

INDEPENDENT REGULATORY AND ADMINISTRATIVE AUTHORITIES IN THE REPUBLIC OF LITHUANIA

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Abstract: *The aim of this research is to identify the independent regulatory authorities in the Republic of Lithuania. Western scholars use a lot of terms in defining this type of institutions, i.e. in Great Britain they are called QUANGOs (quasi-autonomous non governmental organizations), in the U.S.A. – IRAs (independent regulatory agencies), in France – les autorités administratives indépendantes, in Italy – autorità indipendenti, in Germany – Ministerialfreie Verwaltung, in Czech Republic – nezávislé správní úřady. Obviously, in these categories dominates the term “independent”. There are regulatory and administrative institutions in Lithuania which are never called independent. The scientists, politicians, and practitioners entitle them as institutions accountable to the Seimas (parliament), President or Government. We presume that these entities correspond to the features which Western scholars consider as characteristic to independent state authorities. Let us assume that namely these entities cover the niche in Lithuania of so called independent regulatory and administrative authorities. The article discusses characteristic of independent state authorities, the convergence of “administrative” and “regulatory” categories. The analysis also deals with the aspects of their institutional structure, activity, and their place in the public administration entities’ system.*

Keywords: *administrative, regulatory, independent regulatory authorities, independent administrative authorities*

1. INTRODUCTION

Scholars regularly try to explain the essence and the need of so called independent administrative authorities. One theory proposes the idea that international dynamics matter: they diffused internationally as decisions to create them have been influenced by previous decisions in other countries¹. Moreover, it happened because of the processes of liberalization and privatization, which began in Europe in the 80s of 20th century. Others predicate that it is important to demarcate regulation from the politics in order to develop political continuity, to increase the credibility of the regulatory commitments made by the policy makers, to prove abilities of expertise². Other scholars suppose that the spread of independent agencies is connected with the changing role of the state. Nowadays the state operates like an arbitrator and regulator, but not like an entrepreneur or market player³.

There are a huge variety of definitions of independent regulatory bodies. Scholars of different countries define them diversely. The U. S. scholars determine them as entities with the regulatory powers, separated from the executive entities and that are not subordinated to the President⁴. French scholars define them as administrative entities that dis-

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¹ GILARDI, F. *Delegation in the Regulatory State*. MPG Books Ltd, Bodmin, Cornwall, 2008, pp. 21–22.

² *The Public Administrations Dictionary*. Chandler R. C., Plano J. C. Santa Barbara, California, Oxford, England. 1988, p. 198.

³ DEMARIGNY, F. *Independent administrative authorities in France and the case of the French Council for Competition, in Regulating Europe*. European Public Policy Series, edited by J. Richardson. London - New York: Routledge, 1996, p. 157, p. 162.

pose of certain degree of independency or that are separated from hierarchical structure of central administration⁵. British scholars perceive them as “any body that spends public money to fulfill a public task but with some degree of independence from elected representative”⁶. Australian scientists determine them as collegial non-departmental public bodies that are established by laws; that are not ministries, nor local bodies⁷. Czech scholars perceive them as independent administrative organs or state institutions that implement public administration aside its’ organizational structure⁸.

Notwithstanding the variety of perception of that kind of entities some common features are crystallized in the scientific literature (Bougrab, J., Flinders, M., Handrlica, J., Kenneth, W., E., Wettenhall, R.). First and foremost, they are organizationally separated from the executive power institutions. Second, they are public organizations with regulatory powers – quasi-legislative, executive and quasi-judicial. Third, the leadership of these institutions are neither elected by the people, nor directly managed by the politicians. Fourth, the powers and responsibilities of these institutions are given under the public law. Fifth, Parliament and President usually participate in the composing of leadership.

We presume that there are such authorities that correspond to the above mentioned characteristic in Lithuania. For example, the Competition Council, the Communications Regulatory Authority, National Bank, State Audit Office, Central Electoral Committee, Public Procurement Office, the National Control Commission for Prices and Energy, Chief Official Ethics Commission, State Nuclear Power Safety Inspectorate, Board of the Research Council, the Radio and Television Commission of Lithuania. In order to analyze independent regulatory and administrative authorities’ role in the process of legal regulation we separate two concepts, i.e. institutional structure and the content of regulation. Institutional structure would let us reveal the legal norms, which determine the place of these entities in the system of public administration authorities, their relationship with the other state authorities, and the aspect of their independency. The content of regulation is connected with the legal norms, which establish the functions of these institutions, namely quasi-legislative and quasi-judicial powers. We would like to emphasize that this analysis grounds on the research of legal acts, but not on the empirical investigation of what above mentioned authorities do.

