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INDEPENDENT REGULATORY AGENCIES: POSSIBILITIES TO IDENTIFY THE PECULARITIES OF THEIR ACTIVITY AND THEIR POSITION IN THE SYSTEM OF LITHUANIAN PUBLIC ADMINISTRATION BODIES

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Annotation. *Over the past twenty years regulation has gained an unprecedented place in European countries. In effect, the rise of regulation has been accompanied by the rise of a new type of institutions, namely independent regulatory agencies. Western scholars use a lot of terms in defining this type of institutions, i. e. QUANGO (quasi-autonomous non governmental organization), NDPB (non-departmental public body), EGO (extra-governmental organization), NGO (non-governmental organization), QAO (quasi-autonomous organizations), SAO (semi-autonomous organization). But the most frequent term is IRA (independent regulatory agency). They define this type of institutions as public organization with regulatory powers that are neither elected by the people, nor directly managed by elected officials. M. Thatcher reveals certain requirements for inclusion as an IRA. First, the agency has its own powers and responsibilities given under public law; second, it is organizationally separated from the institutions of executive power; and finally, it is neither directly elected nor managed by elected officials. Additionally, they implement quasi-legislative and quasi-judicial functions.*

There are such institutions in Lithuania, too. For example, the Competition Council, the Communications Regulatory Authority, the Securities Commission of the Republic of Lithuania, the National Health Board, etc. Scientists, politicians, and public servants entitle them as institutions accountable to the Parliament or President.

The authors of this article try to answer to some questions. First, what is regulation and what is an independent regulatory agency? Second, why regulatory agencies must be insulated from political influence? Third, how is it possible to define the organizational form of such institutions in Lithuania? Fourth, what is the exact place of such institutions in the system of public administration bodies of Lithuania?

***Keywords*:** *regulation, regulatory agencies, independency, public administration institutions.*

Introduction

Relevanced the Topic. The degree of regulation has been changing constantly since the middle of the nineteenth century: there have been times, when the state eliminated the most important industries from the market, and later gave permission to privatize them, or established intermediate institutions. Moreover, the role of these institutions is to regulate one or another industry or service provision sphere. The last two decades have been the period of great political, economical, and legal changes in Europe. Western scholars acknowledge that the consequences of liberalization and privatization are paradoxical and unexpected because regulation has become the most significant part of public intervention, and the modern state has become a regulatory state. Scholars agree that over the past twenty years regulation has gained an unprecedented position all over the world. Fabrizio Gilardi emphasizes the statement of the Giandomenico Majone that the role of the state as an economic actor is so important that it actually amounts to a structural transformation by which regulation has become a major activity of governments[1]. This has led to the rise of a different type of institution, namely the independent regulatory agency. The unprecedented expansion of these institutions is noticeable both on the national level and the international level. For example, at the EU level the number of agencies has increased from four in 1993 to twenty two in 2008[2]. In the White Paper on European Governance adopted in 2001 it is explained that "The creation of further autonomous EU regulatory agencies in clearly defined areas will improve the way rules are applied and enforced across the Union"[3]. Supposedly, it could give increased expertise on the sophisticated technical issues; it could lighten the workload of the other EU institutions, which can center their attention on their essential functions.

1 Gilardi, F. *Delegation in the Regulatory State*. Cornwall: MPG Books Ltd, Bodmin, 2008.

2 Vitkus, G. *Europos Sąjunga. Enciklopedinis žinynas* [European Union. Encyclopedic Dictionary]. Vilnius: Eugrimas, 2008, p. 12–14.

3 Geradin, D.; Munoz, R.; Nikolas, P. *Regulation through Agencies in the EU: a New Paradigm of European Governance*. Cheltenham, UK, Northampton, MA, USA, 2005. (Editors' Preface).

The scope of regulation which is the main mission of both national agencies and EU agencies includes public control, from vocational training, price or quality of a good or service, to environmental, food, and maritime safety. The increasing role of regulatory agencies is confirmed by American administrative law scholars, namely purists, who relate the scope of the administrative law to the independent regulatory agencies such as the Federal Emergency Management Agency[4], the Environmental Protection Agency[5] or commissions such as the Federal Trade Commission[6] or the Nuclear Regulatory Commission[7], etc. This attitude of purists is predicated on the assumption that the above-mentioned agencies traditionally implement quasi-legislative and quasi-judicial functions[8]. There is a huge variety of terms by which western scholars define regulatory institutions, but the most usual and frequent is the *independent regulatory agency.*

Such an organizational form as a regulatory agency or regulatory institution doesn't exist in Lithuania, yetobviously such type of institutions exist. For example, the Competition Council, the National Bank, the Communications Regulatory Authority, the Securities Commission of the Republic of Lithuania, the National Health Board, etc. Lithuanian administrative law scholars define this type of institutions as *control institutions,* or *institutions established by the Parliament,* or *institutions accountable to the Parliament or President,* or *other central bodies.* As we develop this thesis, however, it will become evident that these institutions encompass not only regulatory bodies but also other types of institutions which do not implement regulatory functions. Moreover, there is no clear system of these institutions in Lithuania.

