

Independent Regulatory Agencies in Albania Between Autonomy and Political Influence

Bledar Abdurrahmani

Law Department, Faculty of Political Science and Law

University "Aleksandër Moisiu", Durrës/Albania

Orcid: 0009-0004-6235-5189

doi: <https://doi.org/10.37745/gjplr.2013/vol12n35366>

Published June 10, 2024

Citation: Abdurrahmani B. (2024) Independent Regulatory Agencies in Albania Between Autonomy and Political Influence, *Global Journal of Politics and Law Research*, Vol.12, No.3, pp.53-66

ABSTRACT: *After the fall of the communist regime, one of the main objectives of the democratic state in Albania was creating a free market. Free market protection and consolidation necessitated the implementation of the appropriate mechanisms to regulate the efficient functioning of different economic and social sectors, to increase the efficiency of services, consumer protection, competition, etc. Albania in the first steps of democratic changes relied on the use of Independent Regulatory Agencies, as the right tool to respond to the new dynamics of economic and social development. Considering the experience of other countries this approach was the best solution because it relied on two crucial elements: the protection of the general interest and independence from politics and groups interest. The paper analyzes the general concept of public entities according to Albanian legislation. The study assesses the legal status, characteristics, and classification of public entities, focusing mainly on the role of IRAs, as one of the public entities in Albania. The paper affirms that the Albanian legal framework seems to embody elements that aim to guarantee the independence of the IRAs from politics and interest groups in various sectors. The question arises whether de jure independence is sufficient for de facto independence, especially for a country in a long transition like Albania. The paper supports the hypothesis that in Albania in the complex trade-off between IRA's autonomy and political control, there is clear evidence of their political captivity. The main issue is finding a fair balance between the demand to increase an agency's independence with components of political impact. The paper recommends avoiding political influence will increase the autonomy of the regulatory agencies.*

KEY WORDS: public entity, independent regulatory agency, general interest, political control

INTRODUCTION

The emergence and rationale of IRA

Independent Regulatory Agencies (IRAs) are considered an important element of the governance structure by the New Public Management Doctrine (Pierre, 1995; Gosay, 2007, Sobaci et al.,

2008). They were established to deal with the consequences of global political and economic change after the wave of democratization in the last decades of the 20th century (Lay, 2006). Later, it became clear that the freer and more complex the market mechanism, the more rules and policies were required (Gilardi and Braun, 2006). The role of the State in economic and public affairs grew bigger and wider, therefore there had been a shift from a minimalist state to a regulatory one (Majone, 1997). The main characteristic of a regulatory state was the increase of the state's role in public affairs by establishing specific institutions to carry out normative and supervisory functions (Faur, 2011). This tool was perceived to be used in state activities that influence and control the behavior of individuals and businesses or the system of rules that affect an industry or activity, competencies of regulators, including the adoption, oversight, and, improvement of the rules (Bianculli et al, 2013). According to Sobaci et al. (2008), IRAs were seen as a reflection of the changing role of the state in economic and social areas to public administration and affect the economic, social, and political areas, more and more. The main rationale behind the creation of IRAs was to improve the efficiency of markets. It was believed these mechanisms should enhance efficiency through normative and administrative action. They are considered a guarantee for an objective and unbiased administration in a depoliticized state. The key benefits sought from independent regulators are to enable technical specialization and know-how, enable long-term capital investments by ensuring long-term predictability, and shield markets from short-term political interventions.

Over time, an increased role of the IRA was also connected with a significant impact of the EU policies and regulations in related sectors, new forms of re-regulations, and, the creation of independent regulatory agencies. Alongside the above-mentioned economic regulators, many countries created other types of IRA-s, known as “social regulators” or agencies to carry out the normative, supervisory, and administrative functions in areas like environment, the safety of food or at work, racial and gender equality, and to promote ‘public interest’ goals other than the competition (Thatcher, 2005).

OECD affirms that independent and self-regulatory authorities have become a common feature of most countries (OECD 2002a). The NPM doctrine considers them an effective tool to regulate public sectors and rationalize public utilities management. IRAs are presumed instruments capable of playing an important role in intermediation and balance between public administration, economic operators, civil society organizations, and citizens. OECD defines them as entities authorized by law to use legal remedies to achieve policy objectives and impose restrictions and charges through issuing permits, licenses, accreditation, approval, inspection, and execution (OECD, 2014). According to Lanneau (2021), they are defined as administrative agencies established by legislative acts, entrusted with substantial (but variable) regulatory power – from rulemaking to adjudication and sanctions – and granted a certain level of independence (especially regarding the executive branch). The effectiveness of the regulatory agencies in achieving their task relies on an optimal equilibrium between two competing principles independence and accountability.

