategies. The basic answer to this question is that, by and large, Romania lacks a strategic framework for programming and budgeting. The links between policy making, planning and budgeting remain weak, and there is a weak capacity at the center (for example, in the Ministry of Finance) to assess the appropriateness of proposals coming from line ministries against overall strategic policy objectives. There appears to be an ad hoc rather than cohesive and comprehensive approach to management. Monitoring, whether for consistency with policy or on actual outcomes and outputs vis a vis targeted outcome and outputs, is also deficient.

There is no functional institutional platform to aggregate various sectoral policy measures, although this was identified many times as a priority and a lot of technical assistance was devoted to its creation. The inter-ministerial committees of the cabinet function erratically, failing to address cross-sectoral issues in a systematic way. Because they are very numerous and fluid, they are not perceived as important by their supposed institutional members, so many times junior staff with no decision-making power are delegated to take part. On the other hand the General Secretariat of the Government (a permanent body with ministerial status) is in charge of the daily management of the cabinet's agenda, but does not perceive the screening, reviewing or analyzing the individual proposals coming from line ministries as part of its mission. Moreover, it acts only as a dispatcher of legal documents which are sent to ministries for consultation, but does not work with broader, policy documents. As a result, these are absent from the government's agenda, which consist almost exclusively of bits of legislation, or at best compilations put together by individual ministries.

The only mechanism for formal decision-making across sectors remains the weekly meeting of the cabinet. This meeting is overburdened as a result of the lack of preliminary screening and delegation, and can create bottlenecks. For example, in 2003 the government endorsed 2,050 normative acts, at a rate of 40-50 per session. Since no forum for resolving conflicts before they reach the government meeting exists, these sessions may be very long. There is also the risk that some important implications or trade-offs are overlooked, which contributes to the existing tendency to regard the laws as only “general guidelines” for action, and adjust them informally to reality in an ad hoc manner, case by case, in the process of implementation.

The role of the EU as a catalyst for better policy coordination was uneven: it worked in some sectors, but much less for the government overall. As a requirement in this process, the Romanian government has produced a National Development Plan (NDP) for 2004-06, and another one is under preparation for the period 2007-13, along with companion Sectoral Operational Plans (SOPs)¹⁴. These are standard instruments developed by all candidate countries. It might be presumed, therefore, that these NDPs and the SOPs attached to them would provide the national and sectoral strategies to function as frameworks for priority setting at both national, sectoral and sub-national levels, and in turn guide preparation of the budget as a whole. The reality is, however, that the current domestic policies are prepared and implemented absolutely independently of the NDP, which is not so far used for setting priorities, and it is unclear if and when these diverging priorities and methodologies will merge. Instead of being a comprehensive national strategy where the EU intervenes with financial help in some of its chapters, NDP is so far exclusively an instrument for programming EU Structural and Cohesion funds, and there is evidently a rush to produce new projects to fill in the

¹⁴ To coincide with the EU budget cycle.

boxes agreed with Brussels. There is little communication or coordination between those in charge with the resource allocation planning for the NDP and in the line ministries.

On the contrary, the sheer size of the foreign assistance available in the last decade – which has steadily increased, and will increase even more after 2007 – was in a way a strain on the capacity of the public sector. The little strategic capacity which existed in institutions was fully absorbed into the process of programming and running EU projects, and the same happened with the few financial resources which are not consumed in current operations. In consequence, the strategic agenda seems sometimes to be entirely confiscated by the task of dealing with the foreign assistance, coming primarily from the EU, and the main policy target of the authorities becomes the absorption rate of funds. They struggle constantly with their own limited capacities and budgets in order to be able to consume everything which is allocated, a process which is not easy to manage and is bound to become even more difficult as the size of assistance to Romania increases over time.

A cleavage is appearing between the public institutions as a result of these developments: on the one hand, those performing regular tasks which consume a lot of resources but are not eligible for foreign funding (social assistance, education, health, but also "routine" jobs in other sectors); on the other hand, "innovative" tasks (mainly investments, in the eligible sectors) which qualify for extra funding. To the extent that the two categories communicate less and less, following different programming procedures and being administered by different offices, the likelihood of policy integration decreases. This cleavage many times overlaps with – and reinforces – the duality of the civil service mentioned above in section 3: a small number of good professionals at the top, who tend to cluster where the real action is (eligible sectors, working on projects); and a mass of bureaucrats administering the rest.

