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## CONTENTS

### STUDIES AND COMMENTS

- Ivica PAVIĆ**  
Human dignity in the context of prison privatization .....6
- Ramona Mihaela COMAN**  
“The presumption of guilt” in the investigation of tax evasion crimes .....31
- Carmen Oana MIHĂILĂ**  
Counterfeiting and illicit drug sales. Effects on intellectual property rights .....39
- Adriana Elena BELU**  
Transport safety and security from the perspective of the French transport code .....54
- Constanța-Nicoleta BODEA, Augustin PURNUȘ**  
Legal implications of adopting Building Information Modeling (BIM) .....63
- Mihaela-Emilia MARICA**  
Hoeworking / teleworking. Atypical forms of employment: between  
usefulness and precariousness .....73
- Nikola DOŽIĆ**  
CHF denominated loans – a case study of Montenegrin approach .....86
- Bazil OGLINDĂ, Cristina OLARIU**  
Risky business: distribution of risk in contracts for international sales of goods ...103
- Cătălin-Radu PAVEL**  
Constitutional references related to the guarantee of the right of a person  
aggrieved by a public authority in Romania .....114
- Harsh PATHAK**  
A perspective on joint venture: an international business expansion strategy  
and legal implications with specific reference to India .....130
- Alina POPESCU**  
The right to information and the capital market .....138
- Raluca TOMESCU**  
Defending a state of affairs through a lawful action.  
Possession and possessive action .....147

<b>Roxana Maria ROBA</b>	
Considerations regarding the rights of employees who were dismissed unlawfully .....	155
<b>Alexandra Raisa ROȘCAN</b>	
Some considerations about the application of the more favourable criminal law regarding deeds on trial in some countries of European Union.....	163
<b>Armands SMANS</b>	
Legal regulation on handling criminally acquired property and its impact upon business environment – the experience of Latvia .....	179
<b>Dragoș Lucian RĂDULESCU</b>	
Aspects of discrimination in salary. Study case .....	201
<b>Valeria GHEORGHIU</b>	
Illegal use the own image right in virtual space .....	210
<b>Sónia de CARVALHO</b>	
A quiet and discrete revolution in the Portuguese courts: the twilight of the employment contract? .....	221
<b>Marta-Christina SUCIU, Mina FANEA-IVANOVICI</b>	
The European digital library (Europeana). Concerns related to intellectual property rights .....	244
<b>Ana-Maria Iulia ȘANTA</b>	
Criminal cartels.....	260
<b>Adriana DEAC</b>	
Romanian Law no. 151/2015 on the insolvency of physical persons. Participants in insolvency proceedings .....	268
<b>Wioleta BARANOWSKA-ZAJĄC</b>	
The economic activity of local self-government entities as public entities in Poland – exception or rule?.....	281
<b>Adrian SIMION</b>	
MiFID II and savings .....	296
<b>Ina BALUKJA</b>	
Evolution of corporate finance methods .....	306
<b>Cătălin-Silviu SĂRARU</b>	
Administrative law science in Romania.....	313

## Independent bodies as a model of organization of the public administration

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### **Abstract**

*We live in a time when the number of regulatory bodies or independent agencies or so-called parastatal organs is continually growing and gaining momentum as a part of a country's system of governance. In particular, in the Republic of Macedonia, in the period from 2002, around 24 independent organs have been established with the legislation, which shows that this is not only an actual topic for research and writing but also that there is an actual need for an in-depth study for the purpose of establishing these organs. Simply put, is their establishment in the legal system a necessity or a trend. Hence, the subjects of research in this paper are the reasons or the factors that contribute to the formation of the independent organs, their position in the system of government organization and the distinction between the independent state organs, the regulatory bodies and the independent organs of the state administration. Taking into consideration the fact that through the formation of these organs a new model of exercising public authorization has been developed, a question whether these organs are a new model of organization of the public administration is being raised. A model that enables the decentralisation of certain competencies for which have been the state administration concern so far, and for which the state administration now becomes only an execution controller. All this in order to enable a more efficient, more qualified and depoliticised execution of the public interest services. To achieve the aim of the research in the paper we used historical method, comparative method and normative method.*

**Keywords:** *independent organs, regulatory bodies, agencies, public administration, separation of powers.*

**JEL Classification:** K23, K33

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### 1. Reasons for a reorganization of the public administration - specifically the state administration

The administrative organs are not a once and for all determined category, but a variable that is constantly conditioned and dependent on the total social, economic and political developments in a country, and also on the European trends, conditions and standards for development of the public administration. The administrative organs exist and are established primarily for the purpose of immediate implementation of the laws, which, as we know, are constantly changing. Therefore the administrative organs also need constant adjustment to the new requirements, in a manner that the way the tasks are carried out will be modernized through institutional reforms which also imply changes of the organizational structure of the administrative system.

“The administrative systems themselves are in essence real and open, dynamic systems, and not closed and abstract legal constructions”.<sup>5</sup> As the role of the state changes, the state administration receives new competencies. There is a strong parallel between the increase of the tasks of the state, as it becomes a carrier of a large number of socially necessary activities, and the increase of the competencies of the administration. It becomes responsible for solving issues in the field of economy, transportation, communal services etc. The implementation of these competencies requires implementation of vertical and horizontal reorganisation. The horizontal is implemented in a way that for each new area for which the state administration will be determined as competent, a new department or another state administration organ is formed, while the goal of the vertical organisation is to divide the administrative system into several levels. As Professor Lilić emphasizes, “the administration nowadays appears as an initiator and a coordinator of socially necessary and useful matters (in health, education, transportation, communications, social services etc.), while the attributes of the government, although not completely diminished, no longer constitute the basic content of the administrative activity of the state. With this, the administration functions become not only more numerous, but also increasingly complex and difficult”.<sup>6</sup> This also affects “the social regulation implemented by the administration which now becomes a basic social process and an important assumption for the economic efficiency, cultural development and general social progress in a developed industrial and urbanized society”.<sup>7</sup>

“It can be said that the basic social function and social role of the administration, that is - of the state, consists of the fact that by enforcing its activities to contribute to the general well-being of society, it provides public

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<sup>5</sup> S. Lilić, *Državna uprava-instrument vlasti ili javna služba*, at M. Damjanović, *Uperedna iskustva državnih uprava*, Beograd, 2006, p. 44.

<sup>6</sup> S. Lilić, *Poslovi državne uprave u zakonodavstvu i novom ustavnom Srbije*, p. 1, the document is available online at [www.uologa](http://www.uologa) na državna uprava (consulted at 10.04.2018).

<sup>7</sup> Compare: E. Pusić, *Društvena regulacija*, Zagreb, 1989, taken from S. Lilić, *Poslovi državne uprave u zakonodavstvu i novom ustavnom Srbije*, p. 1, the document is available online at [www.uologa](http://www.uologa) na državna uprava (consulted at 10.04.2018).

services to its citizens. The administration implements the general objectives of the modern society by enforcing the public interest (bono publico), as interests that stand above the individual (personal or group) interests".<sup>8</sup> Weber emphasizes the dual role of the administration, as an instrument of political power and as an organization for implementation of the activities of public interest. As early as 1905 he noticed the difference between the administration as a service that encompasses education, communal services etc. and the administration as a government.<sup>9</sup> For the acceptance of the concept of state administration as an expert service, the judicial practice of the Council of State in France, which decides on which of the matters are considered as administrative, played a significant role. Thus, in 1905, in the Terrier case (Terrier - removal of the stray dogs from the streets of the city of Paris), it was confirmed that all the matters related to the organisation and functioning of the public services are included within the administrative activity.<sup>10</sup> This decision was the basis for the theoretical concept of the administration as a public service, a theory that was advocated by the famous French theorist Léon Duguit, who in 1913 declared that the basic task of the state is no longer exercising authority, but performing public services. Maurice Hauriou, however, believes that the public service is "just one of the most effective procedures used by the administration for performing its mission".<sup>11</sup>

From the more recent authors, Professor Dimitrijevic points out the three fundamental values of the modern administration: democracy, efficiency and the rule of law.<sup>12</sup> "The objectives this modern administration needs to achieve are: openness and transparency, service and quality, expertise and ethics".<sup>13</sup> He talks about a new model of administration, the so-called "new public administration".<sup>14</sup> This public administration model emerges in the middle of the 20<sup>th</sup> century and derives from the previous model of the administration as a public service. "What characterizes this approach to the administration is an equal treatment with citizens, a request for social justice, responsibility for its own actions and for the actions of the subordinates, execution of public programs and giving priority to the needs of the citizens before the needs of the administrative organs and organizations. All of this requires certain changes which cover several key issues: decentralisation, devolution, time limit and deadlines for project execution, programming projects through projects, contract as a legal basis for many administrative activities, a new valuation system and values (responsibility of the administration, legitimacy, social justification, legality, protection of citizens' rights, fair procedure etc.), permanent organizational development, dissemination of responsibility to the citizens. These

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<sup>8</sup> S. Lilić, *op. cit.* (*Poslovi državne...*), p. 2.