The Object of the Research. The review of the independent regulatory agencies in Lithuania. Identification of their possible position in the system of public administration bodies. Estimation of some peculiarities of their activity.

The Objective of the Study. To develop the notion that agencies which implement quasi-legislative and quasi-judicial functions are independent regulatory agencies.

Methodology of the Study. In the course of reaching the objective of this study both theoretical and empirical methods were employed. For example, the method of c*ontent analysis* was employed in order to gather and to examine documentation; the method of *comparative analysis* was used in order to establish the indications of the above-mentioned institutions, to identify their position in the system of public administration bodies. In order to achieve these goals, the authors of this article had to compare theories, examinations and the results of different studies by various scholars. The *comparative-historical* method helped compare historical facts regarding the characteristics of the phenomenon of regulation due to the factors of totalitarianism factor and democracy. The *collation* method contributed to combining the information which was obtained by analyzing different social systems (i. e. public sector, third sector, so called "grey zone" sector or private interests government sector), by examining various monographs,

4 FEMA [interactive]. [accessed 2009-05-23]. <http://www.fema.gov>.

5 EPA [interactive]. [accessed 2009-05-23]. <http://www.epa.gov>.

6 FCT [interactive]. [accessed 2009-05-23]. <http://www.ftc.gov>.

7 NRC [interactive]. [accessed 2009-05-23]. <http://www.nrc.gov>.

8 Kenneth, F. W. *Administrative Law in the Political System*. West Publishing Company, 1988, p. 11.

studies, scholarly articles (i. e. introduced material about the phenomenon of regulation in the U.S, Czech Republic, Italy, France, Great Britain, the EU, etc.). The *observation* method was employed in order to gather primary social information: observation of political life, news, reading analytical articles, etc.

1. Regulation and Independent Regulatory Agencies (IRAs)

The phenomenon of regulation is differently defined and variously construed by the multiple social science disciplines. One kind of literature explains the phenomenon of regulation as the public effort to oversee economy, another kind of literature interprets regulation as the "promulgation of the an authoritative set of rules, accompanied by some mechanism, typically a public agency, for monitoring and promoting compliance with these rules"[9]. Noll gives us a common definition of regulation. He claims that regulation includes the quality of a good or service, the control of certain features of production processes, or the control of entry into the market[10]. Lutz and Czada explain that regulatory policy is a specific form of mostly public oversight and control over private market actors[11]. Western scholars usually separate two types of regulations – social and economic regulation. Regulation is defined as economic when it deals with the price, entry or exit, service of an industry. Regulation is termed social when it connects with such issues as health, safety, and social security. According to Salamon, social regulation deals with the effects of economic activity on the health, welfare, or social well-being of citizens. Social regulation is aimed at restricting behaviors that directly threaten public health, safety, welfare, or well-being. Economic regulation is aimed at ensuring competitive markets for goods and services and avoiding harm to consumer and other detriments when such markets are not feasible[12].

Regulation is a certain set of legal means created by the state bodies which have legislative discretion[13]. A. Vaišvila claims that in order to purposefully transform the conception of a law from the human consciousness into real actions, people and public bodies face the conception of legal regulation[14]. Hence we may conclude that regulation is some kind of mean by which social transformations, social behavior will be translocate from the static setting into the dynamic. A. Urmonas emphasizes the mission of administrative law. It must organically service public interest, guarantee individual safety, the development of culture, economics, etc. Whereas public life is not stable, the alteration

9 Gilardi, F., p. 14.

10 *Ibid*.

11 *Ibid*.

12 *Ibid*., p. 15.

13 Pranevičienė, B. *Kvaziteismai administracijos kontrolės sistemoje*. [Praneviciene, B. Quasi-Courts under System of Administrative Control]. Vilnius: LTU, 2003, p. 43–45.

14 Vaišvila, A. *Teisės teorija*. [Vaisvila, A. Theory of Law]. Vilnius: Justitia, 2004, p. 153.

of the mission of administrative law must be guaranteed. And it could be guaranteed by administrative legal instruments[15], one of which could be regulatory agencies.

In the case of a totalitarian regime, the spectrum of regulation is restricted to prohibitions. Under the circumstances of democracy such kind of regulation is inadequate, but the free market could evoke various social problems too, even long-term business slowdowns. According to Slater and Tonkiss, self regulation of markets is not perfect, and that is the reason why the intervention of government is sometimes justifiable[16]. Consequently the majority of states have set their sights anew at regulation, trying to find new instrumentality of regulation, creating semi-governmental bodies or establishing independent regulatory agencies.