6. Agenda for reforming the policy process

Under such complex circumstances, approaching policy reform head-on is no easy task, as in most governments (like Romania's) there is no clear institutional focus for this type of intervention. In spite of the significant attention and resources devoted lately to streamlining this process, a clear mechanism for policy-making has still not emerged and important decisions continue to be made in an ad-hoc, almost experimental manner. Sectoral agencies and lobby groups are resistant to introducing generally-applicable, horizontal procedures, and the government's agenda is fatally driven by emergency interventions and crisis-solving. Moreover, it may be really difficult to tackle the problems in all sectors at once, even when the strategic shortcomings are similar, due to the varying timetables and feelings of urgency across sectors (for example, those assisted and those not assisted with foreign funds – see the previous paragraph).

What is more, we should not start with unrealistic expectations about the completely rational nature of the policy process, even in advanced democracies. Most governments have loosely defined and often inconsistent objectives that result from the process by which they were formulated. In coalition bargaining, it is often impossible to obtain consensus on anything more than broad statements of principle, so accuracy and specificity must be sacrificed. Furthermore, the compromise reached in these negotiations would not hold up if the costs and tradeoffs involved were made explicit¹⁵.

¹⁵ David Glover, *Policy Researchers and Policy Makers: Never the Twain Shall Meet?*

http://www.eepsea.org/en/ev-8311-201-1-DO_TOPIC.html

Objective ex ante examination of the feasibility of policies is thus extremely difficult to do in government, because the analyses highlighting costs and tradeoffs threaten the political consensus – and the same logic may apply to ex-post assessments and feedback. However, if a policy process which is perfectly rational and objective is not possible to achieve in reality anywhere in the world, the flaws of the one currently existing in Romania are by comparison so obvious that some steps towards this normative model will definitely increase its efficiency¹⁶.

Given all the objective difficulties mentioned, what can local reformers do, in cooperation with international donors and other local or foreign advisors, in order to change the situation? How can they uproot the entrenched groups with a stake in perpetuating the *missing policies model* described in this report, characterized by muddled strategies, opaque resource allocations and the selective enforcement of rules? What can they do to shift the point where negotiations are made among interest groups from the implementation stage, to the formulation stage of policies, and thus break the vicious circle weak/ineffective policies – low level of public participation and accountability? These are very important questions, because in practice they all boil down to one simple, but crucial one: how can the historical process of fully modernizing these states and societies be accelerated?

A number of general principles can be inferred for orienting the action of governments, local independent policy analysts or international actors. At the very basic level, one useful way of thinking about how to approach the issues of capacity development for better policy management in countries similar to Romania is along the lines suggested by Shah¹⁷. New practices have been slow to be “owned”, adopted and put in practice so far, beyond the superficial level which was strictly necessary to respond to conditionality attached to broader processes to which the country was committed (EU integration, IMF monitorization, etc). This was the case, for example, with the performance-based budgeting reforms. In such situations we should distinguish among:

- *ability* or technical capacity issues that are likely to arise;
- *authority* issues;
- *acceptance* issues.

In this framework, the fundamental point of this report, supported by the arguments in the previous sections¹⁸, is that **the constraints to improved policy management are to be found firstly in terms of low acceptance** (of the legitimacy of new, objective criteria and transparency), secondly in terms of low *authority* (meaning that nobody knows who exactly is in charge with prioritization across sectors, for example) and only thirdly in terms of low technical *ability* in institutions. Historically, both the Communist legacy (over-extended, technically capable state, but with fluid institutions and negotiable rules) and the unfinished modernization before Communism (no weberian, impersonal bureaucracy in place) played a role here.

The direct implication here is that the main problem in our system is not knowledge, but *incentives*. If so, it is unlikely to be fixed by providing technical assistance to institutions

¹⁶ Very much like in physics: even though ideal models do not exist in reality, they are still a good guide for analysis and action.

¹⁷ Shah, A. (1998), *Balance, Accountability, and Responsiveness: Lessons about Decentralization*. World Bank.

¹⁸ And by the conclusions of the research paper, which will explore the influence of party membership on financial transfers at the sub-national level.