⁴ KENNETH, W. F. *Administrative Law in the Political System*. USA: West Publishing Company, 1988, p. 31.

⁵ BOUGRAB, J. Independent Administrative Authorities in France in Independent administrative authorities. Edited by Caranta, R., Andenas, M., Fairgrieve, D. London: British Institute of International and Comparative Law, 2004, p. 57.

⁶ FLINDERS, M., V. *Setting the Scene: Quangos in Context, in Quangos, accountability and reform: the politics of quasi-government*. Edited by Mathew V. Flinders and M. J. Smith. New York: St. Martin's Press in association with Political Economy Research Centre, University of Sheffield, 1999, pp. 3–4.

⁷ WETTENHALL, R. Exploring Types of Public Sector Organizations: Pas Exercises and Current Issues. *Public Organization Review: A Global Journal*. 2003, p. 229.

⁸ HANDRLICA, J. *Nezávislé správní orgány*. Praha: Studie Národohospodářského Ústavu Josefa Hlávky, 2009, pp. 129–161; VOPÁLKA, V. *Nezávislé správní orgány*. In: *Ve službách práva*. Praha: C. H. Beck, 2003, pp. 87–97; MIKULE, V. *Nezávislé správní urady?* Praha: Nakl. Karolinum, 2002, pp. 251–255; PELIKÁNOVÁ, I. *Komise pro cenné papíry a nezávislé správní orgány*. In: *IX. Karlovarské právnícké dny. Společnost německých, českých a slovenských právníků*. Mnichov – Praha, 1999; JEŽEK, T. *Nezávislé správní orgány – žádoucí směr inovace Ústavu ČR*. In: Kysela, J. (ed.). *Deset let Ústavy České Republiky*. Praha: Eurolex Bohemia, 2003, pp. 347–351; SLÁDEČEK, V. *Obecné správní právo*. Praha: ASPI, 2004, pp. 227–234.

2. THE CONVERGENCE OF ADMINISTRATION AND REGULATION, DEFINITION OF INDEPENDENT REGULATORY BODY AND OF INDEPENDENT ADMINISTRATIVE BODY

Public administration concept is given in the Law on Public Administration of the Republic of Lithuania⁹. It has two meanings: functional and institutional.

According to the Law public administration functionally means activities of entities of public administration regulated by laws and other legal acts, which are intended: a) for adoption of administrative decisions, b) control of the implementation of laws and administrative decisions, c) provision of administrative services established by laws, d) administration of the provision of public services and e) internal administration of an entity of public administration. These five activities are called main spheres of public administration. Thus the entity which operates at least in one of these spheres usually is called public administration entity.

Public administration has its institutional construction, i.e. system of entities of public administration. This system is divided into two major groups of public administration entities: 1) state administration, 2) entities of municipal administration. Moreover, state administration is subdivided into two types of entities: a) central entities of state administration (whose activity is performed in the whole territory of the state) and b) territorial entities of state administration (whose activity is performed in the established area of the territory of the state). Moreover, we presume that the state administration is constructed from the three types of groups: 1) executive branch entities (ministries, Government committees, commissions, Government agencies, and agencies under ministries), 2) independent regulatory and administrative entities; 3) state enterprises, public establishments whose owner or stakeholder is the State, associations whose performance of public administration is authorised (appendix 1). Our attention in this article is mainly concentrated on the state administration, precisely on independent regulatory and administrative agencies, not on the executive bodies notwithstanding with the fact that state administration includes them.

As we separate administrative bodies and regulatory bodies the difference between these terms must be clarified. First of all, we understand regulatory body as an organization whose main mission is to regulate industrial branches of markets. Industrial here means telecommunication, electricity, gas, postal, railways markets, i.e. where circulates big amounts of money and where market players have to dispose of gigantic material facilities. Furthermore, regulation here means three main functions – rule-making, enforcement and adjudication, or quasi-legislative, executive and quasi-judicial powers, whereas administration means fulfilling one of the five main spheres entitled in the Law on Public Administration. It has to be said that all regulatory bodies are administrative bodies because they adopt administrative decisions (including binding rules). But not all administrative bodies are regulatory bodies, because not all of them issue binding rules and dispose of adjudicatory powers, or realize their responsibilities in regard to the industrial branches of market. Most of administrative bodies are involved in health care, welfare, so-

⁹The Republic of Lithuania Law on Public Administration. *Official Gazette*. 1999, No. VIII-1234.

cial well-being of citizens; while regulatory bodies are aimed to control markets where usually dominate monopolies or government properties.