<sup>9</sup> See also: D. Milenković, *Javna uprava* (skripta), Beograd, 2011, p. 35.

<sup>10</sup> *Ibid.*, p. 36.

<sup>11</sup> Maurice Hauriou, *Precis de droit administratif et de Droit general* Paris, 1921, p. 144, taken from D. Milenković, *op. cit.*, p. 37.

<sup>12</sup> Predrag Dimitrijevic, *Upravno pravo*, Nis, 2008, p. 79.

<sup>13</sup> *Ibid.*, p. 79.

<sup>14</sup> *Ibid.*, p. 81.



ideas are anti-bureaucratic and they mark the New public administration".<sup>15</sup> As a matter of fact, the new public management advocates rationalisation of the public sector, separation of types of administrative organisations according to the type of affairs of those that are in charge of their formation and monitoring of the public policy and those that perform the tasks and creation of small administrative organisations, with clear responsibility for the result.

All this is conditioned by the simple reason that the bulky administrative apparatus must be efficient, economical and effective and distinguished by its openness, dynamism, resilience, adaptability, flexibility. The introduction of market criteria in the actions of the state, and the introduction of a new managerial culture - a culture of responsibility, innovation, cost awareness and progressive development is attributed to this model.<sup>16</sup>

Having this in mind, we can conclude that in the evolutionary development of the public administration models there are models of classical state administration, a concept of administration as a public service, a model of "new public administration" also known as new public management or a model of a regulatory state known as "agencification".

## **2. The independent organs as a model of public administration organization**

Consequently, we can conclude that in order for the administration to adapt to the new social developments, the reforming cuts can not be separated from the administration. These reforms can refer to the organisational structure, to the personnel in the administrative organs, to the manner of the execution of their competencies etc. However, the most important are the institutional reforms that according to theorists may refer to:

- decision-making: adoption of means to improve the policy making, forecasting, programming, budgeting, information processing, coordination, control, development etc.
- structural rearrangement: planning new organisations and institutions, laws, communications and control models
- procedures: a change of methods, processes, techniques, functions, roles and contacts
- communications: reassessment of decisions, information, results, standards, management, values etc.
- adaptability: finding solutions to changes in the environment, research, innovations, failures, crises, transformations etc.<sup>17</sup>

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<sup>15</sup> *Ibid*, p. 81.

<sup>16</sup> Ivan Kopriv, *Структура и комуницирање во управни организации (Structure and communication in administrative organizations)*, Zagreb, 1999, p. 267.

<sup>17</sup> N. Grizo, B. Davitkovski, A. Pavlovska-Daneva, *Јавна администрација (Public Administration)*, Skopje, 2011, p. 412.

“There is a growing tendency to abandon the abstract normativistic approach to the administration as a “set of organs that perform administrative power” and an increasingly stronger orientation towards a pragmatic approach based on an empirically verifiable principle that a “good” administration is the administration that will prove to be “successful”. In that sense, a successful administration is the one that will accomplish its goals in the most efficient, economical and most rational way, taking into account that the basic goal of the administrative action is to achieve and to protect the basic human rights and freedoms on the one hand, and to increase the state welfare on the other hand”.<sup>18</sup>

In order to achieve these goals and reforms in the public administration, there is an increasing trend in the so-called “agentification”. This trend also known as a model of regulatory state has been intensified at the end of the 19<sup>th</sup> and the beginning of the 20<sup>th</sup> century. The model is characterized by separating special autonomous organs from the administration organs or by establishing completely new independent organs. The reason for this is that the state administration organs should allocate those competencies that can be performed by another organ in a more efficient, better and more professional manner. By doing so, the state will only have the role of a controller over the legality of the performance of these organs, which on the other hand will remain having financial, organizational and personnel independence from the other holders of power for the legislative, judicial and executive branches.

At the same time, the regulatory state is based on the idea of entrusting the regulatory matters to special bodies or organizations that are professional and isolated from possible political pressures, which would ensure adequate market competition among the public services providers, that is, the protection of the special rights of users and employees.<sup>19</sup>

### **2.1 The beginnings of the independent organs/agencies and the reasons for their appearance**

The “agentification” is undoubtedly a new concept of organisation of the public administration.<sup>20</sup> In the period from 1990 to 2005, more than 200 regulatory

<sup>18</sup> S. Lilic, *Drzavna uprava instrument vlasti ili javna sluzba*, Uporedna iskustva drzavnih uprava, Beograd, 2006, p. 39.

<sup>19</sup> G. Majone, *Regulating Europe* London New York: Routledge, 1996, G. Majone, *From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance*. *Journal of Public Policy* 17 (2): 139-167, taken from Anamarija Musa, *Agencifikacija kao nova i dodatna centralizacija-hoce li se Hrvatska ikada moci decentralizirati*, „Hrvatska i komparativna javna uprava”, 2012, no. 4, p.1197-1224.

<sup>20</sup> Musa, Anamarija, *Agencifikacija kao nova i dodatna centralizacija - Hoće li se Hrvatska ikada moći decentralizirati*, Savjetovanje Instituta za javnu upravu, Lokalna i regionalna samouprava između gospodarske krize i članstva u EU, 16. 11. 2011, Zagreb, HGK, available at <http://www.slideshare.net/ijuzagreb/anamarija-musa-agencifikacija-kaonova-i-dodatna-centralizacija> (30. 10. 2012.), Koprić, Ivan, Musa, Anamarija, Đulabić, Vedran, *Europski standardi regulacije službi od općeg interesa: (kvazi)nezavisna regulacijska tijela u izgradnji modernog kapitalizma*, Hrvatska javna uprava, no. 3, 2008, p. 661, taken from Dr. sc. Edita Čulinović Herc.

agencies in the world were established.<sup>21</sup> Although the beginnings of these agencies are primarily from the Anglo-Saxon countries, they are now part of all administrative systems. The agencies are considered to be an American invention from the time of the great economic crisis and the establishment of a policy of state interventionism, and in Europe they expanded during the 1990s. The idea that preceded their appearance is that the independent agencies can ensure and guarantee the application of specialised knowledge in certain areas during the implementation of the state policy in a best possible way.<sup>22</sup>

Given the enormous increase in the competencies of the public administration organs in the fields of education, science, social protection, health care etc., it is no longer sufficient for all of these competencies to be exercised only by the organs that are part of the state administration (ministries, administrations, directorates, bureaus etc.), but there appears to be a need to strengthen the role of the public services (the public enterprises and the public institutions), as well as the organs that will ensure the execution of a part of the public services, and those are primarily the independent agencies also known as regulatory organs. Considering the fact that public services can provide public favours that can be of a profitable or an unprofitable character, there are two types of public services: services of general economic interest and non-economic services of general interest.<sup>23</sup> The services of general economic interest are left to act on the market, but that market is not regulated. Instead of directly providing those services, the state reorients to their regulation, and they are provided by private legal entities. If the private entities are enabled to provide services of general interest, mechanisms for regulation, licensing, supervision and protection of the rights of the consumers of those services must be established. Because of that, independent regulators whose role is to autonomously and independently regulate an individual part of the market or a specific sector are established (for example, electronic communications).<sup>24</sup>

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Dr. sc. Antonija Zubović: *Upravnosudski nadzor nad nezavisnim regulatornim agencijama: aktuelnosti u postupcima*, Zbornik radova Pravnog fakulteta u Splitu, god. 50, 2/2013, p. 371-392.

<sup>21</sup> Bilić, Antun, Josipović, Tatjana, Petrović, Siniša, *Independent regulators in the network industries, in the book Regulirengsagenturen im Spannungsfeld von Recht und Ökonomie* (Hrsg./eds. BodirogaVukobrat, Nada, Barić, Sanja), Verlag Dr. Kovač, Hamburg, 2012, p. 247. For the process of agentification in Croatia see more at Musa, Anamarija, Koprić, Ivan, *op. cit.*, p. 47-51, where they emphasize that this procedure was most intensive in the period from 2001 to 2009, while in 2010 there was an opposite trend - a decrease in the number of agencies, which they call deagentification, taken from Dr. sc. Edita Čulinović Herc, Dr. sc. Antonija Zubović: *Upravnosudski nadzor nad nezavisnim regulatornim agencijama: aktuelnosti u postupcima*, Zbornik radova Pravnog fakulteta u Splitu, god. 50, 2/2013, p. 371-392.