Since the IRA plays an important regulatory mission that aims to protect on one hand, the public interest in general, and on the other hand, the interests of the state as an operating actor or other private operating entities in the market, the main aspect that is worth addressing is what does the notion of independence mean.

Defining “Independence” as a core element of IRA

Independence of IRAs is defined as the ability of these institutions to make decisions regarding the sectors they regulate without any effect or intervention from outside, especially from the government or the actors in the regulated sector (Smith 1997a: 9; Virag 1999: 16; Hogwood 1990: 595). Independence means that the classical administrative supervisory authority of political power and administrative units is not implemented over the authorities and functions of these agencies and that other institutions cannot order or instruct these agencies. Independence describes the stand of such agencies against the actors around them, mainly the government or interest groups. In Lanneau's point of view, this independence materializes, quite often, with fixed terms, limits regarding reappointment, guarantees against removal (a “cause” is required), a staffing structure allowing a significant place for experts (and not politicians), and collegiality at its head. The justification behind the regulatory agencies with formal independence, mainly from the executive power, involves the avoidance of hazardous and turbulent political influences, including those of sectional interests also represented by elected politicians (Sosay, 2007). According to Majone “independent regulatory agencies have been established ...to achieve higher-level objectives such as policy coherence, credibility, and accountability. In political terms, an independent regulatory agency assures the political spectrum that its policies will be implemented impartially in a technically and economically competent way. The assumption that the agency operates at arm’s length from the government is of course essential” (Majone, 2001)

The legal status of an independent regulatory agency is an important feature to achieve its goal. Thus, this mechanism should be complemented with a wide range of powers, specifically: a) regulatory powers over the services and entities subject to regulatory activity; b) supervisory powers, and c) administrative powers, to make investigations and sanctions. Another important element regarding the status of IRAs is their position toward the legislative and mainly the executive branch of the state.

According to Nunes et al, the main characteristics of independent regulatory agencies are a) Public Interest in protecting a major social or economic good and promoting competition through market approaches; b) Authority given by a specific legal framework for exercising its activity; c) Centralisation: control, supervision, and monitoring of any specific market to assure the best regulatory outcome; b) Independence: being financially, organically and functionally independent from the government, regulated organizations, and any economic player in a specific sector; 5) Regulatory Governance: being accountable to society in a fair and transparent way, Parliament or other democratic institutions (Nunes et al, 2015) The degree to which the goal of independence is fulfilled for the supervisory agencies remain an empirical question. However, it should be said that

some aspects related to the legal position of a certain regulatory agency, taken together, might offer a general overview to understand the degree of de jure and de facto autonomy. These aspects are related to a) the institutional design and governance structure of IRA, b) the scale of autonomy in exercising the mandate, c) budget and financial resources, and d) human resources policy.

Analyzing Public Entities in Albanian Legislation. IRAs as one of Public Entities

During the communist period, the economy of Albania was centralized and planned by the state. After the fall of the communist regime in 1991 Albania turned its page toward a new era of human rights, free market, and freedom of economic activity. The year 1993 marked the beginning of the privatization wave of different economic sectors, at the same time, it led to the creation of new mechanisms to regulate, and supervise the activities, and public or private entities carried out these activities. The independent regulatory agencies became one of the public law subjects in Albania.

The transfer of responsibility for the regulation and supervision of certain sectors from the state to these mechanisms, known as Independent Regulatory Agencies came as a necessity for strengthening the free market. The opening of the market in specific sectors of the economy made it possible for private operators to operate alongside public operators. The approach of constituting IRAs in different sectors of social and economic activity was a guarantee for strengthening the entrepreneurial climate, improving the efficiency of the services, guaranteeing competition, dealing with claims and concerns, etc. The approach of constituting such a mechanism makes it possible to guarantee to private operators that the regulation of the field is not influenced by the state interests, as an operator, or as a market agent. In this period Albania implemented rules and mechanisms necessary for a free and competitive market following the best practices of developed countries and several international organizations, such as the World Bank, IMF, and OECD. One of the features of this policy was that from the large volume of state responsibility of the executive branch, a part of this related to certain social and economic sectors be transferred to other subjects of public law, with an independent nature or with autonomous powers. The independent regulation aims to make the decision-making process visible and transparent and to avoid the “regulator’s capture” by the political power, the corporate power, or the economic power (Nunes et al, 2015).