Hence the authors of the article distinguish two types of the state bodies: administrative bodies (independent and executive bodies) and independent regulatory bodies. As we are concentrated on independent administrative and independent regulatory bodies it is possible to give such definitions:

- *independent administrative body* is a central state entity, separated from the traditional hierarchy of the executive entities' system, with the quasi-legislative, executive and quasi-judicial powers, in the composition of which participate Parliament, President, Government, and established to form and implement politics in the exceptional spheres of national importance.

- *independent regulatory body* is a central state entity, separated from the traditional hierarchy of

- the executive entities' system, with the quasi-legislative, executive and quasi-judicial powers, in the composition of which participate Parliament, President, and Government, established to regulate industrial branches of market, and possessing dual-degree of independence, i.e. relatively independent (related to the decisions of Government and its' responsibility to control entity's activity) and fully independent.

As we have mentioned above this article concentrates on the state bodies which can be called independent administrative and regulatory bodies. These bodies are known as institutions accountable to the Parliament in Lithuania.

In order to analyze the independent regulatory and administrative authorities' role in the process of legal regulation it is important to separate two concepts, i.e. institutional structure and the content of regulation¹⁰. The understanding of institutional structure would let us reveal the legal norms, which determine the place of these entities in the system of public administration authorities, their relationship with the other state authorities, and different aspects of their independency. The content of regulation is connected with the legal norms, which establish the functions of these institutions, namely quasi-legislative and quasi-judicial powers. Hence the purpose of this analysis is to estimate, whether Lithuanian entities correspond to the criteria structured for so called independent administrative bodies in Western countries. This analysis includes: first, the estimation if the functions and activities of these entities are fixed by the laws; second, examination of the order of formation of the leaderships; third, exploration of the financial sources of the institutions; fourth, determination of the disposition of quasi-legislative and quasi-judicial powers; fifth, evaluation of the aspects of accountability and control; sixth, research of criteria of independency fixed in the laws.

3. INDEPENDENT REGULATORY BODIES

We presume that independent regulatory bodies in Lithuania are the Bank of Lithuania, the Competition council, the State Control Commission for Prices and Energy, the Radio

¹⁰ MILČIUVIENĖ, S. *Kainų teisinis reguliavimas elektros energijos rinkoje*. Vilnius: Mykolo Romerio universitetas, 2009, p. 62.

and Television Commission of Lithuania, the Public Procurement Office, the Communications Regulatory Authority, the State Nuclear Power Safety Inspectorate.

One way or another all independent regulatory bodies are structured by the several state government authorities, usually by the President and the Parliament. For example, chairperson of the Board of the Bank of Lithuania shall be appointed and dismissed prior to the expiration of the term of office by the Seimas on the recommendation of the President. Deputy Chairpersons and members of the Board shall be appointed and dismissed prior to the expiration of their term of office by the President on the recommendation of the Chairperson of the Board of the Bank of Lithuania¹¹. Chairman and four members of the Control Commission for Prices and Energy shall be appointed by the Seimas on the recommendation of the president¹². One member of the Radio and Television Commission shall be appointed by the President, three members shall be appointed by the Seimas on the recommendation of the Seimas Committee of Education, Science and Culture and Seimas Committee on the Development of Information Society¹³. In the structuring of leadership of these authorities Prime Minister also participates. For instance, the Chairperson and four members of Competition Council shall be appointed by the President on the recommendation of the Prime Minister¹⁴. It is worth mentioning that other subjects can participate in the formation of the leadership as well. For example, other members of the Radio and Television Commission shall be appointed by the Lithuanian Artists' Association, the Lithuanian Filmmakers' Union, the Lithuanian Composers' Union, the Lithuanian Writers' Union, the Lithuanian Theatres' Union, the Lithuanian Journalists' Union, the Lithuanian Journalists' Society, the Lithuanian Bishops' Conference and the Lithuanian Periodical Press Publishers' Association. Similarly here we can observe that the terms of tenure are fixed in the Laws. For example, Deputy Chairpersons and members of the Board of the Bank of Lithuania shall be appointed for a term of six years, Chairperson of the Board of the Bank of Lithuania shall be appointed for a term of five years, Chairperson and members of the Competition Council shall be appointed for a term of six years, Chairman and four members of the Control Commission for Prices and Energy are appointed for a term of five years, Chairperson of Radio and Television Commission is elected by the members of the Commission for a term of two years.