<sup>22</sup> Branko Smerdel, *Nezavisni regulatori i vladavina prava hrvatska praksa u svijetlu američkog iskustva*, the document is available online at [https://www.pravo.unizg.hr/...](https://www.pravo.unizg.hr/.../), on 26.08.2014.

<sup>23</sup> See also: I. Koprić, *Razvoj i problem agenciskog modela s posebnim osvrtom na nezavisne regulatore, Agencije u Hrvatskoj: regulacija i privatizacija javnih službi na državnoj, lokalnoj i regionalnoj razini*, Institut za javnu upravu, Zagreb, 2013, p. 5.

<sup>24</sup> I. Koprić, *Razvoj i problem agenciskog modela s posebnim osvrtom na nezavisne regulatore, Agencije u Hrvatskoj: regulacija i privatizacija javnih službi na državnoj, lokalnoj i regionalnoj razini*, Institut za javnu upravu, Zagreb, 2013, p. 6.

All of this happens during the period of liberalisation and privatisation, when the state changes its role from an owner and manager to only a regulator. In the new role, the state creates the rules for the functioning of the market for a particular section, it determines the conditions for the entering of new participants on the market, sets standards for the products (services) that are being offered. It was mentioned that this process derives from the Anglo-Saxon countries, more precisely from Great Britain during the first Margaret Thatcher government.<sup>25</sup> At the same time, one of the most significant reforms implemented at that time is the establishment of executive agencies, the so called Next Steps agencies. In order to establish these agencies, a key issue is to separate the policy matters that remain within the competencies of the ministries from the implementation of the policies that should fall under the responsibility of the executive agencies. This way, the agencies are not new organisational creations, but are formed by separation from the organisational structure of the ministries. Formally they have only managerial (election of an official on a competition) and financial autonomy. By the end of the rule of the conservatives, there were a total of 140 such executive agencies.<sup>26</sup>

In the theoretical world it is considered that this concept of agentification is related to the model of new public management. As the new public management advocates rationalisation of the public sector, separation of the types of administrative organisations according to the types of affairs of those in charge for their formation and monitoring of the public policy and those that carry out the tasks and formation of small public organisations, with a clear responsibility for the result, at the same time the regulatory state is based on the idea of entrusting the regulatory affairs to special bodies or organisations that are professional and isolated from possible political pressures, which would ensure appropriate market competition between the public services providers, that is, protection of the special rights of the users and employees.<sup>27</sup> Christopher Hood - considered a creator of the New Public Management, points out the four basic elements on which his theory is based: an attempt to slow down the growth of the government bodies, focusing on privatisation, development of the information technology, especially when it comes to providing public services, and development of international cooperation.

Regarding the conceptual determination of the agencies, we would point out that it depends primarily on their type, because they are not a homogeneous

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<sup>25</sup> Slobodan Tomić, Aleksandar Jovančić, *Nastanak i nezavisnost regulatornih tela u Srbiji: domaće ili eksterne determinante?*, <http://www.politickeperspektive.org/izdanja/broj-5/2>, Informacioni centar Evropske unije, Srbija, consulted on 10.04.2018.

<sup>26</sup> Beuselinck, 2006; Greenwood et al., 2005; Peele, 2004; v. also Musa, 2014, taken from *Komparativna javna uprava - nastavni materijali*, Institut za javnu upravu Zagreb, 2015, [https://www.pravo.unizg.hr/\\_news/14947/KJU%20%20nastavni%20materijali%20za%20web.pdf](https://www.pravo.unizg.hr/_news/14947/KJU%20%20nastavni%20materijali%20za%20web.pdf), consulted on 10.04.2018.

<sup>27</sup> G. Majone, *Regulating Europe* London New York: Routledge, 1996, G. Majone, *From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance*. *Journal of Public Policy* 17 (2): 139-167, taken from Anamarija Musa, *Agencifikacija kao nova i dodatna centralizacija-hoće li se Hrvatska ikada moći decentralizirati*, *Hrvatska i komparativna javna uprava*, 2012 godina, no. 4, p. 1197-1224.

phenomenon, but differ in regard of certain criteria such as status, financial and organisational independence, manner of responsibility, the type of activity that they perform, and accordingly they can be divided into several categories. In fact, they can be classified as: independent, executive and expert.<sup>28</sup> Their title can be: agencies, regulatory bodies, public agencies or parastatal organs. The standpoints that these bodies are a part of the administration are increasingly present in the theoretical perceptions.<sup>29</sup>

According to the European Regulation ((EC) No. 58/2003), the executive agencies are separate legal entities whose limits and conditions for entrusting competencies, the entrusted competencies, control over the executive agencies affairs, as well as their funding and openness in the affairs are determined in advance.<sup>30</sup>

What we need to conclude is that not every agency is considered as a regulatory body. Thus, there are certain conditions that need to be met in order for one agency to be recognized as a regulatory body. According to Staničić those would be the following characteristics: being a legal entity with public authorisations that is outside of the state administration composition, having authority to adopt by-laws and to conduct special administrative procedures and an appeal not being allowed against the decision of the regulatory agency.<sup>31</sup> Petrović defines them as autonomous and independent bodies with public authorisations, established for the purpose of managing and supervising the execution of (liberalized) activities of general social interest.<sup>32</sup> According to Đerđa i Rupe, the term regulatory agencies means organisations with different name, structurally separated from the state administration structure, whose task is continuous enforcement of the public matters at a national level.<sup>33</sup>

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<sup>28</sup> I. Koprić, *Razvoj i problem agenciskog modela s posebnim osvrtom na nezavisne regulatore, Agencije u Hrvatskoj: regulacija i privatizacija javnih službi na državnoj, lokalnoj i regionalnoj razini*, Institut za javnu upravu, Zagreb, 2013, p. 13

<sup>29</sup> Z. Urosevic, *Положај и улога јавних агенција у нашем правном систему (The position and role of public agencies in our legal system)*, „Правни живот” („Legal Life”) 10/2005, p. 283-295.

<sup>30</sup> Council Regulation (EC) No. 58/2003 of 19 December 2002, laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes.

<sup>31</sup> Staničić, Frane, *Pravna narav regulatornih agencija u Republici Hrvatskoj*, *Pravo u gospodarstvu*, no. 5, 2012, p. 1359-1360, Barić, Sanja, Đerđa, Dario, *Zakonsko uređenje regulatornih agencija u Republici Hrvatskoj*, *Informator male stranice*, no. 5908, 2010, p.3, taken from Dr. sc. Edita Čulinović Herc, Dr. sc. Antonija Zubović: *Upravnosudski nadzor nad nezavisnim regulatornim agencijama: Aktuelnosti u postupcima* *Zbornik radova Pravnog fakulteta u Splitu*, god. 50, 2/2013, p. 371-392 ([http://www.pravst.hr/dokumenti/zbornik/2013108/zb201302\\_371.pdf](http://www.pravst.hr/dokumenti/zbornik/2013108/zb201302_371.pdf) on 03.09.2014).

<sup>32</sup> Petrović, Siniša, *Pojam i uloga nezavisnih regulatora*, *Pravo u gospodarstvu*, br. 3, 2008., p. 465, taken from Dr. sc. Edita Čulinović Herc, Dr. sc. Antonija Zubović: *Upravnosudski nadzor nad nezavisnim regulatornim agencijama: Aktuelnosti u postupcima* *Zbornik radova Pravnog fakulteta u Splitu*, god. 50, 2/2013, p. 371-392 ([http://www.pravst.hr/dokumenti/zbornik/2013108/zb201302\\_371.pdf](http://www.pravst.hr/dokumenti/zbornik/2013108/zb201302_371.pdf) on 03.09.2014).