(training, exchanges, secondment programs, institutional twinning, new equipment). If at all, capacity building should go hand in hand with serious efforts to increase the accountability of the system. This does not mean that all civil servants are equally capable and efficient; on the contrary, as it was mentioned above, the civil service displays a pronounced *duality* (see sec. 3). However, the way to fix the problem is not merely by training the bottom half of the bureaucracy, but to find a way to measure their performance, make the results public and build pressure for change within the system. For example, when reforming the policy making process most effort should go not into prescribing detailed rules and guidelines about how powerful ministers must run their sectors, which they usually tend to ignore, but into splitting the field of policy-making into relevant areas and stages, and finding the most powerful "natural" incentives for officials to change their behavior in each of these areas.

Prioritization in public programs is fundamentally a political process; it follows from here that a strong demand for efficiency in resource use at the political level is the most important condition for getting that efficiency. As mentioned above, the *demand* for good policy identification and evaluation capabilities is more important than the supply of people trained in technical skills such as cost-benefit analysis or budgeting skills. If a strong demand is present – and the first openings must be made at the political level – the supply can be generated fairly rapidly, especially in ex-communist countries, with their well-educated manpower. But if the demand is lacking, then the supply is irrelevant. This is an important note for the reformers in our region.

By promoting transparency and efficiency reformers make their societies more "readable" as a crucial prerequisite for sound public policy, and break the vicious circle of distrust between citizens and state mentioned above. Even in societies dominated by *amoral familism* (see footnote 7), most citizens know intuitively that having a bureaucracy which is unfair and personalized imposes a tax on everyone's welfare. If things change, the competition for rent-seeking which tends to take place when policies are implemented – getting preferential treatment, usually by obtaining a special regime / or an individual exemption under a general policy – may be replaced by a different type of competition, one for shaping policies at the stage of formulation. While the latter is no perfect guarantee against rent-seeking, it usually tends to be more visible, i.e. transparent, and to involve more numerous and comprehensive constituencies. Thus, a practice that would be labeled today as "grand corruption" may be reduced, in favor of the legitimate practice of balancing social interests.

Everyone benefits in the long run if the policy-making environment is opened up to this second type of competition among interest groups, which is the "right sort" of competition. It may reduce rents and improve the overall quality of institutions. When the number of trading partners increases, a natural demand for better institutions appears even in societies with a high degree of state capture, because good institutions are necessary to manage the risk that arises from dealing with numerous and unknown individuals who do not belong to one's in-group. Greater risk and greater opportunities thus act together to break the entrenched networks of interests, from outside and from inside. Evidence from empirical studies show, for example, that openness in trade is correlated with efficient public goods provision, lower corruption, effective government policies and strengthened rule of law. The same may be true for the market of ideas and policy analysis.

Measuring the effects of policies is crucial for accountability and for strengthening the weakest link of the policy cycle in our region: getting feedback from implementation and using it to adjust programs. Nothing focuses the attention more of the public players than someone keeping the score on what they do. In other words, what is not measured

does not get improved. Arguably, it is very rare when this policy circle really closes at the feedback point in countries like Romania, and the reasons were discussed above: first and foremost, no incentive to institutionalize such feedback (and when assessments are being done, no incentive to pay attention to them and act); and, occasionally, the lack of capacity. Governments should understand that they can avoid almost entirely the capacity problem by putting all the information they have in the public domain. The "expert public" (think tanks, journalists) will pick it up and run such evaluations at zero cost for the budget and, hopefully, at increasing quality over time. They will also disseminate the lessons to the rest of the public, and thus generate the strong political signal for real change.

Governments committed to reform should voluntarily engage in these transparentization exercises, since, if you are a reform champion fighting the inertia of the administration, it is conceptually and practically easier to disclose the information you may have (of mixed quality, scattered across institutions, collected in uncoordinated ways, etc) than to set up a public body to aggregate, analyze and use it for informing the policy process. This also solves the problem of follow up on well-meant reforms, where they fall into oblivion after a while or never get to be implemented in substance because they rely on permanent investments in terms of attention and resources from the government¹⁹. When an independent constituency is created to keep the reform alive, this problem is avoided. Governments which are not committed to reforms should be subject to public pressure to do so.