There is no clear mechanism for establishing the above-mentioned bodies; there are even no unambiguous categories for those institutions in the Republic of Lithuania. There is no such administrative legal category as 'regulatory agency" or "regulatory body", yet such kind of institutions exists in Lithuania. For example, the Competition Council, the National Bank, the Communications Regulatory Authority, the Securities Commission of the Republic of Lithuania, the National Health Board, etc. Lithuanian scholars use various terms, which include not only regulatory bodies but also other types of bodies, i. e. pretrial bodies, control bodies. The examples of terms are *Institutions formulated by Parliament*[17], or *Bodies, established by the Seimas (parliament) of the Republic of Lithuania*[18], or *other central bodies*[19], or *institutions established and accountable to the Seimas or President*[20], or *institutions accountable to the* Seimas[21]. Western literature uses a a great variety of categories in order to identify regulatory institutions. For example, *QUANGO* (quasi-autonomous non-governmental organization), *NDPB* (non-departmental public body), *EGO* (Extra-governmental organization), *SAO* (Semi-autonomous organization). It must be emphasized that the most frequent term which reveals the organizational form of the above-mentioned institutions is *independent regulatory agency* (IRA). For instance, in the US the term in use is *independent regulatory agency*, in the Czech Republic – *nezávislé správní úřady*, in France – *les auto-*

15 Urmonas, A. Administracinės teisės veiksmingumas. [Urmonas, A. Effectiveness of Administrative Law]. *Lietuvos teisės universiteto Teisės fakulteto Administracinės teisės ir proceso katedros mokslinės praktinės konferencijos „Veiksmingumo problemos administracinėje teisėje", vykusios 2003 m. gruodžio 10 d., pranešimas.*

16 Slater, D.; Tonkiss, F. *Rinkos visuomenė*. [Slater, D.; Tonkiss, F. Market Economy]. Vilnius: Lietuvos rašytojų sąjungos leidykla, 2004, p. 206.

17 Andruškevičius, A. Probleminiai administracinės teisės reguliavimo dalyko klausimai. [Andruskevicius, A. Problematic Issues of Object of Administrative Law Regulation]. *Teisė*. 2002, 42: 7.

18 Andruškevičius, A. *Administracinės teisės principai ir normų ribos*. [Andruskevicius, A. Principles of Administrative Law and the Limits of their Norms]. Vilnius: VĮ Teisinės informacijos centras, 2004, p. 69.

19 Andruškevičius, A. *Administracinė teisė. Bendrieji teorijos klausimai, valdymo aktų institutas, ginčo santykių jurisprudenciniai aspektai.* [Andruskevicius, A. Administrative law]. Vilnius: VĮ Registrų centro centro Teisinės informacijos departamentas, 2008, p. 199.

20 Bakaveckas, *A. Lietuvos vykdomoji valdžia*. [Bakaveckas, A. Executive of Lithuania]. Vilnius: Eugrimas, 2007, p. 136.

21 For instance, Seimas of the Republic of Lithuania [interactive]. [accesses 12-15-2009]. <www.3lrs.lt/pls/inter/w5_show?p-r>.

rités administratives indépendantes[22], in Italy – *autorita indipendenti.* Every state has its own type of interpretation of the independency construction of IRAs. For example, they are independent from the executive power institutions in Italy, France, but most of them are dependent on ministries in Germany. Nevertheless, it is possible to distill some common features characteristic to this type of institution. *First, the agency has its own powers and responsibilities given under public law; second, it is organizationally separated from ministries; third, it must be neither directly elected nor managed by elected officials*[23]. Hence all of them are linked by the aspect of independency, and by the participation of several representatives from different power branches (usually by parliament and president) in the procedure of establishing such bodies. It may be argued that such characteristic features must ensure their independence (quasi-independence). With the reference to the official Internet website of the Seimas of the Republic of Lithuania such institutions are the Competition Council, the Central Bank, the National Audit Office, the Ombudsman, the Communications Regulatory Authority, the Securities Commission of the Republic of Lithuania, the National Health Board, the Lithuanian Radio and Television Commission, the Office of the Inspector of Journalists Ethics, the Children's Rights Ombudsman Institution of the Republic of Lithuania, the Office of Equal Opportunities Ombudsman, the National Control Commission for Prices and Energy, the Chief Official Ethics Commission, etc.

Is it precise to name the above-mentioned institutions as accountable to the Seimas? The authors of this article think that such a status is provisory. For example, one of them is termed *independent* (Article 3 of the Law on the Bank of Lithuania defines the independence of the Bank of Lithuania: The Government of the Republic of Lithuania and State institutions must respect the independence of the Bank of Lithuania[24]), another – as *independent accountable to the Seimas* (Lithuanian Radio and Television Commission) [25], or *accountable to the Seimas* (article 3 of the Law on the National Audit Office of Lithuania states that the National Audit Office shall be the supreme public audit institution, *accountable to the Seimas*)[26]. Other institutions are defined as *independent state institutions* (for example, the Communications Regulatory Authority). It is important to emphasize that the director of this Authority shall be appointed by the President on the recommendation of the Prime Minister, besides, the written activity and financial report of the Authority must be submitted to the Seimas and to the Government. Some of the institutions accountable to the Seimas are entitled as *budgetary independent state institutions* (for example, the Seimas Ombudsman's Office), or *state institutions accountable to the Seimas or President of the Republic of Lithuania* (for example, the State Security Department, the Special Investigation Service of the Republic of Lithuania[27]), or *state*

22 Andruškevičius, A. *Teisė*. 2002, 42: 7.

23 Geradin, D.; Munoz, R.; Nikolas, P., p. 50.

24 Law on the Bank of the Republic of Lithuania. *Official Gazette*. 2004, No. 61-2188.

25 Lithuanian Radio and Television Regulation, confirmed by the Government of the Republic of Lithuania, July 28th 2000, No. 744.