<sup>33</sup> Đerđa, Dario, Rupe, Doris, *Pravno uređenje regulatornih agencija u hrvatskom pravu*, *Hrvatska pravna revija*, no. 11, 2010, p. 62, taken from Dr. sc. Edita Čulinović Herc, Dr. sc. Antonija Zubović: *Upravnosudski nadzor nad nezavisnim regulatornim agencijama: Aktuelnosti u postupcima*

However, there are opposing views, according to which the mentioned bodies can not be valued exclusively for part of the administration. The American author Mulock defines them as “organs which are neither legislative, nor executive, nor judicial, but unite somewhat from each branch of government and are theoretically responsible to the Congress. They are established when the Congress considers that special conditions require continuous and frequent adoption of legislative acts based on a uniform and consistent policy”.<sup>34</sup> Similar is the standpoint of Christensen, Laegreid and Stone Sweet who point out that these bodies are structurally separated from the state administration for the purpose of enforcing public affairs on a national level on a permanent basis, in which the employees are public servants mainly financed from the state budget and are subject of public law regulations.<sup>35</sup> Independent experts will adopt regulations and implement them, according to the rules of the profession, free of politics and government interventions.<sup>36</sup>

By linking the independent bodies with the differentiation and the decentralisation of the state administration, it is considered that “the horizontal differentiation in modern states has been taking place since the beginning of the modern administration, at first as branching into central state administration of various administrative departments, and then in recent decades as a functional, administrative decentralization in terms of branching of the central state administration into a large number of agencies”.<sup>37</sup> Also, “the new perceptions of the character of the public administration and the role of the state in the society intensively promote the fragmentation of the central administration and the

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Zbornik radova Pravnog fakulteta u Splitu, god. 50, 2/2013, p. 371-392 ([http://www.pravst.hr/dokumenti/zbornik/2013108/zb201302\\_371.pdf](http://www.pravst.hr/dokumenti/zbornik/2013108/zb201302_371.pdf) on 03.09.2014).

<sup>34</sup> Mulock, B. in Smerdel, Branko, *Regulatorne agencije*, Informator, no. 5432, p. 1. See more about the position of the regulatory agencies in American law at Bajakić, Ivana, *Razvoj i učinci regulatornih*

agencija u SAD: uspješan model za Europu?, Zbornik Pravnog fakulteta u Zagrebu, no. 2., vol. 60, 2012, p. 495-526, taken from Dr. sc. Edita Čulinović Herc, Dr. sc. Antonija Zubović: *Upravnosudski nadzor nad nezavisnim regulatornim agencijama: Aktualnosti u postupcima* Zbornik radova Pravnog fakulteta u Splitu, god. 50, 2/2013, p. 371-392 ([http://www.pravst.hr/dokumenti/zbornik/2013108/zb201302\\_371.pdf](http://www.pravst.hr/dokumenti/zbornik/2013108/zb201302_371.pdf) on 03.09.2014).

<sup>35</sup> Christensen i Laegreid te Thatcher i Stone Sweet in Koprić, Ivan, Musa, Anamarija, Đulabić, Vedran, *Europski standardi regulacije službi od općeg interesa: (kvazi)nezavisna regulacijska tijela u izgradnji modernog kapitalizma*, Hrvatska javna uprava, no. 3, 2008., p. 661, taken from Dr. sc. Edita Čulinović Herc, Dr. sc. Antonija Zubović: *Upravnosudski nadzor nad nezavisnim regulatornim agencijama: Aktualnosti u postupcima* Zbornik radova Pravnog fakulteta u Splitu, god. 50, 2/2013, p. 371-392 ([http://www.pravst.hr/dokumenti/zbornik/2013108/zb201302\\_371.pdf](http://www.pravst.hr/dokumenti/zbornik/2013108/zb201302_371.pdf) on 03.09.2014).

<sup>36</sup> Branko Smerdel, *Nezavisni regulatori i vladavina prava hrvatska praksa u svijetu američkog iskustva*, taken from [https://www.pravo.unizg.hr/...](https://www.pravo.unizg.hr/.../), on 26.08.2014.

<sup>37</sup> Eugen Pusić, *Nauka o upravi*, Zagreb, 2002, taken from Anamarija Musa, *Agencifikacija kao nova i dodatna centralizacija-hoce li se Hrvatska ikada moci decentralizirati*, Hrvatska i komparativna javna uprava, 2012, no. 4, p. 1197-1224.

delegation of affairs set aside to independent organisations whose responsibility and control remain insufficiently resolved issues".<sup>38</sup>

However, in order to talk about the formation of independent organs and bodies (including the regulatory ones), to which a public autorisation for carrying out tasks of public interest is transferred, first of all we would have to define the public autorisation. The public autorisation is the "right and obligation of certain entities to act authoritatively on behalf of the social community when performing the entrusted tasks, determining obligations, prohibitions and other behaviors even against the will of the entity to which those measures relate".<sup>39</sup> Most often, public autorisation is given for: solving administrative matters and performing public records and issuing certificates. More specifically, public autorisations are entrusted for the following state affairs: performing normative activity - by passing statutes and other general acts to regulate relations, to establish conditions; solving administrative matters - for example, they should be foreseen in the LGAP; performing expert supervision, protection and inspection; keeping public records and issuing public documents.

Considering the above-mentioned definitions of the autonomous organs, we can conclude our own synthesized definition that incorporates the basic elements one body should contain in order to obtain the status of an independent body. These organs are established with a special law that recognizes their capacity as a legal entity and according to their position in the system of separation of powers, they are located outside the three government branches (legislative, judicial, executive), which means that they have a certain degree of autonomy in the decision-making process, and which incorporate the regulatory, the executive and the judicial power. When establishing these organs, authorizations and responsibilities in the provision of public services and the performing of certain public affairs are transferred to them. In general, these organs are independent in the matters of organisation, finance and personnel, and they answer only for the violation of the principle of legality when passing acts and taking actions, while the elected members (if it is a committee) or directors (if it is an agency) answer to the legislative body (the Assembly) that has elected them. They are formed for carrying out expert, executive and control tasks. However, from the research conducted for this paper we can note that there is no unified system with previously established rules that refer to determining the need for establishing an independent organ, the management style, the method of financing, the status of the employees, their salaries, the control over their effectiveness and efficiency in the work process. This leaves the impression that there should be specific criteria for these issues in the future. In the end, we would like to point out that although these

<sup>38</sup> Verhoest et al., 2010; Pollitt I Talbot, 2004, Verhoest, K.P.G. Roness, B. Verschuere, K. Rubecksen, M. MacCarthaigh (2010) *Autonomy and Control of State Agencies*. Comparing States and Agencies. Palgrave Macmillan, taken from Anamarija Musa, *Agencifikacija kao nova i dodatna centralizacija-hoce li se Hrvatska ikada moci decentralizirati*, Hrvatska i komparativna javna uprava, 2012, no. 4, p. 1197-1224.

<sup>39</sup> Đuro Gatarić, *Djelatnosti od posebnog društvenog interesa i javna ovlaštenja*, Zagreb, 1986, p. 101-102.

bodies seem to be between the three branches of the government, after all they are closer to the wider term of the public administration. This actually derives from the fact that they are entrusted with the performance of the public interest affairs which would traditionally fall under the jurisdiction of the administration.

### 3. Comparative experiences in the development of independent bodies /agencies

The independent regulatory bodies in Great Britain emerge as a result of the need for certain state activities to be executed independently of the central government and without direct political control by the government. According to their legal status, the regulatory bodies belong to the group of the so called non-departmental public bodies that are different in their nature and the functions that they perform, which causes difficulties in their definition. They are established by the government and have their own independent budget and staff. The management of the regulatory bodies, appointed by the government for a certain period of time, is responsible for its work to the line ministries, and not the parliament, which reduces the independence and public responsibility of these bodies for their work. In order to overcome this criticism of the politicization and the lack of accountability in the work of the regulatory bodies, mandatory public competitions for the election of the management of the regulatory bodies have been introduced in Britain, thus strengthening transparency in the choice of the management and the professionalism in the work of the regulatory bodies.<sup>40</sup>

The agencies in the USA are divided into dependent and independent. Dependent organs are formed as organs within a department that comprises the office of the President of the United States. At the head of these organizations is an official appointed by the President, in accordance with the Senate. The independent agencies, for their part, are divided into independent executive branch agencies and independent regulatory agencies. The independent executive branch agencies have similar status with the dependent ones in relation to the authorizations that the President of the United States has towards them, and the difference is that the independent executive branch agencies have organizational autonomy because they are not a part of a department.<sup>41</sup> On the other hand, the independent regulatory agencies have a relatively high degree of independence. They do not belong to any administrative department, nor are they under the direct control of the president of

<sup>40</sup> Dejan Šuput, *Samostalna regulatorna tela u pravnom sistemu Republike Srbije*, taken from [http://www.telekomunikacije.rs/arhiva\\_brojeva/treci\\_broj/mr\\_dejan\\_suput\\_samostalna\\_regulatorna\\_tela\\_u\\_pravnom\\_sistemu\\_republike\\_srbije\\_165.html](http://www.telekomunikacije.rs/arhiva_brojeva/treci_broj/mr_dejan_suput_samostalna_regulatorna_tela_u_pravnom_sistemu_republike_srbije_165.html), consulted on 10.04.2018.