The common feature which unites these authorities is that they are not subordinated to the bodies of the executive branch. However, this proposition is not unconditional. Government approves regulations of Competition Council and State Control Commission for Prices and Energy after all. We would like to emphasize that according to the Law on the Government¹⁵ it shall approve regulations of the Ministries, the Office of the Prime Minister, government agencies, and agencies under the Ministries. Hence the Board of the Bank of Lithuania and the Radio and Television Commission approve their regulations by themselves. It has to be mentioned that the composition and formation of these authorities are regulated by the laws. It is obvious that the procedure of formation of above mentioned authorities is not unified.

¹¹ Republic of Lithuania Law on the Bank of Lithuania. *Official Gazette*. 1994, No. I-678.

¹² Republic of Lithuania Law on Energy. *Official Gazette*. 2002, No. IX-884.

¹³ Republic of Lithuania Law on the Provision of Information to the Public. *Official Gazette*. 1996, No. I-1418.

¹⁴ Republic of Lithuania Law on Competition. *Official Gazette*. 1999, No. VIII-1099.

¹⁵ Republic of Lithuania Law on Government. *Official Gazette*. 1994, No. I-464.

Moreover, there are some other differences. For example, the members of the Board of the Bank of Lithuania, of the Control Commission for Prices and Energy, of the Radio and Television Commission, and of the Competition Council are not public servants and the Law on Public Service cannot be applied to them. They are called state officers and the amounts of their salaries are declared in the different law – Law on Remuneration of State Politicians and State Officers, except the salary of the Board of the Bank of Lithuania, which is fixed in the Law on the Bank of Lithuania and except the salaries of the members of Radio and Television Commission as they approve it by their order. That way or another, members of leaderships of these authorities have the status of state officers, not civil servants. There are some difficulties due to this fact. The authorities face a situation where the salaries of members are lower than the civil servants' who serve in the administrations of these bodies. Such situation can be observed in the Competition Council and the Control Commission for Prices and Energy.

Sources of funding of these bodies are also different. Competition council is financed from the state budget. The capital of Central bank is comprised of its authorized capital (it is accumulated from the funds of the state and profit of the Bank) and reserve capital (it is accumulated from the profit of the Bank). Commission for Prices and Energy is financed from the state budget and its' activity profit. Radio and Television Commission is financed only from its' activity profit.

It has to be stated that the above mentioned authorities issue binding rules and implement quasi-judicial functions. All of them issue binding orders and have the right to impose fines and penalties on economic entities.

The question of accountability and control of these bodies is rather delicate or maybe even tricky. As we have mentioned before, independent regulatory bodies are called authorities accountable to the Seimas in Lithuania. But again – this proposition is not absolute. According to the laws the Bank of Lithuania and Radio and Television Commission are accountable to the Parliament. The chairpersons have to present reports (twice a year Bank's Board Chairperson, once a year Commission's chairperson) to the Seimas on the implementation of their primary objectives, performance of their functions. Competition Council's chairperson has to submit annual reports on authority's activities to the Seimas and the Government. The chairperson of the Commission for Prices and Energy submits annual reports to the President, Seimas, and Government. In regard to the independent regulatory authorities we can subdivide forms of the control into parliamentary control, President's control, Government's control, financial audit, and judicial control.

Parliamentary control has to be performed by the Committees of Seimas. For example, the Bank of Lithuania – controlled by the Budget and Finance Committee, the Competition Council, Commission for Prices and Energy – controlled by the Economics Committee, Radio and Television Commission – controlled by the Education, Science and Culture Committee and the Development of Information Society Committee. According to 49 article 9 c., 56 article 1 s. of the the Seimas Statute¹⁶ the committees of Seimas on their own initiative or upon the instruction of the Seimas consider annual reports on the activities of the State institutions accountable to the Seimas and present their conclusions to the Seimas. Con-

¹⁶ Seimas of the Republic of Lithuania Statute. *Official Gazette*. 1994, No. I-399.