26 Law on the State Control of the Republic of Lithuania. *Official Gazette*. 1995, No. 51-1243.

27 Hardly can we call these institutions as public administration bodies or independent regulatory bodies, be-

institutions (for example, the Office of the Inspector of Journalist Ethics, the Chief Official Commission), or *public body* (the Article 18 of the Law on Competition).

2. IRAs as Public Administration Bodies

Western scholars sometimes hesitate as to whether regulatory agencies belong to the public sector or so called "grey zone" sector or private interest government sector[28]. Despite this, the majority of Lithuanian regulatory institutions belong to the system of public administratiive bodies. Paragraph 1 of Article 2 of Law on Public Administration[29] defines public administration as the activity of public administrative bodies, intended for the administrative regulation, supervision and control of the implementation of administrative acts, provision of administrative services, administration of the provision of public services, internal administration of entities of public administration. So it must be said that the main spheres of public administration shall be as follows:

1) administrative regulation;
2) supervision and control of the implementation of administrative acts;
3) provision of administrative services;
4) administration of the provision of public services;
5) internal administration of an entity of public administration.

Hence regulatory agencies implement *administrative regulation* (only entities of public administration have the right to adopt administrative regulatory enactments, orders, and decisions required for the implementation of legal acts). For example, the Competition Council implements state competition policy and controls compliance of enterprises, public and local authorities with respect to the requirements set forth in the Law on Competition. This institution has the right to adopt legal acts, give obligatory instructions. It means that the Competition Council implements the Law on Competition. Similarly, the Bank of Lithuania implements the Law on the Bank of Lithuania. This means that this entity has the right to adopt legal acts, to carry resolutions, orders and decisions within the scope of its competence. When implementing the National Energy Strategy, Law on Energy, Law on Electricity, the National Control Commission for Prices and Energy shall approve the methodologies and procedures for setting state regulated prices, set state regulated price caps, etc[30]. Furthermore, regulatory agencies provide *administrative services*. For example, the Bank of Lithuania issues licenses to foreign credit institutions in order to provide licensed financial services, and conversely – revokes licenses for national credit institutions. Lithuanian Radio and Television Commission grants the broadcasting and rebroadcasting licenses. The Competition Council

cause they are law enforcement authorities, they administer pretrial investigation, and they do not administer the provision of public services or provide administrative services.

28 Greve, C.; Flinders, M.; Van Thiel, S. Quangos – What's in a Name? Defining Quangos from a Comparative Perspective. *Governance: An International Journal of Policy and Administration*. 1999, 12(2): 129–146.

29 Law on Public Administration of the Republic of Lithuania. *Official Gazette*. 1999, No. 60-1945.

30 National Control Commission for Prices and Energy. Commission tasks in the Electricity Sector [interactive]. [accessed 2009-08-07]. <http://www.regula.is.lt/en/activities/electricity>.

adopts legal acts on the granting of licenses or permits in order to engage in certain economic activity, takes decisions regarding mergers and consolidations. The National Control Commission for Prices and Energy grants licenses for electricity market operators and licenses for transmission, distribution, public supply and independent supply of energy. The Securities Commission of the Republic of Lithuania grants and revokes licenses to the financial brokerage firms, and also issues financial advisory company licenses. The Central Electoral Commission issues parliamentary, municipal councilor, and presidential certificates. The Chief Official Ethics Commission grants lobbyist certificates. Additionally, regulatory agencies as well as other public administration entities exercise the *supervision and control of the implementation of administrative acts*. For example, The National Control Commission for Prices and Energy oversees the licensed activities of energy companies, controls the application of state regulated prices and tariffs. The Bank of Lithuania supervises the activities of credit institutions. The Lithuanian Radio and Television Commission can revoke a license. The Securities Commission is the securities market supervisory authority, so it exercises supervision of the activities of financial institutions and insurance companies. Accordingly, we can refer to these institutions as public administration bodies.

3. The Position of IRAs in the System of Public Administrative Bodies

When trying to identify regulatory institutions and understand the characteristic features of their activity, it is important to establish their position in the national system of public administrative bodies. Article 4 of Law on Public Administration states that this system consists of three layers: entities of state administration, entities of municipal administration, and other entities of public administration[31]. To sum up, regulatory agencies are entities of the state administration. The system of public administration entities, however, consists of inner systems like the system of executive power institutions or the system of municipal institutions. Regulatory agencies must not belong to the system of the executive power bodies. They must be insulated from that category of institutions.

