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## **THE LEGAL STATUS OF THE REGULATORY BODIES/AGENCIES IN THE REPUBLIC OF MACEDONIA**

### **I. INTRODUCTION**

It is evident that the number of regulatory bodies in the Republic of Macedonia since the 1990s has been continuously increasing. These authorities gain increasing importance and influence on the market economy and deregulation of a part of the state administrations' activities. The main features of the regulatory bodies include specialisation, professionalism, political neutrality, independence and organisation as central authorities. In a historic sense, they appear primarily due to the fact that the state administration should be scaled down. The scaling down means that the state administration should not perform those activities that can be conducted in a more proper, qualitative and effective way by other authorities, that is, bodies with public authorities. This way, the privatization and liberalization of the public sector is initiated. All this is due to the emergence of new public management whose basic principles are economy, efficiency, effectiveness, specialisation.

As of December 31, 2016, the Register of Public Sector Employees in the Republic of Macedonia records 13 independent authorities and 10 regulatory authorities. Regulatory authorities in the Republic of Macedonia are: the Agency for Supervision of Fully Funded Pension Insurance - ASFFPI (MAPAS) from 2002, the Insurance Supervision Agency - ISA (ASO) from 2002, the Macedonian Securities and Exchange Commission from 2005, the Civil Aviation Agency from 2006, the Agency for Electronic Communications - AEC (AEK) from 2008, the Regulatory Commission for Housing from 2009, the Postal Agency from 2010, the Energy Regulatory Commission from 2011, the Agency for Regulation of the Railway Sector from 2012 and the Agency for Audio and Audiovisual Media Services from 2013.

The authors analyze several important issues regarding the regulatory bodies, such as: 1. the position of these authorities in the system of separation of powers in the Republic of Macedonia, 2. the relation between these authorities and other authorities (state administration, judiciary and assembly), 3. basic activities executed by these authorities and 4. in what manner their independence or autonomy from other authorities is ensured. Thus, the authors aim to open the dilemmas and problems that we face when defining these bodies, their delineation and differentiation from other independent authorities, agencies, the problem with the inequality of the legal regulation regarding the election of members in these authorities, the way decision are made, the manner of control and the discharge of responsibility of these bodies. For instance, the

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legal status of the regulatory bodies in the Republic of Macedonia is not properly regulated by a single act, such as the Law on Regulatory Bodies, etc. This status is determined in accordance with special substantive regulations (*lex specialis*), which establish the respective regulatory bodies.

In order to equalize the legal practice and the possibility to differentiate regulatory bodies from other state and parastatal authorities, state administrative bodies, public services (public institutions and enterprises) and joint stock companies in state ownership, a single law for establishment and operation of the Regulatory Authorities should be enacted in the Republic of Macedonia. This new future legal solution would unify certain common principles and standards regarding the organisational and functional position of these authorities, the financial independence, the manner of acting and control, all of which are common to all regulatory authorities. Namely, it would also equalize their legal status, which is now regulated in the existing ten and more laws that establish these bodies.

**Key words:** regulatory bodies, independent authorities, principle of separation of powers, public administration

## II. THE HISTORICAL DEVELOPMENT OF REGULATORY BODIES/AGENCIES

The trend of establishing independent bodies (agencies, commissions, etc.) is nothing more than one of the models of organisation of the public administration. This model comes along with the process of privatisation and liberalisation of state-owned enterprises, whereby when the independent agencies are founded, the state withdraws as an owner and manager, but it remains to be asked, only now as a regulator. In that role, it creates the rules that determine how the market for a particular sector will function. In this way, the state begins to determine the conditions for the entry of new market participants, to set standards for the products that are offered.<sup>1</sup> The origin of this model is in the Anglo-Saxon countries - in Britain during the first government of Margaret Thatcher and in the United States during the great economic crisis and the establishment of a state interventionism policy, with the idea that it is the best method to ensure organisational use of specialised knowledge in certain areas of the implementation of state policy.<sup>2</sup> This trend of increasing the number of regulatory bodies, in the literature also known as agentification, in the European continental countries gained momentum in the 1980s. The establishment of these independent/regulatory bodies as a concept of organization of the public administration has its similarities with the concept of new public management. Namely, the new public management advocates the rationalisation of the public sector, the separation of the governing organisations according to the type of affairs of those charged with their formation and monitoring of the public policy and those who perform tasks and the creation of small administrative organisations, with clear responsibility for the result. At the same time, the regulatory state is based on the idea of entrusting regulatory work to special bodies or organisations that are professional and isolated from possible political pressures, which would