sidering article 206 of the Statute heads of the State institutions, who are appointed by the Seimas or the appointment whereof requires Seimas approval, render an annual accounting of the institution's annual activity. Upon receipt of such accounting, the Speaker of the Seimas advises the Seimas of this and the latter shall decide, which committee should be tasked with analysing the submitted report. Upon analysing, the committee prepares a conclusion and draft of a decision, which will be considered at the Seimas sitting along with the report by the head of the State institution. The Seimas adopts a resolution regarding the head's accounting and institution's activity. Reality is different though. Over the last four years annual reports are rarely considered at the Seimas' sitting. For example, the last Seimas order on the report of the Bank of Lithuania was issued in 2001, on the report of Commission for Prices and Energy – in 2007, on the report of Radio and Television Commission – in 2008. There are no any Seimas resolutions on the reports of Competition Council. But even if the Seimas considers annual reports it can only approve or disapprove the report and give some suggestions to the authority and the Government. There are no other legal outcomes. The Seimas also has the right to submit in advance written questions to the heads of the state institutions appointed by the Seimas or whose appointment requires Seimas' approval. For the purpose of the control how the decisions of Seimas are being implemented, the Seimas has the right to form ad hoc control or investigation commissions.

President disposes limited mechanisms of control. It could be said that the main instrument is appointment or dismissal of members. And even if the chairperson has to submit the annual report to the President, the President does not issue any decision on the annual report. Members can be dismissed only for cause (usually set in the Law) but not on the ground of the President's discretionary power.

In regard to the control of Competition Council, Commission for Prices and Energy Government has some role as well. It considers annual reports during its sittings or meetings. However, there is no uniform practice, although according to the Law on the Government¹⁷ reports submitted to the Government may be discussed at the meetings. The result of these discussions usually is the adoption of the resolution "to take into account the annual report". There were no situations when Government disapproves the annual report.

In regard to all above mentioned regulatory bodies National Audit Office supervises the lawfulness and effectiveness of their management and how they use the state property and execute the state budget. Moreover, according to the Law on National Audit Office¹⁸ the Seimas may assign the State Control to perform public audit within the competence of the State Control by its resolution.

Administrative courts usually execute judicial control of the decisions of the independent regulatory bodies.

¹⁷ Republic of Lithuania Law on the Government. *Official Gazette*. 1994, No. I-464: art. 3: "When implementing the objectives and performing its functions as well as pursuing the activities necessary for that, neither the Bank of Lithuania, nor the Chairperson of the Board of the Bank of Lithuania, the Deputy Chairpersons, the Members of the Board, nor other members of the staff of the Bank of Lithuania must seek and take instructions from the institutions and bodies of the European Union, the governments of the Member States of the European Union 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 of Lithuania and its staff in discharge of their duties".

¹⁸ Republic of Lithuania Law on National Audit Office. *Official Gazette*. 1995, No. I-907.

Independence requirements of regulatory bodies are set by laws. This arose from the experience of different countries and from the European Union's secondary law. These requirements are established in a broad way only in some of the enactments, for example, in the Law on the Bank of Lithuania¹⁹, and in the Law of Energy²⁰. Requirements of independence due to other authorities are expressed in more restrained form, for example, in the Law on the Provision of Information to the Public²¹ or in the Law on Competition²². It may be explained by the impact of the secondary European law and the institutional structure examples (there is no separate European Competition Agency and the liberal expression due to the national regulatory bodies in the Directive 2010/13/EU²³).

Here we would like to crystallize some features of independent regulatory authorities. It is not very easy because there are no unified criteria of formation, accountability, and independency, still:

1. the Bank of Lithuania is an entity of constitutional level, because its' status is clarified in the Constitution of the Republic of Lithuania. However it is possible to find the origins of other authorities in the main act of the state as well. According to the article 46 of the Constitution "the law shall prohibit monopolization of production and the market and shall protect freedom of fair competition" (Competition Council), article 44 estimates that "the State, political parties, political and public organizations, and other institutions and persons may not monopolize the mass media" (Radio and Television Commission), there is defined that "the State shall regulate economic activity so that it serves the general welfare of the Nation" in the article 46 (Control Commission for Prices and Energy);

2. all these authorities are collegial, their status, functions and activities are established by laws;

3. all of them are structured by several state government authorities, usually by the President, and the Parliament. In some cases Prime Minister and professional associations participate in their activities;

4. all the leaders are state officers (tenure term is from 2 to 6 years);

5. they are financed from the state budget or state budget and their activity profit;

6. they issue binding rules and implement quasi-judicial functions;

7. all the chairpersons of above mentioned authorities have to submit annual reports to the Seimas (the Bank of Lithuania, Radio and Television Commission) or to the Seimas and Government (Competition Council), or to the Seimas, President and Government (Control Commission for Prices and Energy); in regard to all the authorities we subdivide

¹⁹ Republic of Lithuania Law on the Bank of Lithuania. *Official Gazette*, 1994, No. I-678.