<sup>41</sup> Johnson C. Scott, *Administrative Agencies: A Comparison of New Hampshire and Federal Agencies' History, Structure and Rulemaking Requirements*, „Pierce Law Review”, Vol 4, No. 3, University of New Hampshire, 2006, 438, taken from Драган Милков, редовни професор Универзитета у Новом Саду Правни факултет у Новом Саду, *ЈАВНЕ АГЕНЦИЈЕ У СРБИЈИ - Случајна грешка или лоша намера?* (Dragan Milkov, full professor University of Novi Sad, Faculty of Law in Novi Sad, *PUBLIC AGENCY IN SERBIA - Random error or bad intention?*).



the state or the head of a certain department. Common features of the regulatory bodies in the United States are:

- there is a group of people at the head of these bodies, not one head
- at the most a simple majority of the collective management body can be from one political party
- the members of the collective management body are appointed by the president of the state (based on the opinion and the approval of the Senat) for a specified period
- the members of the collective management body can be dismissed from that position only in the event of a clear cause, unlike most of the servants in the executive branch that are "in the service" of the president.<sup>42</sup>

In France the emergence of the independent regulatory bodies was noticed during the seventies of the 20<sup>th</sup> century, and their legal position is not clearly defined by a law or in the judicial practice even today. According to the interpretation of the State council, the independent regulatory bodies that act on behalf of the state have public autorizations but do not depend on the government. They are excluded from the hierarchy of the organs of the executive branch. The French state takes the view that the independent regulatory bodies are politically and organizationally independent, which ensures their expertise, credibility and legitimacy because they work in "sensitive" areas of social life. Although the heads of these bodies are most often appointed by a decree of the President of the Republic, they are declared as independent and autonomous. The principle of work is most often collegial although there are examples of independent regulatory bodies. The areas in which the independent regulatory bodies work most often (for example, economy, public finances, public information, electronic media and telecommunications). An example worthy of attention would be the French competent body for telecommunication that at its head, as collegial organ, has a collegium whose members are elected by the President of the Republic, the President of the Senat and the President of the National Assembly.<sup>43</sup> The State Council considers that the agencies are based on two cumulative criteria, such as: autonomy, by which the agencies differ from the independent administrative organs (*autorités administratives indépendantes*) and the existence of autorisations to carry out the national public policy (*l'exercice d'une responsabilité structurante dans la mise en oeuvre d'une politique publique nationale*). These agencies carry out things of public interest (in the fields of health care, social services, education etc.). However, in France there are no agencies that fall under the authority of administration bodies. In France, the status of the agencies is similar to the status or

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<sup>42</sup> *Ibid.*

<sup>43</sup> Dejan Šuput, *Samostalna regulatorna tela u pravnom sistemu Republike Srbije*, taken from [http://www.telekomunikacije.rs/arhiva\\_brojeva/treci\\_broj/mr\\_dejan\\_suput\\_samostalna\\_regulatorna\\_tela\\_u\\_pravnom\\_sistemu\\_republike\\_srbije\\_165.html](http://www.telekomunikacije.rs/arhiva_brojeva/treci_broj/mr_dejan_suput_samostalna_regulatorna_tela_u_pravnom_sistemu_republike_srbije_165.html), consulted on 10.04.2018.

our special organisations, and even more are those that fall into the public services.<sup>44</sup>

Croatia is characterized by the fact that in recent years, since 2009, there is an undergoing process of deagentification, which means a reduction of the number of the agencies. Such a decision follows after the process of critical review of the number of organs, the introduction of unique rules, an attempt to introduce a mechanism for coordination and management of the effectiveness and other forms of rationalization in the execution of the state administration affairs (19 were abolished and 7 new agencies were established, reduced by 14%). The basis for such a solution is the final report of the project on Functional analysis in restructuring state administration and agencies at the end of 2008, conducted by the Croatian experts for the World Bank. Particularly, from the past experience with the formation of large number of independent organs, now things are moving in the direction of their rationalization. As fundamental problems of the independent regulatory bodies in Croatia are considered: the position in the system of governance, unbalanced regulation of their legal status, the manner of handling specific situations, the judicial supervision of their work, recruitment, quality and legal status of the employees, wider social perception and support for their work, mechanisms of influence and supervision, the efficiency and effectiveness of the agencies and the difficulty in their measurement etc.<sup>45</sup>

The Republic of Serbia, on the other hand, is characterized by having a separate Law on Public Agencies<sup>46</sup>, according to which the public agencies are divided into three legal categories: agencies as public services, agencies as separate organizations and agencies as public agencies.<sup>47</sup> As public agencies are considered a large number of legal entities whose legal nature and status is regulated by the Law on Public Agencies. According to this Law, a public agency is "an organization established for development, professional and regulatory matters of general interest, if the development, professional and regulatory matters do not

<sup>44</sup> Dr. Dragan Milkov, *Јавне агенције у Србији - случајна грешка или лоша намера? (Public Agency in Serbia - A Random Error or Bad Intent?)*, p. 25-36, <http://scindeks-clanci.ceon.rs/data/pdf/0550-2179/2014/0550-21791403025.M.pdf>, consulted on 10.04. 2018.

<sup>45</sup> I. Koprić, *Razvoj i problem agenciskog modela s posebnim osvrtom na nezavisne regulatore, Agencije u Hrvatskoj: regulacija i privatizacija javnih službi na državnoj, lokalnoj i regionalnoj razini*, Institut za javnu upravu, Zagreb, 2013, p. 14

<sup>46</sup> *Закон о јавним агенцијама (Law on Public Agencies)*, Official Gazette PC no. 18/2005 и 81/2005.

<sup>47</sup> A. Martinović, оригинални научни рад, «Правна природа агенција у правном систему Републике Србије» (original scientific paper, "Legal nature of agencies in the legal system of the Republic of Serbia"), 391-400, <http://scindeks-clanci.ceon.rs/data/pdf/0550-2179/2012/0550-21791202391M.pdf>, consulted on 10.04.2018. When it comes to agencies as special organizations, in 2009 there were six of them. Out of this number, two of the agencies were established by the Law on Ministries of 2004 (the Agency for development of the local self-government infrastructure and Agency for foreign investment and export promotion), while four were established by special laws: the Recycling Agency (established by the Law on Waste management), the Security Information Agency (established by the Law on Security Information Agency), the Energy Efficiency Agency (established by the Energy Law) and the Republic Agency for Peaceful settlement of the labour disputes (established by the Law on Peaceful settlement of the labour disputes).

require a permanent and immediate political supervision and if the public agency is capable of a better and more effective performance than the state administration organ, especially if the public agency entirely or in most cases can be financed from the priced paid by the service users". These agencies can be given public authorizations with a special law and they can be entrusted with the following competencies: adopting regulations for the enforcement of laws and other general acts, first instance decision-making in administrative cases and issuing public documents and keeping records. Each agency is autonomous in its decision-making. But despite the special legal solution for the agencies in Serbia's legal theory, there is no consensus on the legal nature of the individual agencies.<sup>48</sup>

According to Article 117, paragraph 3 of the Romanian Constitution (Fundamental Law) administrative bodies can be established by an organic law. By linking that regulation with Article 116 of the Constitution and Article 29 of the Law no. 20/2001 on the organization and the operation of the Romanian Government that was further changed and amended (Official Gazette no. 164 from 02.04.2001), it can be concluded that the autonomous administrative organs are established outside any ministry (independently of them) or another competent organ subordinated to the Government. All categories of administrative organs in Romania are established according to a law. These administrative organs (the autonomous), however, are organized as central organs of the public administration, with the exception that they enforce their executive powers completely independently and thus they enforce the regulations and ensure the adequate functioning of the public services. In this case, there is no single organ having a higher status or competency to issue orders against them [a note by the author - the autonomous organs], which means that they have their own rights and responsibilities which are completely separate from those of the other central administrative bodies. Numerous autonomous administrative organs are enumerated in the Constitution: The Ombudsman (Articles no. 58-60), the Legislative Council (Article no. 79), the Supreme Council of National Defense (Article no. 119), The Superior Council of Magistracy (Articles no. 133 and 134), the Court of Auditors (Article no. 140), the Economic and Social Council (Article no. 141). Apart from these, there are also such administrative organs that are not explicitly mentioned in the Constitution, but are created by organic laws, including: the Competitiveness Council, the National Audiovisual Council, the National Integrity Council, the National News Agency (AGERPRES), the National Supervisory Authority for Personal Data Processing, the Permanent Electoral Authority, the Private Pension System Supervisory Commission, the National Council for the Study of the Security Archives, The National Council for Prevention of Discrimination and the Romanian Intelligence Service. Depending on the internal structure, they can be classified as (Gîrleşteanu, 2011: 41): unique, such as the Ombudsman; collegial such as all the councils that perform specific