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<sup>1</sup> Nastanak i nezavisnost regulatornih tela u Srbiji: domaće ili eksterne determinante?, Slobodan Tomić, Aleksandar Jovančić\* <http://www.politickeperspektive.org/izdanja/broj-5/2>, Informacioni centar Evropske unije, Srbija

<sup>2</sup> Branko Smerdel, Nezavisni regulatori i vladavina prava hrvatska praksa u svijetlu američkog iskustva, taken from [https://www.pravo.unizg.hr/...](https://www.pravo.unizg.hr/.../), on 26.08.2014

ensure adequate market competition between public services providers, that is, protection of the special rights of users and employees.<sup>3</sup>

### III. THE TERM - INDEPENDENT AGENCIES

By linking the independent bodies with the differentiation and decentralisation of the state administration, it is also considered that "the horizontal differentiation in modern states has been taking place since the beginning of the modern administration, at first as a differentiation in central state administration of various governing departments, and then in the last decades as a functional, administrative decentralisation in terms of separating specialised organisations from the state administration to a large number of agencies".<sup>4</sup> Also, the new perceptions of the character of the public administration and the role of the state in society intensively promote fragmentation of the central administration and delegation of matters allocated to independent organisations, whose responsibility and control remain insufficiently tackled issues.<sup>5</sup> QUANGO (Quasi non-governmental agencies) is a common term for formally independent bodies. Otherwise, these autonomous authorities can be found under various terms, such as, agencies, regulatory bodies, public agencies or parastatal bodies. The term "agency" derives from the Anglo-Saxon law and signifies the entities that perform administrative activity, which, according to us, are governing bodies.<sup>6</sup>

The regulatory bodies are independent agencies that perform a certain type of administrative activities. Namely, starting from the function criterion, they represent one form of decentralisation of power. The purpose of the existence of these agencies is to achieve greater efficiency in conducting administrative activities, and as the main advantages or arguments for the existence of these agencies are considered specialisation and expertise in their operations.<sup>7</sup>

Petrović defines them as autonomous and independent bodies with public authorisations, established for the purpose of arranging and supervising the implementation of (liberalized) activities of general social interest.<sup>8</sup> According to Đerđa and Rupe consider the regulatory agencies as organisations with a different name, structurally separated from the composition of

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<sup>3</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>4</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;

<sup>5</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 Aencies*. Palgrave Macmilan, 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>6</sup> З. Урошевић, "Положај и улога јавних агенција у нашем правном систему", *Правни живот* 10/2005, 283-295.

<sup>7</sup> 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>8</sup> Petrović, Siniša, *Pojam i uloga nezavisnih regulatora*, *Pravo u gospodarstvu*, no. 3, 2008, p. 465, taken from Dr. sc. Edita Čulinović Herc, Dr. sc. Antonija Zubović: *Upravnosudski nadzor nad nezavisnim reulatornim agencijama: Aktuelnosti u postupcima Zbornik radova Pravnog fakulteta u Splitu*, god. 50, 2/2013, p. 371-392 ([http://www.pravst.hr/dokumenti/zbornik/2013108/zbornik201302\\_371.pdf](http://www.pravst.hr/dokumenti/zbornik/2013108/zbornik201302_371.pdf) on 03.09.2014)

the state administration, whose task is permanent execution of public matters on a national level.<sup>9</sup> American author Mulock defines them as "authorities, which are neither legislative, nor executive, nor judicial, but unite something 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 acts of a legislative nature, based on a uniform and consistent policy".<sup>10</sup>

Christensen and Laegreid and Thatcher and Stone Sweet point out that these bodies, in which the employees are public servants, are structurally separated from the public administration for the purpose of executing public matters on a national level on a permanent basis, and they are mainly financed from the state account and are liable to public law regulations.<sup>11</sup> Independent experts in agencies shall adopt and implement regulations, according to the rules of the profession, free from interventions of politics and government.<sup>12</sup>

In particular, regulatory authorities are the authorities established by the legislature for the purpose of regulating the market or protecting certain groups and they are responsible for their operations to the assembly.