²⁰ Republic of Lithuania Law on Energy. *Official Gazette*. 2002, No. IX-884: art. 8: "Commission is legally distinct from and functionally independent of all public or private subjects".

²¹ Republic of Lithuania Law on the Provision of Information to the Public. *Official Gazette*. 1996, No. I-1418: art. 47: "The Commission shall be an independent body accountable to the Seimas which regulates and controls the activities of broadcasters and re-broadcasters of radio and/or television programmes and providers of on-demand audiovisual media services falling under the jurisdiction of the Republic of Lithuania".

²² Republic of Lithuania Law on Competition. *Official Gazette*. 1999, No. VIII-1099: art. 17: "the Council shall be independent, accountable to the Seimas. The decisions of Council shall be issued self-sufficiently and independently".

²³ "Member States are free to choose the appropriate instruments according to their legal traditions and established structures, and the form of their competent regulatory bodies..." Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive). [2010] OJ, L 95/1.

forms of the control into parliamentary control, President's control, Government's control, financial audit, and judicial control.

8. the level of the requirements of independency are differently established in the laws. The broadest level of independency belongs to the Bank of Lithuania, Control Commission for Prices and Energy, and Radio and Television Commission; Competition Council dispose of more restraint level of independency.

There are some entities which are not entitled as institutions accountable to the Seimas, but institutions accountable to the Government. This term exists in the official website of the Government²⁴ notwithstanding with the fact that according to the Law on the Government there could be such executive entities as ministries, Government committees, commissions, Government agencies, agencies under ministries, but there is no such a term as institutions accountable to the Government, i.e. State Nuclear Power Safety Inspectorate (SNPSI), the Communications Regulatory Authority (CRA), Public Procurement Office (PPO). We presume that these entities also correspond to the features characteristic to so called independent regulatory bodies.

We will try here to crystallize some peculiarities of these three entities:

1. all of them are established on the ground of the order of the Government; functions and activities are fixed in the laws;

2. the heads of such institutions are appointed by the President on the recommendation of the Prime Minister; all of them are state officers (tenure term is from 4 to 6 years), except deputies of CRA director and PPO director as they are civil servants;

3. SNPSI leadership's amounts of salaries are declared in different law (Law on the Nuclear Energy), whereas amounts of salaries of CRA and PPO directors are declared in the Law on Remuneration of State Politicians and State Officers;

4. these entities are not collegial, but they have councils as advisory organs;

5. SNPSI and PPO are financed from the state budget or state budget and their separate budget;

6. they issue binding rules and implement quasi-judicial functions;

7. annual reports must be submitted to the President and Government (SNPSI) or to the Seimas and Government (CRA, PPO); that is one of the issue why it is not correct to entitle them as accountable to Government;

8. the level of independency requirements is differently established in the laws. The broadest sense of independency is expressed in the laws due to SNPSI and CRA²⁵. Obviously, it is connected with the requirements expressed in the European secondary laws²⁶.

²⁴ Vyriausybės įstaigos ir Vyriausybei atskaitingos institucijos ir įstaigos [interaktyvus] [žiūrėta 2012-04-01] <<http://www.lrv.lt/lt/vyriausybe/institucijos-istaigos-prie-lrv/>>.

²⁵ Republic of Lithuania Law on Nuclear Energy and Law on Electronic Communication. *Official Gazette*. 1996, No. I-1613.

²⁶ Council Directive 2009/71 EURATOM of 25 June 2009 establishing a Community framework for the nuclear installations. [2009] OJ, L 172/18. Council Directive 2011/70 EURATOM of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste. [2011] OJ, L 199/48. Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications. [1997] OJ, L 295. Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorization of electronic communications networks and services. [2009] OJ, L 337/37.

Independent administrative authorities

We presume that there are four independent administrative bodies in Lithuania, i.e. National Audit Office, the Central Electoral Committee (CEC), Chief Official Ethics Commission (COEC), and the Research Council of Lithuania (RCL). We will crystallize here the main features characteristic to them.

Parliament, President, Prime Minister, ministers, judges, the Lithuanian Bar Association participate in the establishing of the leaderships of the independent administrative authorities. For instance, the Auditor General shall be appointed by the Seimas on the recommendation of President, deputies of Auditor General shall be appointed by the President on the proposal of Auditor General; the President, the Speaker of the Seimas, the Prime Minister, the President of the Supreme Court of Lithuania and the President of the Association of Local Authorities in Lithuania shall each propose one member of the COEC to the Seimas. Minister of justice, Lithuanian Bar Association, and political parties participate in the formation of CEC members. The Seimas appoints the members of CEC. Minister of education and science, Prime Minister, Government participate in the formation of RCL. The Seimas appoints the members of RCL. Tenure terms are also fixed in the laws. For example, Chairmen of RCL, his deputies scientific secretary, and the members of Committee of Humanities and Social sciences, the members of Committee of Natural and Technical Sciences are appointed for a term of five years, Auditor General – for a term of five years, CEC members – for a term of four years, COEC – for a term of five years.