There are some factors which would not allow us to bracket executive power bodies together with the regulatory bodies. It has been mentioned that there are two actors who participate in the procedure of the formation of regulatory institutions – the Parliament and the President. Moreover, the legal status of IRAs is fixed by the enactments (i. e. National Bank, Competition Council, Central Electoral Committee), or by the regulations (i. e. the Office of the Inspector of Journalists Ethics, Chief Official Ethics Commission) which are confirmed by the legislative body. Additionally, activity of the IRAs does not relate to the executive power bodies because there is no subordination between them. Hence, the IRAs neither belong to the legislative power (after all, they do not legislate!) nor to the judicial power (naturally, the State Security Department, the Special Investi-

31 Law on Public Administration of the Republic of Lithuania.

gation Service, the Prosecution Service are law enforcement authorities[32], but they do not administer justice, because the Article 109 of the Constitution of the Republic of Lithuania provides that justice shall be administered only by the courts). Almost all of the above-mentioned institutions, excluding the latter few are public administration bodies, for they implement laws and other regulatory enactments by making administrative decisions, providing administrative services, administering the provision of public services. Therefore it is possible to subsume IRAs into the system of central entities of state administration. Furthermore, nearly all aforementioned institutions exercise regulatory functions. That is the basis for referring to these institutions as regulatory institutions. It is true to say that not all the institutions accountable to the Seimas (as it is fixed in the official Internet website of the Seimas) could be entitled as regulatory agencies because some of them are advisory institutions. For example, one of the main goals of the Research Council of Lithuania is to counsel Seimas and Government on the formation of science policy[33]. The Cultural Heritage Commission [34] counsels Seimas, President and Government on cultural heritage issues. The main functions of the State Property Fund [35]are privatization of state-owned property, taking over and holding of buildings, structures owned by the state, reorganization, liquidatation and change of status of existing enterprises, etc. It is obvious that this entity does not regulate anything. The National Health Board[36] is an advisory body on health policy.

Hence, the *regulatory* function is not typical to all the institutions accountable to the Seimas. Whether directly or not, a regulatory function is indicated by the legal acts. For example, Article 3 of Postal Law [37] establishes that postal activities in the Republic of Lithuania shall be regulated by the Government or an institution authorized by it and the Communications Regulatory authority. Article 4 of Law on Electronic Communications of the Republic of Lithuania[38] establishes that electronic communications activities shall be regulated by the Communications Regulatory Authority. Legislation equates the regulatory function with the control and supervisory function. As a result, the most frequent terms in the legal acts which determine above-mentioned institutions' functions are "control", "supervision", "to control", "to supervise". For example, Item 27 of Article 3 of Law on Markets in Financial Instruments[39] defines the Securities Commission of the Republic of Lithuania as a supervisory institution. The Article 45 of Law on the Bank of Lithuania[40] establishes that the Bank of Lithuania shall supervise the activities

32 *Kokiai valdžiai priklauso prokuratūra – vykdomajai ar teisminei*? [To which of Authorities does Prosecution Service Belong – Executive or Judicial?]. Atsako Generalinės prokuratūros Valdymo skyriaus vyriausiasis prokuroras Viktoras Markovas [interactive]. [accessed 2008-12-04]. <http://www.vaateismas.lt/index.php/37511>.

33 Regulation of Research Council of Lithuania. *Official Gazette.* 2007, No. 137–5571.

34 Law on Cultural Heritage Commission of the Republic of Lithuania. *Official Gazette*. 2004, No. 153-5572.

35 Law on the State Property Fund of the Republic of Lithuania. *Official Gazette.* 1997, No. 104-2616.

36 Regulation of National Health Board. *Official Gazette.* 2009, No. 80-3226.

37 Postal Law of the Republic of Lithuania. *Official Gazette*. 1999, No. 36-1070.

38 Law on Electronic Communications of the Republic of Lithuania. *Official Gazette*. 2004, No. 69-2382.

39 Law on Markets in Financial Instruments. *Official Gazette*. 2007, No. 17-627.

40 Law on the Bank of the Republic of Lithuania. *Official Gazette*. 2004, No. 61-2188.

of credit institutions holding a license of the Bank of Lithuania. The article 18 of Law on Competition[41] provides that the Competition Council is a public body implementing state competition policy and supervising compliance with the Law on Competition. The Article 17 of the Law on Advertising provides that the Competition Council oversee whether advertisement is misleading[42], etc. The Radio and Television Commission of Lithuania maintains control over compliance by broadcasters with the provisions of the Law concerning the Protection of Minors against the Detrimental Effect of Public Information[43], etc. The Inspector of Journalist Ethics is responsible for the supervision of the Law on the Protection of Minors from the Detrimental Effect of Public Information, the Law on the Provision of Information to the Public, etc.[44] It is possible to find such terms as "control", "supervise", and "regulate" in the legal acts which determine the functions of executive power institutions as well. For example, the State Commission on the Lithuanian Language (as an institution accountable to the Seimas) coordinates the implementation of the language program, accumulates information on language usage and standardization[45]. The State Language Inspection, which is subordinated to the Ministry of Culture (i. e. executive power body) controls the implementation of the Law on State Language. This entity is accountable to the State Commission on the Lithuanian Language. The State Food and Veterinary Service implements the Government's policy on food safety and quality. One of its' objectives is to ensure and control contagious animal diseases, zoos and of animal shelters, to eliminate diseases, to ensure food safety and control all stages of food handling, etc[46]. The Article 17 of the Law on Advertising establishes that the National Council for Consumer Protection is an agency of control[47]. This agency is subordinated to the Ministry of Justice. The Government's policy of alcohol and tobacco is implemented by the State Tobacco and Alcohol Control Service. One of the main objectives of the State Public Health Service under the Ministry of Health is to implement control of national public health safety[48]. It is clear that the functions of control and supervision are exercised by both – the regulatory agencies and institutions subordinated to the Government. Hereby the question could be raised as to what kind of difference there is between the regulatory agencies and institutions subordinated to the Government and if it is of consequence to distinguish those institutions.