According to one research, independent agencies are considered to be a fourth branch of government, because they have authorisations of a regulatory nature (e.g. adoption of by-laws and proposing laws), of an administrative nature (e.g. granting and revoking licenses, enrollment in the register, issuing public documents) and judicial nature (e.g. arbitration and mediation).<sup>13</sup>

The constitutional nature of these regulatory authorities is debatable because the generally accepted principle in the modern political systems is the principle of the triple separation of powers into legislative, executive and judicial. Starting from this principle, the regulatory bodies cannot specifically be placed in one of these authorities, but operate independently of other authorities. The question of constitutionality is also posed in the American constitutional theory. So, E. Corwin says: "If these bodies are not inside the executive, then where are they? In the legislation. Or are they really in an incredible situation, like a coffin

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<sup>9</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 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>10</sup> Mulock, B. at Smerdel, Branko, Regulatorne agencije, Informator, no. 5432, p. 1; See more about the status 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: 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>11</sup> Christensen i Laegreid te Thatcher i Stone Sweet at 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: 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>12</sup> Branko Smerdel, Nezavisni regulatori i vladavina prava hrvatska praksa u svijetlu američkog iskustva, taken from [https://www.pravo.unizg.hr/...](https://www.pravo.unizg.hr/.../), on 26.08.2014

<sup>13</sup> Dragana Aleksić, „Agencifikacija“ Srbije, <http://www.ecinst.org.rs/sites/default/files/mat-kratki/temamesecaagencifikacijasrbije.pdf>

that floats neither in heaven nor on earth?"<sup>14</sup> Regarding their authorisations to rule on issues of violation of regulations, many believe that this is a definite loss of the independence of the judiciary, as a cornerstone of the principle of rule of law. R. Lorch wrote: "The judicial power is masked behind the word "quasi". Penalties imposed by agencies are called sanctions. This distortion of terminology helps reduce the woe and shame felt by the judges while burying the so-called principle of power sharing".<sup>15</sup> In the 1937 Report of an Investigative Committee, the independent agencies are rated as "the headless fourth branch of government" and "an incredible set of irresponsible organisations with uncoordinated powers" that "violate the basic theory of the American constitution, after which there should be three, and only three branches of power ". The Committee concluded: "Congress has not found a more efficient way to control them, the president is unable to control them, and the courts are responsible only for the legality of their work".<sup>16</sup>

#### **IV. REGULATORY BODIES/AGENCIES IN THE REPUBLIC OF MACEDONIA**

Regarding the position of these authorities in the separation of power system, three different ways of integrating them into the entire constitutional framework are generally differentiated. One of them is to formally group the most important agencies (for example, Venezuela and Ecuador), the second is to include all agencies under one title in the constitution and to subscribe them to a series of common rules without having to pretend to formally create the additional government, and the third way which is repeatedly applied is the ad hoc creation of such agencies at different times and in different parts of the respective constitution, which reflects the new democracies that are under pressure from the civil society and international actors to find new ways of taking responsibility outside the electoral policy.<sup>17</sup>

##### **1. The position of independent agencies in the system of separation of powers in the Republic of Macedonia**

In the Republic of Macedonia, the trend of establishing regulatory bodies begins in 2002. There are currently 10 regulatory bodies in the Republic of Macedonia, including the Agency for Supervision of Fully Funded Pension Insurance - ASFFPI (MAPAS) from 2002, the Insurance Supervision Agency - ISA (ASO) from 2002, the Macedonian Securities and Exchange Commission from 2005, the Civil Aviation Agency from 2006, Agency for Electronic Communications - AEC (AEK) from 2008, the Regulatory Commission for Housing from 2009, the Postal Agency from 2010, the Energy Regulatory Commission from 2011, Agency for