The Seimas confirms regulations of these entities, except CEC as it issues its regulation by itself. National Audit Office follows Auditor General's orders. It is worth mentioning that the formation of leadership and the status of above mentioned entities is regulated by the laws (National audit office's by the Law on National Audit Office²⁷, CEC's by the Law on the Central Electoral Committee²⁸, COEC's by the Law on the Chief Official Ethics Commission²⁹), except RCL's as it is regulated by the order of the Seimas.

The amounts of salaries are established by the Law on Remuneration of State Politicians and State Officers. Hence all the heads of entities are state officers. Independent administrative authorities are financed from the state budget (COEC, National Audit Office, CEC), or from the state budget and European structural funds (RCL).

All of them issue binding rules and execute quasi-judicial functions. But there are some differences from independent regulatory authorities, i.e. their binding rules are dedicated to specific set of addressees. For example, RCL rules – for scientists, academic communities, COEC rules – for representatives of public sector, Audit General – for the municipalities' audit offices, CEC rules – for political parties. These entities are accountable to the Seimas (National Audit Office, CEC, COEC), or to the Seimas and Government (RCL).

The question of accountability and control of independent administrative bodies is rather complicated and very similar to the issue of accountability and control of independent regulatory authorities. In regard to these authorities we can subdivide forms of the control into parliamentary control, Government's control, financial audit, and judicial control.

²⁷ Republic of Lithuania Law on National Audit Office. *Official Gazette*. 1995, No. I-907.

²⁸ Republic of Lithuania Law on the Central Electoral Committee. *Official Gazette*. 2009, No. IX-985.

²⁹ Republic of Lithuania Law on the Chief Official Ethics Commission. *Official Gazette*. 2008, No. X-1666.

Parliamentary control has to be performed by the Committees of Seimas. For example, the National Audit Office's – the Audit Committee, RCL's – Committee of education, science and culture, COEC's and CEC's – State Administration and Local Authorities. These committees usually consider annual reports and later Seimas issues orders and approves or disapproves with the submitted reports. In any case there is no any legal impact on the entity. The Seimas usually gives some suggestions to the entity and the Government. The Seimas' committees can require giving any information about how entities followed the suggestions of Seimas. But it happens very rarely. Seimas also has the right to submit in advance written questions to the heads of the state institutions appointed by the Seimas or whose appointment requires Seimas approval. Also the Seimas has the right to form ad hoc control or investigation commissions.

In regard with RCL Government as well as the Seimas has the right to control its activity during the sittings of the Cabinet of ministers. The result of these discussions usually is the adoption of the resolution "to take into account the annual report".

In regard to all above mentioned administrative bodies (except National Audit Office) National Audit Office supervises the lawfulness and effectiveness of their management and how they use the state property and execute the state budget. Financial audit of National Audit Office is performed by an audit body appointed by the resolution of the Seimas.

Administrative courts usually execute judicial control of the decisions of the independent regulatory bodies.

The requirements of independence of the administrative bodies are set in the laws very differently. These requirements are established broadly in regard to COEC³⁰ and CEC³¹. The term of independence is mentioned in the Law on the National Audit Office alongside with the principles of the activities of State Control on which it must be based³². In regard with the RCL there are no any references to the independency of this entity.

4. THE TYPOLOGY OF INDEPENDENT REGULATORY AND ADMINISTRATIVE BODIES

Taking into account the formation of the authorities, aspects of accountability, the authors of this article disagree with the opinion to perceive these entities as accountable to

³⁰ Republic of Lithuania Law on the Chief Official Ethics Commission. *Official Gazette*. 2008, No. X-1666: art. 9: "1. While performing its duties, implementing its rights and taking decisions on the issues within its competence, the COEC shall be independent. None of state institutions or state officials may give binding instructions concerning the solution of issues within the competence of the COEC. 2. When performing his official duties, a member of the COEC shall be independent and adhere only to the laws".