41 Competition Council [interactive]. Vilnius, 2009 [accessed 2009-01-18]. <http:// www.konkuren.lt>.

42 *Ibid*.

43 Radio and Television Commission [interactive]. Vilnius, 2009 [accessed 2009-08-08]. <http://www.rtrk.lt/en/static_old.php?strid=283508>.

44 Office of the Inspector of Journalist Ethics [interactive]. Vilnius, 2009 [accessed 2009-08-08]. <http://www3.lrs.lt/pls/inter/setika?r_id=62078&k_id=1&d_id=81272>.

45 State Commission on the Lithuanian Language [interactive]. Vilnius, 2009 [accessed 2009-08-08]. <http://www/vlk.lt/eng/commission.htm>.

46 State Food and Veterinary Service [interactive]. Vilnius, 2009 [accessed 2009-08-08]. <http://vmvt.lt/en/about.sfvs/>.

47 Law on Advertising of the Republic of Lithuania. *Official Gazette*. 2000, No. 64-1937.

48 State Public Health Service under the Ministry of Health [interactive]. Vilnius, 2009 [accessed 2009-08-08]. <http://www.vvspt/en/>.

First, the procedure for the formation of these institutions is different. It was mentioned that the members and the directors of independent regulatory agencies are appointed by the President or by the Seimas, whereas the heads of governmental agencies or of the institutions subordinate to the ministries shall be appointed by the Prime Minister or Minister (except Police Commissioner General). The regulations of the executive power institutions are usually confirmed by the Government, whereas the regulations of independent regulatory agencies are confirmed by the Parliament or the Government. Secondly, executive power institutions are bound by the Program of the Government, as they are by the resolutions of the Government and the Seimas. Regulatory agencies adopt their own resolutions by which they can oblige the executive power institutions to change their decisions (for example, the Competition Council). Besides, a regulatory agency must be apolitical because it could make a decision both in respect of private entities and in respect of a political formation (for example, with respect to the municipal council, the Government, ministries, governmental agencies, institutions under the ministries, and others). Hence the most precise definition of central state institutions which execute regulatory functions is independent regulatory agencies. These institutions are the intermediaries who must keep a balance between the political and economic interests, because sometimes they contradict each other. When performing their functions, regulatory agencies must be independent from the other public administrative bodies. For example, Article 3 of the Law on the Bank of Lithuania establishes that when implementing the objectives, neither the Bank of Lithuania, nor the Chairperson of the Board of this Bank, the deputy Chairpersons, the Board members nor other members of the staff of the Bank must seek nor take instructions from the institutions and bodies of the European Union, the governments of the Member states of the EU or any other institutions or bodies. The Government of the Republic of Lithuania and State institutions must respect the independence of the Bank of Lithuania and must not seek to influence the Bank or its staff in the discharge of their duties[49]. Similarly, Article 7 of the abovementioned Law defines the type of relationship between the Bank and the Government. It is said that the Bank must support the economic policy of the Government of the Republic of Lithuania, without prejudice to the primary objective of the Bank of Lithuania. Article 41 specifies the type of the relationship. It provides that the Bank of Lithuania may consult and give proposals to the Government on issues related to financial markets and State Treasury policy.

4. Some Characteristics of IRA Activities

The fact that representatives of both, the legislative and the executive branches of power usually participate in the formation of IRAs should guarantee impartiality, neutrality, and the absence of interests in the decision making. Thus, when performing their functions, IRAs must not be connected to any political or business interests. We have

49 Law on the Bank of the Republic of Lithuania.

already mentioned that IRAs could make decisions which impact both, private entities and political formations.