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<sup>14</sup> The President, Office and Powers 1387-1957, New York Univ. Press, New York 1957; cit. at Peter Woll, American Bureaucracy, Norton & Co, New York 1977. (2nd ed.) p. 155-176, with an overview of theory, taken from Branko Smerdel, Nezavisni regulatori i vladavina prava hrvatska praksa u svijetlu američkog iskustva, taken from [https://www.pravo.unizg.hr/...](https://www.pravo.unizg.hr/.../), on 26.08.2014

<sup>15</sup> Robert Lorch, Democratic Process and Administrative Law, Wayne State University, Detroit, 1980. p. 81, taken from Branko Smerdel, Nezavisni regulatori i vladavina prava hrvatska praksa u svijetlu američkog iskustva, taken from [https://www.pravo.unizg.hr/...](https://www.pravo.unizg.hr/.../), on 26.08.2014

<sup>16</sup> Bronslo Committee on Administrative Management, Commission on the Organization of the Executive Branch of Government, Task Force on Regulatory Commissions, Cit. Kenneth Culp Davis: Administrative Law of the Seventies, Rochester, New York 1976 p. 14-20 taken from [https://www.pravo.unizg.hr/...](https://www.pravo.unizg.hr/.../), on 26.08.2014

<sup>17</sup> [http://www.law.yale.edu/documents/pdf/CompAdminLaw/John\\_Ackerman\\_CompAdLaw\\_paper.pdf](http://www.law.yale.edu/documents/pdf/CompAdminLaw/John_Ackerman_CompAdLaw_paper.pdf),

Regulation of the Railway Sector from 2012 and the Agency for Audio and Audiovisual Media Services from 2013.

As of December 31, 2016, the Register of Public Sector Employees keeps records of 1,291 institutions of the public sector - as much as they exist in the Republic of Macedonia. Founders of the public sector institutions are: the Assembly of the Republic of Macedonia, the Government of the Republic of Macedonia, the City of Skopje and the local self-government units. The founder of the independent institutions, as well as the institutions that emerge directly from the Constitution of the Republic of Macedonia, such as the Constitutional Court of the Republic of Macedonia, the Ombudsman of the Republic of Macedonia, the National Bank of Republic of Macedonia, the courts, the public prosecutor's offices, the Judicial Council of the Republic of Macedonia and the Council for Determining the Facts, is the Republic of Macedonia.

According to the data in the register in the Republic of Macedonia, there are a total of 13 independent state authorities and 10 regulatory bodies. There are a total of 375 employees in the regulatory bodies, and 739 in the independent state authorities.

	REGULATORY BODIES	INDEPENDENT STATE AUTHORITIES CHOSEN BY THE ASSEMBLY OF THE REPUBLIC OF MACEDONIA	INDEPENDENT STATE ADMINISTRATIVE AUTHORITIES
1	Agency for Supervision of Fully Funded Pension Insurance, 2002	The Commission for Protection of the Right to Free Access to Public Information is an independent state authority, 2006	Agency for community rights realisation - legal entity, 2008
2	Insurance Supervision Agency, 2002	The Inspection Council is an independent state body with the capacity of legal entity, 2010	Spatial Planning Agency, 2008
3	Macedonian Securities and Exchange Commission, 2005	The Agency for Administration is an independent state body with the status of legal entity, 2010	Agency for the use of languages spoken by at least 20% of the population in the Republic of Macedonia
4	Civil Aviation Agency, 2006	State Commission for Decision-making in the Second Instance in the field of Inspection Supervision and Misdemeanor Procedure, 2011	Directorate for Security of Classified Information
5	Agency for Electronic Communications, 2008	The State Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance is an independent state authority with the capacity of a legal entity, 2011	Protection and Rescue Directorate