A feasible action plan for reforming the policy process in such environments by operationalizing the principles outlined above should involve all social partners, including the government and its international partners.

First, the **Government** should:

- Admit that it has a problem with the policy process and recognize its real nature (skewed rules of the game, opacity and lack of incentives, dual bureaucracy); with some help from outside, this can be done;
- Be willing to spend some political capital on a crucial task which cannot be fixed by throwing (donors') money at it, and it cannot be delegated to junior ministers or technical advisors; the top political level must be involved, and seen to be involved;
- In terms of what exactly must be done, accept to open up its own internal processes, wherever possible, in order to create incentives for change and a real drive for action in the administration;

Independent actors (think tanks, NGOs, media) should:

- Regard themselves not only as sources of expertise, but more importantly, as *enablers* – agents working to change the political environment in which public officials operate, by measuring the effects of policies, making the results public, and unleashing the natural pressure of the public to support change; sometimes this means confrontation, not only friendly advice;
- Identify good performers and poor performers, and morally reward the first; across-the-board criticism ("nothing works") is not going to change the situation, but only encourage the adverse selection of poor performers in the public sector;

¹⁹ Tisne and Smilov, 2004. *From the Ground Up. Assessing the Record of Anticorruption Assistance in Southeastern Europe*. Policy Studies Series, CEU Press, Budapest.

- Ultimately, the public should be able to distinguish poor policy performance and penalize it politically, as this is the only signal that elected officials are likely to listen to.

The **international partners** should:

- Dedicate a small portion of their efforts to building up transparency and accountability mechanisms to assess what is going on in key areas government (so, not "information offices" funded by the donors and attached to institutions, but tools to transparentize the inner functioning of the public sector, primarily the decision-making and the resource allocation processes);
- Avoid strengthening the existing tendencies in the government to keep important / or controversial / decisions away from the public eye, by adding their own layer of rules of confidentiality; make all programs evaluations public by definition.
- Avoid aggravating the dual-bureaucracy problem, where the few capable and well-paid civil servants are absorbed into running government programs and projects financed with foreign funds (primarily, EU funds), while important policy areas which are not assisted (social welfare, pensions, education and health to some extent) drop gradually in importance.

Practical instruments for implementing this agenda of accountability through transparency can be:

- Adopt of Freedom of Information Acts and Decisional Transparency Acts ("sunshine laws"), and make reasonable efforts to enforce them. Engage social partners in a sincere effort to monitor how these rules are implemented; reward the performers and punish the laggards.
- As a rule, publish all public procurement contracts and their annexes, once they are signed. There is no better (and cheaper) way to monitor the integrity of the procurement system, which is a major source of problems at all levels of government.
- Register and publish (on website) the votes of all individual MPs, on each bill submitted to the Parliament for debate. Without this, all the discussions about regulating lobby groups, reforming parties or the electoral system are pointless.
- Publish ex officio all the declarations of assets and interests of dignitaries and top civil servants; create such declaration forms where they do not exist and make them mandatory.
- Institutionalize the ex ante budget auditors, and make such audits public for all relevant public institutions during the budget preparation cycle.
- Inform the public and open up the budgetary process to outsiders, with no restrictions; of course, very few people will really participate, but some will, and these are likely to be from among the "expert public", which guarantees the dissemination of information when they consider it relevant; moreover, openness in itself acts as a deterrent for irregular practices²⁰.
- Financial transfers for local governments: use as much as possible automatic, formula-based allocation rules to increase predictability and avoid clientelism at the

²⁰ The *Citizens' Budget Guide*, due in February, is an example of instrument that can be used in this process.

local level; supplement that with competitions for grants decided by outside boards²¹.

This paper (and research project) argues that the most powerful instrument for reforming the policy-making process and improve governance is *accountability through transparency*. Reformers, inside or outside governments, should identify a number of important policy domains where problems are obvious, and try to find the best ways to intervene by leveraging public interest and access, which can create moral pressure for change, which in turn is the only signal top officials pay attention to. If we agree that politicians and civil servants are rational individuals, who respond to the incentives they face, accountability through transparency is the only workable way to increase the political costs of poor performance and reward the good one in societies with weak institutions.

²¹ The research paper due in March will document this problem in more detail and present a set of conclusions relevant for policy action in this area.