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<sup>48</sup> Dr Aleksandar Martinović, *Правна природа агенција у правном систему (Legal nature of agencies in the legal system)*, „Зборник радова Правног факултета у Новом Саду” („Proceedings of the Law Faculty in Novi Sad”), 2/2012, p. 391-400.

activities or services. Depending on the scope of work, these administrative organs can be divided into (Iorgovan, 2005: 437): synthesis organs (the National Supervisory Authority for Personal Data Processing); coordination organs (the Supreme Council of National Defense) and control organs (the Court of Auditors). The essence of the autonomous administrative organs is that they manage to maintain the balance between the different branches of the government (executive, legislative and judiciary) (Iorgovan, 2005: 436.), thus contributing to the democratisation and the building of the constitutional state. The role of these organs is not a formal one, and their existence is mainly justified by the fact that they defend the principles that make one country a lawful (or a constitutional) one. The success of this type of administrative organs lies in the fact that they take over a part of the responsibilities, that would otherwise fall under the Government, in key areas where there is a need for independent experts, regardless of whether the legislator was the one who limited the executive powers (of the government) or the Government delegated a part of them. As a whole, they manage to contribute to the effectiveness of the administrative measures and the degree of transparency of the public administration decisions in general. In addition, it must be taken into consideration that from their creation and further they significantly limit the influence that the political system has on the public administration, even without it being the legislator's intention. One of the features of these autonomous administrative organs is that they belong to the central public administration, but unlike all other organs in that area, they also have the capacity of a legal entity (subjectivity).<sup>49</sup>

*According to the comparative experiences in relation to the independent agencies, it can be concluded that they exist in almost every country, and the main reason for their formation was the deregulation of the state administration. As arguments in favour of the formation of the independent organs, the following are usually stated: promotion of professional values, enabling the protection of elements of general (public) interest such as quality, accessibility etc., strengthening the supervision over the provision of services of general interest and strengthening the legal protection of the consumer, protection of the market by preventing the creation of a monopoly and protection of the market mechanisms. On the other hand, the negativities that are emphasized are: they are incompatible with the principle of separation of powers because at the same time they perform regulatory, administrative, supervisory, quasi-judicial, protective and other autorisations, they affect the extensive increase of the number of regulations, their political independence is often brought to question, and there is a question whether they have another form of autonomy in sufficient measure. Sometimes they can*

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<sup>49</sup> Radu Cristian Dragomir, *The Autonomous Administrative Authorities in the Romanian Legal System*, „Revue de Sciences Politiques” no. 50/2016, pp. 123-132.

avoid any form of responsibility and there is a risk of losing their autonomy from the large companies whose relations they need to regulate.<sup>50</sup>

#### 4. Types of independent bodies in the Republic of Macedonia

The Republic of Macedonia, as a country that pretends to join the European Union is obliged to implement several types of reforms, the most important of which for us are the reforms in the field of the public administration. So far, several steps were made in his area, the biggest of which are the ones in relation to the harmonization of the legal framework that regulates the organisation and the functioning of the public administration with the European principles.

Organisational changes occur due to the fact that “apart from the main feature that the state administration uses instruments of power, that is - public autorisations in exercising its power, it is also characterized by a dynamic development in its organisational types, depending on the changes that are happening in a society. The more frequent and the larger those changes get, the more the need to change and improve the state administration in one country arises. That is, in fact, the theoretical determination of the constant change of the organisational types of the state bodies and the other bodies that perform administrative activities”.<sup>51</sup>

There are three types of independent organs in the Republic of Macedonia: independent state administration organs, independent organs and regulatory bodies. Their number from 2000 to 2017 amounts to a total of 50 organs. Out of these, 11 are regulatory bodies, 13 are independent organs and 26 are independent state administration organs. Their display is given in Table 1.

No.	Institution	Number of employees	Funds from the Budget of the Republic of Macedonia
<b>REGULATORY BODIES</b>			
1	Agency for Supervision of Fully Funded Pension Insurance, 2002		
2	Insurance Supervision Agency, 2002		
3	Security and Exchange Commission, 2005		
4	Civil Aviation Agency, 2006		
5	Agency for Electronic Communications, 2008		
6	Regulatory Commission for Housing, 2009	8	10.437 thousand denars

<sup>50</sup> I. Koprić, *Razvoj i problem agenciskog modela s posebnim osvrtom na nezavisne regulatore, Agencije u Hrvatskoj: regulacija i privatizacija javnih službi na državnoj, lokalnoj i regionalnoj razini*, Institut za javnu upravu, Zagreb, 2013, p. 9-10.

<sup>51</sup> Ana Pavlovska-Daneva *Организација на државната управа во Република Македонија до најновите законски прописи (Organization of the state administration in the Republic of Macedonia to the latest legal regulations)*, Годишник на Правниот факултет во Скопје (Annual report of the Law Faculty in Skopje), vol. 39, book III/III, 2001.

No.	Institution	Number of employees	Funds from the Budget of the Republic of Macedonia
7	Postal Agency, 2010		
8	Energy Regulatory Commission, 2011		
9	Railway Regulation Agency, 2012		
10	Agency for Audio and Audiovisual Media Services, 2013		
11	The Council for the Advancement and Oversight of the Audit is <b>established by the Government</b> of the Republic of Macedonia as an independent regulatory body, 2010 <sup>52</sup>	8	8.496 thousand denars
	<b>Total</b>		241.233 thousand denars
<b>INDEPENDENT ORGANS</b>			
1	The Commission for Protection of the Right to Free Access To Public Information is an independent state organ (2006)	23	16.580 thousand denars
2	The Inspection Council is an independent state organ with the capacity of a legal entity	15	25.290 thousand denars
3	The Agency for Administration is an independent state organ with the capacity of a legal entity (2010)	65	40.510 thousand denars
4	State Commission for Decision-making in the Second Instance in the field of Inspection Supervision and Misdemeanor Procedure (2011)	33	27.470 thousand denars
5	The State Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance is an independent state organ with the capacity of a legal entity (2011)	59	57.625 thousand denars
6	The Commission for Protection against Discrimination is independent organ (2010)	7 members and 4 employees	5.540 thousand denars
7	State Appeals Commission on Public Procurement (2007)	18	19.085 thousand denars
8	Directorate for Personal Data Protection (2005)	23	21.905 thousand denars
9	The Commission for Protection of Competition is an independent state organ with the capacity of a legal entity (2010)	27	21.960 thousand denars
10	State Election Commission	117	74.985 thousand denars
11	The State Commission for Preventing Corruption is an independent state organ with	35	31.340 thousand denars

<sup>52</sup> Закон за ревизија, Службен весник на РМ бр.158 од 09.12.2010 година / Audit Law, Official Gazette of the Republic of Macedonia no.158 from 09.12.2010.

No.	Institution	Number of employees	Funds from the Budget of the Republic of Macedonia
	the capacity of a legal entity		
12	The State Audit Office is an independent organ (2010)	89	94.816 thousand denars
13	The Audit Authority for Audit of Instrument for Pre-accession Assistance is established as an independent legal entity	35	40.694 thousand denars
	<b>Total</b>		255 500
	<b>INDEPENDENT ORGANS OF STATE ADMINISTRATION</b>		
1	Agency for community rights realization – legal entity	19	9.450 thousand denars
2	Agency for managing confiscated property	47	22.155 thousand denars
3	Agency for the use of languages spoken by at least 20% of the population in the Republic of Macedonia		8.350 thousand denars
4	Directorate for Security of Classified Information	42	29.914 thousand denars
5	Protection and Rescue Directorate	271	282.900 thousand denars
6	Agency for Financial Support of the Agriculture and the Rural Development	187	8.635.600 thousand denars
7	Agency for Promotion and Support of the Tourism	35	177.232 thousand denars
8	Center for crisis management	310	165.740 thousand denars
9	Agency for Commodity Reserves	35	259.240 thousand denars
10	Directorate of Compulsory Reserves of Oil and Oil Derivatives	17	874.000 thousand denars
11	Agency for Foreign Investments and Export Promotion	58	134.660 thousand denars
12	Directorate for Technological Industrial Development Zones	72	1.005.700 thousand denars
13	National Extension Agency	122	59.546 thousand denars
14	Food And Veterinary Agency	350	630.816 илјади денари
15	National Agency for European Educational Programmes and Mobility	33	146.285 thousand denars
16	Agency of Youth and Sports	48	484.413 thousand denars