For example, the Competition Council obligated the Vilnius Municipality to repeal a decision and terminate or amend a service provision agreement. The Competition Council acknowledged that Resolution No. 1-209 of 12 September 2007 of the Council of the Vilnius Municipality „On the obligation of "Vilniaus profilaktinės dezinfekcijos stotis UAB" [a private company rendering sanitation services] to render mandatory services" infringes upon Article 4 of the Law on Competition. The findings of an investigation allowed the Competition Council to come to the conclusion that the Council of the Vilnius Municipality, having solely by its Resolution and without having conducted any public tender, or any other procedures ensuring competitive conditions, contracted the said private company to provide mandatory pest control services, infringed upon the requirements of the Law on Competition by granting privileges to a single company without regard to other enterprises. The Competition Council established that the Council of Vilnius Municipality, without having announced a tender ensuring a possibility to choose from several best tenders, solely by its decision obligated "Vilniaus profilaktinės dezinfekcijos stotis UAB" to provide mandatory pest control services. In the opinion of the Competition Council, the Council of Vilnius Municipality having decided to procure the mandatory pest control services and, furthermore, at higher rates than offered by other companies, granted privileges to a single enterprise, discriminating others operating in the relevant market. As a result, the Council of the Vilnius Municipality was obligated within the term of three months to repeal the Resolution and terminate the agreement for compensated services concluded on the basis of the relevant resolution concerning Administration of Vilnius Municipality and "Vilniaus profilaktinės dezinfekcijos stotis UAB," or to amend provisions of the agreement bringing them into line with provisions of the Law on Competition[50]. In the March of 2008, the Competition Council obligated the Ministry of Health to amend specified provisions. The Competition Council established that item 6 and 10 of the Procedure for the Payment for Personal health Services approved by Order No. V-1113 of 22 December 2006 of the Minister of Health of the Republic of Lithuania as regards specialized outpatient services contradicts the requirements of Article 4 of the Law on Competition. The investigation established that for the purpose of the distribution of the Mandatory Health Insurance Fund, the Kaunas territorial Patient's Fund was acting in accordance with items 6 and 10 of the Procedure approved by the Order of the Minister of Health. The procedure whereby the funds are allocated in advance as defined in items 6 and 10 of the Procedure creates unequal competitive conditions for entities providing certain health care services. Findings concluded that it causes significant differences in funding to individual health care institutions. The Ministry of Health was obligated within the term of three months to amend provisions of the Order of the Ministry of Health to bring them into line with requirements set down in the Law on Competition.[51]

50 Competition Council [interactive]. Vilnius, 2008 [accessed 2009-08-08]. <http://www.konkuren.lt/en/index.php?show=news_view&pr_id=563>.

51 Competition Council [interactive]. Vilnius, 2008 [accessed 2009-08-08]. <http://www.konkuren.lt/en/index.php?show=news_view&pr_id=497>.

In the summer of 2008, the chairman of the National Control Commission for Prices and Energy of Lithuania expressed an opinion regarding the importance of the regulatory agenciy independence. The head of the office stated that the Commission doesn't solve social problems, and that the aforementioned institution is the intermediary which tries to find a balance between the consumer and the supplier. On the other hand, the Prime Minister tried to assure everybody that the prices which were set by the Commission would not become effective until the "commission of the independent experts" would performed an audit of legal acts according to which the National Control Commission for Prices and Energy sets the prices. However, the Commission must be neutral and politically impartial. If politics set the prices, the political interest would become more important than the public interest (especially prior to parliamentary elections). Besides, only the court could repeal the decisions of above-mentioned Commission, not the Government nor any institution of executive power[52]. So it would seem that in this particular instance the Prime Minister "forgot" that the Price Commission is not subordinated to institutions of executive power.

What is the rationale for the sprawl of such type of institutions and why must politicians be interested to establishing IRAs? Firstly, making regulators independent allows policy makers to increase the credibility of their regulatory commitments. Secondly, it must be recognized that regulatory independence is a way to tie the hands of future majorities and prevent them from undoing what the current government's decisions. Thirdly, international dynamics also matter, since IRAs have diffused internationally, as decisions to create them have been influenced by previous decisions in other countries[53].

Conclusions

1. Over the past twenty years regulation has gained an unprecedented place in European countries. The rise of regulation has been accompanied by the rise of a new type of institutions. Western scholars use a lot of terms in defining this type of institutions, i. e. QUANGO (quasi-autonomous non governmental organization), NDPB (non-departmental public body), EGO (extra-governmental organization), NGO (non-governmental organization), QAO (quasi-autonomous organizations), SAO (semi-autonomous organization). But the most frequent term is IRA (independent regulatory agency).

2. Western scholars define IRAs as public organizations with regulatory powers that are neither elected by the people, nor directly managed by elected officials. Also some

52 Laučius, V. Mūsų šilumos ūkis skendi nuostoliuose, o elektros ir dujų ūkiai maudosi antpelniuose. [Laucius, V. Our Thermal Sector Weters in Losses, while Electrical and Gas Sectors Wallow in Superprofit]. *Veidas* [interactive]. 2008, Nr. 28 [accessed 2008-08-23]. <http://www.veidas.lt/lt.php>; Bačiulis, A. Šilumos faktorius rinkimuose. [Baciulis, A. Thermal Factor in Elections]. *Veidas* [interactive]. 2008, Nr. 28 [accessed 2008-08-23]. <http://www.veidas.lt/lt.php>; Bačiulis, A. Iššūkiai būsimajai Vyriausybei. [Baciulis, A. Challenges for Forthcoming Government]. *Veidas* [interactive]. 2008, Nr. 29 [accessed 2008-08-23]. <http://www.veidas.lt/lt.php>.

53 Gilardi, F., p. 22.

of them reveal certain requirements for inclusion as an IRA. First, the agency has its own powers and responsibilities given under public law; second, it is organizationally separated from institutions of executive power; and finally, it is neither directly elected nor managed by elected officials. Additionally, they implement quasi-legislative and quasi-judicial functions.