6	Regulatory Commission for Housing, 2009	The Commission for Protection against Discrimination is an independent authority, 2010	Agency for Financial Support of Agriculture and Rural Development, 2007
7	Postal Agency, 2010	State Appeals Commission on Public Procurement, 2007	Agency for Promotion and Support of Tourism, 2008
8	Energy Regulatory Commission, 2011	Directorate for Personal Protection Data, 2005	Crisis Management Center
9	Agency for Regulation of the Railway Sector, 2012	The Commission for Protection of Competition is an independent state body with the capacity of a legal entity, 2010	Commodity Reserves Agency, 2008
10	Agency for Audio and Audiovisual Media Services, 2013	State Election Commission, 2006	Directorate for Compulsory Reserves of Oil and Oil Derivatives
11	Audit Promotion and Supervision Council, established by the Government of the Republic of Macedonia as an independent regulatory body, 2010	The State Commission for Prevention of Corruption is autonomous state body with legal entity status, 2002	Agency for Foreign Investments and Export Promotion of the Republic of Macedonia, 2004
12		The State Audit Office is an independent body, 2010	Directorate for Technological Industrial Development Zones
13		The Audit Authority for Audit of Instrument for Pre-accession Assistance is established as an independent legal entity, 2010	Agency for Development of Agriculture, 1998
14			Food And Veterinary Agency
15			National Agency for European Educational Programs and Mobility
16			Youth and Sports Agency
17			Emigration Agency
18			Commission for Relations with Religious Communities and Religious Groups, 2000

19			Real Estate Cadastre Agency
20			The Intelligence Agency is a special state administrative body, 1995
21			Agency for Quality and Accreditation of Healthcare Institutions
22			Agency for Medicinal Products and Medical Devices
23			Agency for Promotion of Entrepreneurship of the Republic of Macedonia
24			Macedonian Film Agency
25			Radiation Safety Directorate

*Table 1 - Source for the financial resources Budget of the Republic of Macedonia for 2018 and the Register of Public Sector Employees for 2016, special laws*

Moreover, the possibility of establishing these regulatory bodies is not foreseen neither in the Constitution of the Republic of Macedonia, nor in certain general regulations, but this issue is regulated by specific substantive regulations that regulate an individual activity for which the establishment of such a body is foreseen. The important features of the particular regulatory agency are stated with these regulations that foresee their establishment. For example, "the competent authority for matters that are subject to the Law on Audio and Audiovisual Media Services is the Agency for Audio and Audiovisual Media Services. The Agency is an autonomous, independent, non-profit regulatory body with the status of a legal entity with public authorisations. The Republic of Macedonia is the founder of the Agency".<sup>18</sup> "An independent regulatory body in the field of the postal services is the Postal Agency. The Assembly of the Republic of Macedonia is the founder of the Agency. The property and assets of the Agency are owned by the Republic of Macedonia, and used and managed by the Agency. The Agency shall be established as an independent and non-profit legal entity performing public authorisations determined by this Law. The Agency shall, in its work and when making decisions within its competencies, be independent from another state authority or other public legal entity or company that performs activities in the field of postal services and is impartial towards them."<sup>19</sup>

<sup>18</sup> Член 4 Закон за аудио и аудиовизуелни медиумски услуги, Службен Весник на Република Македонија, бр. 184 од 26.12.2013 година / Article 4 from the Law on Audio and Audiovisual Media Services, Official Gazette of the Republic of Macedonia no. 184 from 26.12.2013

<sup>19</sup> Член 7 Закон за поштенски услуги, Службен Весник на Република Македонија, бр. 158 од 09.12.2010 година / Article 7 from the Law on Postal Services, Official Gazette of the Republic of Macedonia no. 158 from 09.12.2010