In 1994 the Civil Code of Albania in Article 25 recognized the general concept of public entities as one of the public law subjects. Within this broad legal concept, the IRA represented one of the types of public entities. This moment in 1994 marked the appearance of public entities term, a new legal concept in the formal aspect of the Albanian legal order. Meanwhile, independent regulatory agencies were established months before in various economic and social fields, such as the lawyer’s profession or service, and later in the energy and water sectors (Law no.7827/1994). Likewise, the demand for a better advocacy service and the protection of lawyers' interests led to the creation of an independent regulatory agency. Therefore, the law no. 7827, dated 31.05.1994 "On advocacy in the Republic of Albania", established the National Chamber of Advocacy, as an independent public entity. Article 16 of this law sanctioned that: "The Bar Association is a territorial body of lawyers and conducts its activity independently, based on this law and its statute. The governing

bodies of the bar association are the General Meeting of Lawyers and its Governing Council." Articles 17 and 18, define their powers, some of a normative nature and others of an administrative one. The demand for a competitive and more efficient electricity market, taking into consideration the interests of customers, the safety and quality of the electricity supply service, the requirements for environmental protection, the regulation of activities of production, transmission, distribution, and electricity supply, etc. led to the creation in 1995 of the Electricity Regulatory Entity, a public legal institution independent from the interests of the energy industry and state bodies (Law no. 43/2015, Law no. 102/2015).

Different countries have given various solutions to the legal position of the IRA. Kosovo placed them at the constitutional level (Constitution of Kosovo, Art.119, p.4), meanwhile, according to Albanian Civil Code they are recognized as public law subjects. In addition to the Civil Code on public entities, a framework law provides a more comprehensive definition of these subjects. According to law no. 8480, dated 27.05.1999 "On the functioning of the collegial bodies of the state administration and public entities" the latest are defined as "any nonstate subject of public law, created by law which aims to fulfill a public interest." (Law nr.8480/1999, Art.1, ph.2). This framework law contributes more on a doctrinal level than a specific one because it is not helpful to make an adequate legal assessment of all forms of public entities, and especially IRAs according to Albanian legislation. Nevertheless, from a doctrinal point of view, we might deduce some of the main features of public entities like a) nonstate subject; b) subject of public law; c) created by law; and d) to fulfill a public interest. The last feature of public entities might be considered integrated with the second one because it is evident that all subjects of public law are established to fulfill a public interest. The importance of this definition lies in the fact that it lays down only the general lines of the doctrinal debate on the characteristics of public entities. Therefore, the specific legislation that determines the creation and operation of such an entity details these general features, such as the legal mandate to govern the sector, normative and administrative powers, internal organization, self-financing or public financing, independent human and financial management, professional standards of board members, the appointment of board members and other officials, the competent court that examines the disputes that arise within the entity's activity, relations with the subjects of the field, relations with the legislative and executive power, etc.

The main purpose of the public entity's function is to act as a regulator in a certain sector, mainly exercising activities of a normative nature. Therefore, the main volume of their activity is normative or self-regulatory in the economic or social field they cover. The latter is the main reason why these subjects of public law were created and categorized as such. This deduction also originates from the Code of Administrative Procedures, which includes in the scope of its effects only that small amount of administrative activity that they perform, precisely when they decide on the rights, obligations, and legal interests of a certain category of subjects through the issuing of administrative acts, like granting a license to a lawyer, its removal, issuing disciplinary measures, etc. (Law no. 44/2015, Art. 3, point 6)

Assessing Public Entities Features. Independence as a Crucial Component

The framework law of public entities in Albania determines some of their general features. First and foremost, public entities are subjects of public law. They have a legal personality, meaning a legal mandate to govern and achieve institutional goals by normative and administrative acts through the role of the relevant governing authorities. Secondly, according to framework law, these entities can be created, modified, and extinguished only by the law in the narrow sense, implying only an act of Parliament. The determination that the law makes in this case represents a legal reserve. Therefore, the creation, change, or suppression is only an attribute of the Parliament of Albania and no other state branch. An institution might be classified as a public entity only if created by a legal act of the Parliament and not by acts of other branches of the state. Another aspect related to this feature is that the mission attributed to them is to fulfill a public interest, which constitutes a broad and non-exhaustive notion.