³¹ Republic of Lithuania Law on the Central Electoral Committee. *Official Gazette*. 2009, No. IX-985: art. 5: "1. When discharging its functions and making decisions on issues within its competence, the Central Electoral Commission shall be independent. No institution or officer may issue mandatory instructions regarding the making of the decision that is within the competence of the Central Electoral Commission. 2. It shall be prohibited for state institutions, Seimas members and other officers, the parties, non-governmental organisations or citizens to interfere in the activities of the Central Electoral Commission when organising and conducting elections or referendums".

³² Republic of Lithuania Law on National Audit Office. *Official Gazette*. 1995, No. I-907: art. 5: "Activities of the State Control shall be based on principles of independence, lawfulness, publicity, neutrality, and professionalism."

the Seimas. Moreover, the research of the legal acts reveals that these entities are not accountable only to the Seimas, but to the President, and to the Government as well. Hence the authors suggest the system of these entities as follows:

I level – constitutionally established independent authorities: the Bank of Lithuania, National Audit Office

II level – independent regulatory and administrative authorities:

1. independent regulatory authorities:

- those who operate in the sector of industrial markets: National Control Commission for Prices and Energy, Communications Regulatory Authority, State Nuclear Power Safety Inspectorate, Radio and Television Commission of Lithuania

- those who operate in the sector of competition supervision: Competition Council, Public Procurement Office

2. independent administrative authorities: Board of the Research Council, Chief Official Ethics Commission.

The system of independent authorities was subdivided into two major levels. First level includes constitutionally established authorities. Entities established by the laws and the resolutions of the Government, and those whose legal status differs from the status of Government committees, commissions, Government agencies, and agencies under ministries belong to the second level. It is possible to group independent regulatory authorities according to the degree of their independency. The highest level of independency has the Bank of Lithuania. Competition Council, the National Control Commission for Prices and Energy, the Radio and Television Commission dispose of median degree of independency. The Communications Regulatory Authority, Public Procurement Office, State Nuclear Power Safety Inspectorate dispose of the lowest degree of independency as they cover the niche between executive branch entities' system and so called entities accountable to the Seimas.

5. CONCLUSIONS

1. Although the Law on Public Administration does not use the term “regulatory”, but uses the term “administrative” we subdivide so called authorities accountable to the Seimas into independent regulatory and independent administrative authorities. Moreover, all independent regulatory bodies are administrative, because all of them adopt administrative decisions (including binding rules). However we separate these terms because of the specificity and difference of the activity scope of the said entities. Regulatory bodies usually operate in the sector of industrial markets. Administrative entities are involved in social welfare. We define these bodies as follows: they are state entities with the quasi-legislative, executive and quasi-judicial powers, separated from the traditional hierarchy of the executive entities' system, in the composition of which participate Parliament, President, and Government.

2. There is no clear model of independent regulatory and administrative authorities in Lithuania.

There exist different criteria of the formation of the leaderships of these bodies, different rules of their accountability and control, different regulation of the status of the heads and of their salary, different ways of fixation of their independency in the laws. Furthermore,

we have a lot of different status institutions: entities accountable to the Seimas, entities accountable to the Government, Government agencies, agencies under ministries. Question is weather we need so broad spectrum of entities.

3. The modification of so called institutions accountable to the Seimas or the Government is strongly influenced by the requirements of the secondary European law.

4. The system of so called entities of state administration was grouped into three categories. One of these groups covers independent regulatory and administrative authorities. The latter was subdivided into two major levels. First level includes constitutionally established authorities. Second level includes entities established by the laws and the entities that cover the niche between executive branch entities' system and so called entities accountable to the Seimas.

Legislative Power

Executive Power

Judicial Power

STATE ADMINISTRATION OF THE REPUBLIC OF LITHUANIA

Independent Administrative and Regulatory Authorities

I. Constitutionally established entities: Central Bank of the Republic of Lithuania, State Audit Office
 II. Independent regulatory and administrative entities:
 1. independent regulatory entities:
 • those who operate in the sector of industrial markets: National Control Commission for Prices and Energy, Communications Regulatory Authority, State Nuclear Power Safety Inspectorate, Radio and Television Commission of Lithuania
 • those who operate in the sector of competition supervision: Competition Council, Public Procurement Office
 2. independent administrative entities:
 Board of the Research Council, Chief Official Ethics Commission.

The system of entities of executive power

I. The highest level – Government as cabinet of ministers
 II. The central level – ministries, government agencies, agencies under the ministries
 III. The territorial level – territorial agencies of government agencies, territorial agencies of agencies under the ministries

State enterprises, public establishments, whose owner or stakeholder is the State associations whose performance of public administration is authorised