Pursuant to Article 11-a, in order to ensure safe and secure supply with energy of the consumers in the Republic of Macedonia, environment and nature protection, initiation and protection of a competitive energy market on the principles of objectivity, transparency and non-discrimination, an Energy Regulatory Commission of the Republic of Macedonia is founded. The Energy Regulatory Commission is independent in its operations and in the decision-making within the competences determined by this Law. The members and the President of the Energy Regulatory Commission, as one of the members proposed by the Government of the Republic of Macedonia, are appointed and dismissed by the Assembly of the Republic of Macedonia.<sup>20</sup> Pursuant to Article 3 item 86, the Energy Regulatory Commission of the Republic of Macedonia is a regulatory body established by this Law for the purpose of regulating certain issues in the energy sector and in accordance with Article 15, the regulation of issues related to the performance of the energy activities determined by this Law shall be performed by the Energy Regulatory Commission. The Energy Regulatory Commission is independent in its operations and decision-making within the competencies stipulated by this Law. The Energy Regulatory Commission has the status of a legal entity. The Energy Regulatory Commission shall adopt a statute approved by the Assembly of the Republic of Macedonia.<sup>21</sup>

But what is posed as a question and dilemma for both theorists and practitioners and practice experts is the delineation of the regulatory bodies from other independent state authorities and independent state administration authorities. In order to determine the distinction between these authorities, we will review as examples some positive legal solutions for the regulation of independent state authorities and independent state administration authorities.

Pursuant to Article 47 of the Law on Prevention of Corruption, the State Commission for Preventing Corruption was established as autonomous and independent in the performance of the activities determined by this Law. This Law sets out the measures for preventing corruption in the exercise of power and in the exercise of entrusted public authorisations, the measures for preventing conflicts of interest, as well as the measures for preventing corruption in the performance of activities of public interest by legal entities related to the exercise of power. For the implementation of the measures from paragraph 1 of this Article, the State Commission for Preventing Corruption is established.<sup>22</sup> The Commission for Protection of Competition is an independent state authority with a capacity of a legal entity, independent in its operations and in the decision-making within the competences stipulated by the Law. The Commission is composed of a President and four members appointed and dismissed by the Assembly of the Republic of Macedonia for a period of five years with a 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 which guarantees the independence in the work of this Commission and its responsibility to the Assembly of the Republic of Macedonia.

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<sup>20</sup> Закон за изменување и дополнување на Законот за енергетика, Службен Весник на Република 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>21</sup> Закон за енергетика Службен Весник на Република Македонија бр. 16 од 10.02.2011 година / Law on Energy, Official Gazette of the Republic of Macedonia no. 16 from 10.02.2011

<sup>22</sup> Закон за спречување на корупцијата Службен Весник на Република Македонија бр. 28/02 од 18.04.2002 година / Law for Prevention of Corruption, Official Gazette of the Republic of Macedonia no. 28/02 from 18.04.2002

Our conclusion is that there is no equal access in terms of the manner of establishment of the public sector institutions. Some of the institutions in the public sector derive directly from the Constitution of the Republic of Macedonia, and are further regulated by separate laws (Assembly of the Republic of Macedonia, the Government of the Republic of Macedonia, the President of the Republic of Macedonia, the Ombudsman of the Republic of Macedonia, The National Bank of the Republic of Macedonia, the Public Prosecutor's Office of the Republic of Macedonia, etc.). The ministries, the authorities within the ministries, as well as the independent authorities of the state administration are established with the Law on Organization and Operation of the Authorities, and the public institutions and public enterprises with the Law on Institutions, that is the Law on Public Enterprises. But, after all, the number of institutions established by special laws is large.