No.	Institution	Number of employees	Funds from the Budget of the Republic of Macedonia
17	Agency for Emigration	21	20.957 thousand denars
18	Commission for Relations with Religious Communities and Religious Groups	13	13.130 thousand denars
19	Agency for Real Estate Cadastre	882	671.660 thousand denars
20	Agency for Quality and Accreditation of Healthcare Institutions		
21	Agency for Medicinal Products and Medical Devices		
22	Space Planning Agency		
23	Agency for Promotion of Entrepreneurship		
24	Macedonian Film Agency		
25	Radiation Safety Directorate		
26	The Intelligence Agency is a separate organ of the state administration	254	222.300 thousand denars
	Total	3 382	13.854.048 thousand denars
	<b>Total</b>		<b>14.350.781 thousand denars</b>

*Table 1 Source for the financial resources Budget of the Republic of Macedonia for 2018 and the Register for public sector employees for 2016*

Considering this, it can be concluded that for some of the organs we do not have the data about the budget that is at their disposal and about the total number of employees. On the other hand, the obtained data indicates that for financing these organs, 6.8% are allocated from the Budget of the Republic of Macedonia, and the number of employees reaches over 3382. The data indicates that, in the future, it is necessary to make a detailed functional analysis in order to determine whether these organs are truly independent or only a parallel administration, but also a reorganisation or rationalization of the independent organs. There are also no clear demarcations when deciding to establish an organ and the form of the organ. To illustrate this problem, we are going to list several positive legal solutions.

The Agency for Audio and Audiovisual Media Services is an autonomous and independent, non-profit regulatory body with a status of a legal entity with public authorisations.<sup>53</sup> The Agency is financed from the funds generated from the revenues from the fees stipulated by the law on which it is based, the funds from the collected broadcasting fee in accordance with the law, as well as from loans

<sup>53</sup> Член 4 Закон за аудио и аудиовизуелни медиумски услуги, Сл. Весник на Р. Македонија, бр.184 од 26.12.2013 година / Article 4, Law on Audio and Audiovisual Media Service, Official Gazette of the Republic of Macedonia, no. 184 from 26.12.2013



and other financial and technical assistance.<sup>54</sup> An independent regulatory body in the postal services field is the Postal Agency. Its founder is the Assembly of the Republic of Macedonia. The Agency is established as an independent and non-profit legal entity with public autorisations stipulated by law. The Agency, in its work and decision-making process, is independent of another state body or other public legal entity or company that performs activities in the field of postal services, within its competences, and is impartial to them.<sup>55</sup> In order to ensure safe and secure supply of energy to the consumers in the Republic of Macedonia, to protect the environment and nature, to initiate and protect a competitive energy market on the principles of objectivity, transparency and non-discrimination, the Energy Regulatory Commission of the Republic of Macedonia has been established. The Energy Regulatory Commission is independent in its operations and in the decision-making process within the competencies determined by the law. The President of the Energy Regulatory Commission, who is one of the members proposed by the Government of the Republic of Macedonia, and the members of the Commission are appointed and dismissed by the Assembly of the Republic of Macedonia.<sup>56</sup> Pursuant to Article 3 item 86 of the Law on Energy, the Energy Regulatory Commission is a regulatory body established by law to regulate certain issues in the energy sector, and has a status of a legal entity. The Commission adopts a statute approved by the Assembly of the Republic of Macedonia.<sup>57</sup>

“For the purpose of supervising the legality of the activities undertaken during the processing of the personal data and their protection, on the territory of the Republic of Macedonia is established a Directorate for Personal Data Protection as an autonomus and independent state organ with status of a legal entity. The Directorate is managed by a director who is appointed and dismissed by the Assembly of the Republic of Macedonia on a proposal by the Government of the Republic of Macedonia”.<sup>58</sup> Pursuant to Article 47 of the Law for Prevention of Corruption, a State Commission for Preventing Corruption is established as autonomous and independent in the performance of the activities determined by law. This law lays down measures to prevent corruption in the exercise of powers and the performance of entrusted public autorisations, measures to prevent conflicts of interest, as well as measures to prevent corruption in performing matters of public interest by legal entities related to exercising power. For the implementation of the measures from paragraph 1 of this article, the State

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<sup>54</sup> *Idem*.

<sup>55</sup> Член 7 Закон за поштенски услуги, Службен весник на РМ, бр.158 од 09.12.2010 година / Article 7, Law on Postal Service, Official Gazette of the Republic of Macedonia, no.158 from 09.12.2010.

<sup>56</sup> Закон за изменување и дополнување на законот за енергетика, Сл.Весник на Р.Македонија бр.94 од 13.12 2002 година / Law amending the Law on Energy, Official Gazette of the Republic of Macedonia, no.94 from 13.12.2002.

<sup>57</sup> Закон за енергетика, Службен весник на РМ, бр.16 од 10.02.2011 година / Law on Energy, Official Gazette of the Republic of Macedonia, no.16 from 10.02.2011.

<sup>58</sup> Член 37 Закон за заштита на личните податоци, („Службен весник на Република Македонија“ бр. 7/05) / Article 37, Law on Protection of Personal Data, (“Official Gazette of the Republic Of Macedonia” no.7/05).

Commission for the Prevention of Corruption is established.<sup>59</sup> The Commission for Protection of Competition is an independent state organ with the capacity of a legal entity, independent in its operations and in the decision-making process within the competences stipulated by the Law. The Commission consists of President and four members appointed by the Assembly of the Republic of Macedonia for a period of five years with the right to reappointment. The status of the Commission for Protection of the Right to Free Access to Public Information is regulated by Article 30 of the Law on Free Access to Public Information that guarantees the independence of the work of this Commission and its accountability to the Assembly of the Republic of Macedonia. The status of the Council for Advancement and Oversight of the Audit is governed by Article 6 of the Audit Law, according to which in order to promote and supervise the performance of the audit, the Government on the proposal of the Minister of finance establishes a Council for Advancement and Oversight of the Audit as an autonomous and independent regulatory body, with public authorisations determined in the law. The Council becomes a legal entity by registering in the Register of Other Legal Entities that is kept in the Central Register of the Republic of Macedonia. The Council answers for its work before the Government of the Republic of Macedonia.<sup>60</sup>

Consequently, we conclude that the independent bodies in the Republic of Macedonia are established and their competencies are regulated with specific material regulations for the respective area. The independent bodies are recognized as legal entities and the regulatory organs and the independent organs are accountable in front of the Assembly of the Republic of Macedonia, while the independent state administration bodies are accountable in front of the Government of the Republic of Macedonia. These bodies are usually formed as commissions, directorates or agencies. The independent state administration organs are mostly established for the purpose of professional and development matters, the independent organs primarily have control powers either over the financial operations or over the acts and over the protection of fundamental human rights and freedoms, while regulatory ones are mostly established for regulating the market and protecting the consumers, enacting regulations and standards, issuing work permits, general supervision over the compliance with regulations in certain areas, imposing sanctions for misdemeanors and informing the consumers, and they are authorized to standardize, implement and resolve in the first instance in the area of trade, finance, communications, labor relations, health, consumer protection, etc.. However, there are certain issues that are regulated differently, such as the election of members, the mandate of the officials and the members, the manner of financing, etc.

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<sup>59</sup> Закон за спречување на корупцијата “Сл.весник на Р Македонија” бр.28/02 од 18.04.2002 година / Law for Protection of Corruption, “Official Gazette of the Republic Of Macedonia” no.28/02 from 18.04.2002.

<sup>60</sup> Член 6 од Закон за ревизија, Службен весник на РМ, бр.158 од 09.12.2010 година / Article 6, Audit Law, Official Gazette of the Republic Of Macedonia, no.158 from 09.12.2010.