3. There are such institutions in Lithuania, too. For example, the Competition Council, the Communications Regulatory Authority, the Securities Commission of the Republic of Lithuania, the National Health Board, etc. However,Lithuanians do not have an exact legal term for these institutions. Scholars, politicians, and public servants identify them as institutions accountable to the Seimas or President. However, the system of institutions accountable to the Seimas includes not only regulatory institutions, but also law enforcement and advisory bodies. In conclusion, Lithuanian IRAs are part of the system of public administrative institutions which consist of three layers – entities of state administration, entities of municipal administration, and other entities of public administration. To sum up, regulatory agencies are entities of state administration. At the same time, the system of public administrative entities consists of inner systems like systems of executive power and municipal institutions.

4. According to F. Gilardi, the rationale for the proliferation of such type of institutions is multifaceted. Firstly, making regulators independent allows policy makers to increase the credibility of their regulatory commitments. Secondly, regulatory independence is a way to tie the hands of future majorities and prevent them from undoing what the current government's decisions. Thirdly, international dynamics also matters, since IRAs have diffused internationally, as decisions to create them have been influenced by previous decisions in other countries.

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NEPRIKLAUSOMOS REGULIAVIMO INSTITUCIJOS: VEIKLOS YPATUMŲ IR VIETOS LIETUVOS VIEŠOJO ADMINISTRAVIMO INSTITUCIJŲ SISTEMOJE NUSTATYMO GALIMYBĖS

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Santrauka. *Kelis dešimtmečius iš eilės vyksta reguliavimo institucijų plėtra visame pasaulyje. Lietuvoje taip pat egzistuoja tokios institucijos, pvz., Lietuvos Bankas, Ryšių reguliavimo tarnyba, Konkurencijos taryba ir kt. Tačiau mūsų šalyje šioms institucijoms nėra taikomas joks jas apibrėžiantis terminas. Lietuvos mokslininkų straipsniuose šios įstaigos įvardijamos kitos Seimo formuojamos institucijos arba kontrolės funkcijas vykdančios institucijos, arba Lietuvos Respublikos Seimo sudarytos bei jam tiesiogiai atskaitingos institucijos, arba institucijos, atskaitingos ir atsakingos Seimui arba Respublikos Prezidentui, arba kiti centriniai subjektai. Oficialiame Lietuvos Respublikos Seimo tinklalapyje šios institucijos yra įvardytos Seimui atskaitingomis institucijomis***. *Vakaruose šie terminai yra dar įvairesni, pavyzdžiui, quango, NDPB, EGO, SAO. Tačiau Vakarų mokslinėje literatūroje dažniausiai vartojamas nepriklausomos reguliavimo agentūros terminas (IRA – independent regulatory agency). Nepaisant organizacinės nepriklausomų reguliavimo institucijų įvairovės, Vakarų*

mokslininkai skiria bendrus bruožus, būdingus minėtoms institucijoms. Pirma, šioms institucijoms kompetencija suteikiama įstatymais, taip pat jos vykdo įstatymus. Antra, organizaciškai jos yra atskirtos nuo vykdomosios valdžios institucijų. Trečia, jų nariai neturi būti renkami ir jų vadovai negali būti renkami pareigūnai. Minėta, Lietuvoje įprasta jas vadinti Seimui atskaitingomis institucijomis, nors tokių institucijų sistema apima ir subjektus, kurie nėra laikytini viešojo administravimo subjektais (pvz., teisėsaugos, ikiteisminio tyrimo institucijos), taip pat ir reguliavimo subjektais (pvz., patariamosios institucijos arba kontrolės institucijos). Įdomu ir tai, jog reguliavimo funkcijas vykdo ir vykdomosios valdžios institucijų sistemai priklausantys subjektai. Tai apsunkina galimybes apibrėžti Lietuvos reguliavimo institucijų sistemą bei suvokti šių institucijų veiklos ypatumus. Nors Vakarų mokslininkai kartais abejoja, ar reguliavimo institucijos priklauso viešajam sektoriui, vadinamajam „pilkosios zonos" sektoriui ar privačių interesų vyriausybės sektoriui, dauguma minėtų Lietuvos institucijų veikia viešojo administravimo sričių ribose, nes atlieka administracinį reglamentavimą, teikia administracines paslaugas, administruoja viešųjų paslaugų teikimą. Kokia pagrindinė priežastis atsirasti nepriklausomoms reguliavimo institucijoms ir kodėl politikai turėtų būti suinteresuoti jų steigimu? Pirmiausia, perduodami reguliavimo funkciją atskiroms institucijoms ir juose dirbantiems atitinkamos srities profesionalams, politikai padidina reguliavimo patikimumą. Antra, tokių institucijų nepriklausomumas neleidžia keistis reguliavimo politikai taip dažnai, kaip keičiasi politinė dauguma. Trečia, nepriklausomos reguliavimo institucijos, kaip teigia F. Gilardi, paplito tarptautiniu mastu, nes vienų institucijų steigimas vienoje šalyje skatina tokio paties statuso institucijų steigimą kitoje šalyje.

Reikšminiai žodžiai: *reguliavimas, reguliavimo institucijos, nepriklausomumas, viešojo administravimo institucijos.*

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