What we can conclude is that the independent, regulatory bodies in the Republic of Macedonia are established and their competence is regulated with special substantive regulations for the respective area. Each regulatory body is recognized as an independent authority that shall be accountable for its operations to the Assembly of the Republic of Macedonia. These bodies are usually formed as commissions or agencies. Similar is the case with other independent state bodies. As the only difference between the regulatory bodies and the independent authorities, we would separate the subject of decision, that is, the reason for their establishment. On the one hand, regulatory bodies are established for market regulation and their goal is above all the protection of consumers and users of services. Namely, they should provide balance between the public interest and the interest of the citizens, to suppress the state monopoly and to ensure fair competition. In contrast, the purpose of establishing independent state authorities is to prevent the illegal operation of the public administration authorities (state administration, local self-government, public enterprises, public institutions, funds and other authorities that have public authorisations). These independent authorities first of all have control, that is, a supervisory function and have the authority to take appropriate measures to prevent the illegal operation of these authorities, such as annulment or abolition of illegal acts, filing applications to competent authorities, requesting certain administrative actions that the authorities were obliged to undertake to protect a certain interest of the natural persons and the legal entities. For example, the Agency for Administration is obliged to take care of the implementation of a legal procedure in the employment of administrative officials and the protection of the rights and interests of officials in case of disciplinary and material liability. The State Commission for Decision-making in Administrative Procedure and Labor Relations Procedure in Second Instance is a second instance authority that decides upon a complaint against the first instance decisions adopted in the administrative procedure and its purpose is to determine whether the contested decision is formally and materially lawful and thus protects the rights and obligations of the parties in the administrative procedure.

For example, in the Republic of Serbia there is a separate Law on Public Agencies<sup>23</sup>, according to which the agencies are divided into three straight categories: agencies as public services, agencies as separate organisations and agencies as public agencies.<sup>24</sup> Public agencies

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<sup>23</sup> Закон о јавним агенцијама, Службени гласник РС по. 18/2005, 81/2005

<sup>24</sup> А. Мартиновић, оригинални научни рад, «Правна природа агенција у правном систему Републике Србије», 391-400

<http://scindeks-clanci.ceon.rs/data/pdf/0550-2179/2012/0550-21791202391M.pdf>

are concerned when it comes to a larger number of legal entities whose legal nature and status are regulated by the Law on Public Agencies. According to this Law, a public agency is "an organisation established for development, professional or regulatory matters of general interest, if the development, professional and regulatory matters do not require constant and direct political supervision, and if the public agency can execute them better and more effectively than the state administrative body, especially if it can be entirely or in most cases financed from the price paid by the users for the service. These agencies may be granted public authorisations with a special law and they can be entrusted with the following competences: to adopt 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 independent in its decision-making.

But despite the special legal solution for the agencies in Serbia's legal theory, there is no consensus on what the legal nature of the particular agencies is.<sup>25</sup>

## V. CONCLUSION

In accordance with the results of the research conducted in this paper, the authors concluded that there is a trend of growth in the number of independent authorities and regulatory bodies in the Republic of Macedonia. Namely, 32 independent authorities have been established in the past decade. The authors observed that, in accordance with their legal nature, the independent authorities are neither a part of the legislative, nor the judicial or executive branch of power. Consequently, they wonder if the position of these authorities does not affect the adequate application of the principle of separation of powers, a principle stipulated in the Constitution. The next question is whether an authority, such as the regulatory bodies, can simultaneously perform functions that are part of the judicial and the executive power. The conclusion of the authors is that in the future a detailed analysis should be made of whether their existence is justified. That is, whether they are a necessity in the organisational structure of the Republic of Macedonia or some of these authorities are only a parallel administration. Furthermore, an analysis should be made of their financial independence, that is of how and why the financial resources of these authorities are used and what are the benefits of their functioning so far. In case of a necessity to form a new authority, the financial capacities should also be taken into account, since each new authority entails new employments, new trainings for the new employees, new equipment and additional costs from the budget.

Regarding the regulation of their legal status in the system of separation of powers, the authors consider that a new special law should be adopted as soon as possible, for example a Law on Regulatory Authorities etc. This Law ought to equalize the principles and standards for

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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)

<sup>25</sup> Др Александар Мартиновић, *Правна природа агенција у правном систему* (p. 391–400), Зборник радова Правног факултета у Новом Саду, 2/2012

the establishment of these authorities, the manner of management, the manner of financing, the manner of control etc. In particular, the authors consider that the political accountability of these authorities, which means submitting annual reports to the Assembly of the Republic of Macedonia, is not sufficient, that is, their transparency and accountability to the other institutions and the citizens should increase.

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