<b>Distinction between independent organs in the Republic of Macedonia</b>			
	<b>Independent state administration organs</b>	<b>Independent organs</b>	<b>Regulatory bodies</b>
<b>Legal basis</b>	Law on the Organization and Operation of the State Administration Bodies and special law	A special material regulation	A special material regulation
<b>Financing</b>	Budget of the Republic of Macedonia	Budget of the Republic of Macedonia	Budget of the Republic of Macedonia and own revenues
<b>Responsibility</b>	Before the Government	Before the Assembly	Before the Assembly
<b>Competencies</b>	Administrative and professional matters	Control activities	Market regulation
<b>Status of the employees</b>	Administrative officers	There are also administrative officials, but the rights and obligations, wages etc. are regulated with a special law	There are also administrative officials, but the rights and obligations, wages etc. are regulated with a special law

*Table 2 Distinction between independent state organs, independent organs and regulatory bodies*

### 5. Conclusion

Analyzing the historical development of the independent agencies, it can be ascertained that this concept of formation of independent agencies is intensifying. Its beginnings are from the Anglo-Saxon countries, and today this wave is increasingly affecting the EU countries. They constitute a new type of institutional organisation of the government that is most often implemented ad hoc, without first analyzing whether a separate organ really needs to be formed. Although it is considered that the independent organs and regulatory bodies are not a part of any government, the authors' view is that they are a part of the wider concept of public administration.

Regarding the question about the area in which the agencies are founded, the authors' opinion is that they can be established for development, professional, administrative, control and regulatory activities. What remains debatable is the question - at what point or when should it be decided that there is indeed a need for the establishment of an independent organ, or whether the establishment of such an organ does not constitute duplication of jurisdiction or parallel administration. Therefore, we believe that a special regulation for the agencies or the independent regulators should be adopted, a regulation in which the positive-legal definition of these bodies, the method of establishment, the manner of responsibility, the status of the employees, the manner of financing, their powers and the type of decisions they bring about, will be specified. Otherwise, the current solution for establishing

an independent regulator based on a special material regulation, can only affect the increase in the number of these bodies, without specifically knowing the justification for their existence. The strengthening of the intensity of these organs can only lead to confusion and bewilderment to both the theoreticians, the legislator, and the natural and legal entities themselves, considering that the authors in the paper state that there is: inequity in the legal nature of the regulatory bodies, and for part of these bodies there is a financial incongruity, that is, there is no justification for their existence.

An issue that deserves special attention is the measurement of the performance and the results of the previous work of these independent organs, all in order to determine whether the existence of these bodies in the past 15 years in the Republic of Macedonia has accomplished its goals and what the benefits of their work in the social and economic development are.

In light of the previously elaborated, we can give an explanation that the independent organs are established and exist primarily as a supervisory or control body elected by the Assembly in order to control the work of the executive power. As arguments in favour of the existence of these organs, we would specify efficiency, better performance of the tasks that have been done by the state administration bodies, flexibility in solving problems. However, there are also arguments that do not support the enormous growth of these organs, and these are primarily - the lack of accountability and transparency of these organs, the inability to control their efficiency and effectiveness, the reduction of their competition, the lack of uniformed approaches. What remains unanswered is the question of the effectiveness of these organs. Are the problems for which these bodies were created now solved? And more importantly, are they truly independent organs? What is the relationship, or the influence of the Assembly as an authority that decides about their choice? Whose interest do these bodies defend?

### Bibliography

1. Aleksandar Martinović, *Правна природа агенција у правном систему (Legal nature of agencies in the legal system)*, „Зборник радова Правног факултета у Новом Саду” („Proceedings of the Law Faculty in Novi Sad”), 2/2012,
2. Ана Pavlovska-Daneva *Организација на државната управа во Република Македонија до најновите законски прописи (Organization of the state administration in the Republic of Macedonia to the latest legal regulations)*, Годишник на Правниот факултет во Скопје (Annual report of the Law Faculty in Skopje), vol. 39, book III/III, 2001.
3. Anamarija Musa, *Агенцијација као нова и додатна централизација - Хоће ли се Хрватска икада моћи децентрализирати*, „Хрватска и компаративна јавна управа”, 2012, no. 4.
4. Antun Bilić, Josipović, Tatjana, Petrović, Siniša, *Independent regulators in the network industries*, in *Regulirengsagenturen im Spannungsfeld von Recht und Ökonomie* (Hrsg./eds. BodiřogaVukobrat, Nada, Barić, Sanja), Verlag Dr. Kovač, Hamburg, 2012.
5. Branko Smerdel, *Независни регулатори и владавина права хрватска пракса у свијетлу америчког искуства*, taken from [https://www.pravo.unizg.hr/...](https://www.pravo.unizg.hr/.../), on 26.08.2014.
6. D. Milenković, *Јавна управа (скрипта)*, Beograd, 2011.

7. Đerđa, Dario, Rupe, Doris, *Pravno uređenje regulatornih agencija u hrvatskom pravu*, „Hrvatska pravna revija”, no. 11, 2010.
8. Dragan Milkov, *Јавне агенције у Србији - случајна грешка или лоша намера? (Public Agency in Serbia - A Random Error or Bad Intent?)*, <http://scindeks-clanci.ceon.rs/data/pdf/0550-2179/2014/0550-21791403025M.pdf>, consulted on 10.04.2018.
9. Đuro Gatarić, *Djelatnosti od posebnog društvenog interesa i javna ovlaštenja*, Zagreb, 1986.
10. Edita Čulinović Herc, Dr. Sc. Antonija Zubović, *Upravnosudski nadzor nad nezavisnim regulatornim agencijama*, „Aktuelnosti u postupcima Zbornik radova Pravnog fakulteta u Splitu”, vol. 50, 2/2013.
11. Eugen Pusić, *Društvena regulacija*, Zagreb, 1989.
12. Eugen Pusić, *Nauka o upravi*, Zagreb, 2002.
13. Frane Staničić, *Pravna narav regulatornih agencija u Republici Hrvatskoj*, „Pravo u gospodarstvu”, no. 5, 2012.
14. G. Majone, *From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance*. „Journal of Public Policy” 17 (2): 139-167.
15. G. Majone, *Regulating Europe London New York: Routledge*, 1996.
16. I. Koprić, *Razvoj i problem agenciskog modela s posebnim osvrtom na nezavisne regulatore*, Agencije u Hrvatskoj: regulacija i privatizacija javnih službi na državnoj, lokalnoj i regionalnoj razini, Institut za javnu upravu, Zagreb, 2013.
17. Ivan Koprić, Anamarija Musa, Vedran Đulabić, *Europski standardi regulacije službi od općeg interesa: (kvazi) nezavisna regulacijska tijela u izgradnji modernog kapitalizma*, „Hrvatska javna uprava”, no. 3, 2008.
18. Ivan Kopriv, *Структура и комуницирање во управни организацији (Structure and communication in administrative organizations)*, Zagreb, 1999.
19. Ivana Bajakić, *Razvoj i učinci regulatornih agencija u SAD: uspješan model za Europu?*, Zbornik Pravnog fakulteta u Zagrebu, no. 2., vol. 60, 2012.
20. Johnson C. Scott, *Administrative Agencies: A Comparison of New Hampshire and Federal Agencies' History, Structure and Rulemaking Requirements*, „Pierce Law Review”, Vol. 4, No. 3, University of New Hampshire, 2006.
21. M. Danjanović, *Uporedna iskustva državnih uprava*, Beograd, 2006.
22. Maurice Hauriou, *Precis de droit administratif et de droit general* Paris, 1921.
23. N. Grizo, B. Davitkovski, A. Pavlovska-Daneva, *Јавна администрација (Public Administration)*, Skopje, 2011.
24. Predrag Dimitrijevic, *Upravno pravo*, Nis, 2008.
25. Radu Cristian Dragomir, *The Autonomous Administrative Authorities in the Romanian Legal System*, „Revue de Sciences Politiques” no. 50/2016.
26. S. Lilić, *Poslovi državne uprave u zakonodavstvu i novom ustavnom srbije*, taken from [www.uloga.na.gov.hr](http://www.uloga.na.gov.hr) (consulted at 10.04.2018).
27. Sanja Barić, Đerđa, Dario, *Zakonsko uređenje regulatornih agencija u Republici Hrvatskoj*, Informator male stranice, no. 5908., 2010.
28. Siniša Petrović, *Pojam i uloga nezavisnih regulatora*, „Pravo u gospodarstvu”, no. 3, 2008.
29. Slobodan Tomić, Aleksandar Jovančić, *Nastanak i nezavisnost regulatornih tela u Srbiji: domaće ili eksterne determinante?*, <http://www.politickeperspektive.org/izdanja/broj-5/2>, Informacioni centar Evropske unije, Srbija, (consulted at 10.04.2018).
30. Z. Urosevic, *Положај и улога јавних агенција у нашем правном систему (The position and role of public agencies in our legal system)*, „Правни живот” („Legal Life”), 10/2005.

<http://www.tribunajuridica.eu/arhiva/An8v1/0.%20Cuprins%20-%20Contents.pdf>

<http://www.tribunajuridica.eu/arhiva/An8v2/10.%20Ivana%20Humanovska-Spasovska.pdf>