The last and more important feature is that they are considered “nonstate subjects”. The notion “non-state subject” aims to highlight the independence of this mechanism above all from the executive branch of the state. Independence can be analyzed under two dimensions, organic and functional. The first one indicates that the officials appointed in their institutional structures enjoy high legal protection at work, especially in the appointment methods, terms of office, and dismissal procedure. The second dimension means that the public entity enjoys independence in exercising its legal mandate, regulating and guiding the practices in its sector, determining professional standards, providing and managing its budget, etc. Therefore, non-state or independent implies that public entities enjoy autonomy to regulate their area (Dobjani, 2016). In general, the legal nature of their activity has a normative character. So, public entities might issue legal acts with a normative character, such as regulations, decisions, instructions, and orders which determine rules and standards that must be applied mandatorily by the subjects of the field, and as such, they constitute sources of law in specific fields. Public entities also enjoy organizational independence, meaning that they decide about their internal organizational structure. Thirdly, public entities enjoy financial independence, which means the right to set fees, collect, or realize incomes and make expenses. Their decision-making with financial impact might be controlled by the Supreme State Control or the Ministry of Finance, in cases they profit from budget revenues. Finally, public entities are characterized by administrative independence. This means that they issue legal acts that bring concrete legal consequences for the subjects of the field. Therefore, the administrative activity of public entities is related to issuing certain acts that recognize rights or obligations for the subjects of the field, such as deciding to grant a license to a certain subject, starting a disciplinary proceeding, or imposing a disciplinary sanction, etc.

In a rule-of-law state, characterized by the separation of powers the public entities represent a separate jurisdiction. The principle of the rule of law and that of good governance imposes that their activity must be subject to control, in all possible forms, such as jurisdictional, financial, and administrative. The jurisdictional control of their administrative activity is subject to the general regime of public administration law, that is, their administrative acts are subject to judicial control

by administrative courts. Meanwhile, their normative activity cannot be subject to judicial control. It can be reviewed or corrected only through unilateral measures of withdrawal of previous illegal and irregular or inappropriate acts, due to the submission of these acts to the law. In another dimension, jurisdictional control means overseeing the activity of appointed authorities of the public entities by the Parliament, through assessing their activity by resolutions or other instruments of parliamentary activity. The main question is how far the parliamentary oversight over some public entities, like IRAs might go. In these cases, the parliamentary control might be very loose, allowing the regulator too much or inappropriate discretion.

Highlighting Public Entities Classification

The governance model we have built is largely based on public entities' role, especially regulatory agencies as important subjects of public law. Their functional and organizational autonomy is one of their fundamental aspects. Autonomy should be considered a relative demand, conditioned always by the nature of the activity of the public entity, the financing and supervision scheme, and the way of appointing the executive managers or members of the management boards. Therefore, a valuable help in determining the degree or level of autonomy is provided by the general classification made to public entities by the administrative law doctrine in Albania. Through this classification, we can understand to a certain extent in general what impact politics has on these subjects.

Making a classification of public entities in Albania represents a complex and long process, carrying out a comprehensive study of certain laws that determine their creation, regulate their role, function, organs, and powers, relations with other subjects, determining the budget, the way of reporting and control, etc. It must be said that the classification of public entities is mainly a doctrinal issue, where studies by different authors of administrative law have classified public entities into types according to various criteria (Dobjani, 2016). Therefore, the general classification of public entities cannot be exhaustive, but simply illustrative of the different forms of public entities recognized by the legal system. This classification helps us fulfill the object of the study of this paper to highlight elements of their autonomy according to the type of public entity when regulatory agencies comprise the most important type. The main criteria for the classification of public entities are:

- a) *the economic and social sectors* where the public entity is established. This type of public entity is mostly known as Independent Regulatory Agency or sectorial public entities. These types of entities serve to regulate, supervise, and control various public or private operators that produce goods or services. Public entities that supervise, regulate and control specific sectors or specific aspects of the operation of the free market. They are known as sectorial public entities and are public entities created by law in order to supervise, regulate and control private or public economic and social activities in certain areas. Typical examples are: the Electricity Regulatory Authority (ERE, law no. 43/2018 "On the electricity sector", amended), the Regulatory Authority of the Water Supply and

Wastewater Removal Sector (Law no. 8102, dated 28.03.1996 "On the regulatory framework of the water supply and wastewater disposal sector", Amended), Financial Supervision Authority (FSA, law no. 9572, dated 07.03.2006 "On the Financial Supervision Authority", amended), Audiovisual Media Authority (AMA, law no. 97/2013 "On Audiovisual Media in the Republic of Albania"), Electronic and Postal Communications Authority (AKEP, law no. 9918, dated 19.05.2008 "On electronic communications in the Republic of Albania"), Bank of Albania, (BSh, law no. 8269, dated 23.12.1997 "On the Bank of Albania", amended), Albanian Insurance Bureau (BSh, law no. 32/2021 "On the insurance of mandatory in the transport sector"), Deposit Insurance Agency (ASD, law no. 53/2014, "On deposit insurance"), etc. The Albanian legal framework has sanctioned de jure elements that aim to guarantee the exercise of functions by public entities, especially IRA authorities in complete independence from politics and interest groups in their respective sector. The question arises whether this de jure independence of regulatory agencies is sufficient to guarantee de facto independence, especially for a country in a long transition like Albania.

- b) *the professional field* where the public entity is established, that is, they serve to self-regulate and control interest categories of certain professions. These types of entities are known as *professional public entities*. Professional public entities represent a broad category of public entities. They are established to regulate and manage the interests of certain social groups that practice different professions. Characteristic is the fact that professional public entities present the typical structure of associations, with bodies composed of the assembly of members (or delegates of associations based on the territory), from committees or management councils, and the chairman or chairmanship. A characteristic of professional public entities is that the subjects that are part of the group of interested parties directly or through ad hoc delegates determine a series of decisions related to the activity of the entity. public professional entities are established within the framework of regulated professions as professional orders that are regulated through law no. 10171, dated 22.10.2009 "On regulated professions in the Republic of Albania". According to Article 4 of this law, "a regulated profession is an activity or a group of professional activities, the right to exercise which or one of the forms of exercise is regulated by law or by-laws and is conditioned by a certain level of training or possession of special professional qualifications.". According to this law, "Professional Order" is the national public entity, which represents the common interests of the professions in a certain field and regulates the relations between them, in the function of the public. According to Article 5 of this law, regulated professions in the Republic of Albania are the profession of: doctor; dentist; pharmacist; nurse; midwife; physiotherapist; veterinarian; architect; engineer; teacher; social worker, and psychologist. The law determines that regulated professions are also the professions defined as such by other, special laws. For example, in addition to the above regulated professions, there are also professions of Lawyer, Notary,

Mediator, Accounting Expert, Legal Auditor, etc. These entities operate with almost complete independence regarding professional standards and rules of the field. According to their nature, they interact with different institutions of the Assembly, the government, or the judicial system.

- c) *the object of the activity of the public entity*, that is, if the object of the activity carried out by the public entity supports or helps in the development of state policies in certain fields. These types of public entities are created to carry out a certain activity which is the responsibility of the executive branch of the state. These types of public entities are known as auxiliary public entities. Public auxiliary entities are created by special law to exercise activity independently, activity that supports or comes to the aid of the public bodies of the executive power, which enjoy important powers of supervision and control over these entities. Thus, their mission and purpose coincide and even support the activity of executive power bodies. Auxiliary public entities enjoy a special characteristic because they are often seen as a form of decentralization of public services provided by the executive branch of the state. The latter, by law, transfers the exercise of public service, i.e. the public function, to a special public entity, which provides the authorized public service in administrative form. The relationship between the public bodies of the executive power and auxiliary public entities is expressed in the right of control enjoyed by the executive power over the entity's activity, especially in the form of activity inspection, financial management, etc. Among the most significant auxiliary public entities are: Public Universities, the National Institute of Statistics (INSTAT, law no. 17/2018 "On official statistics"), the School of Magistrates (law no. 8136, dated 31.07.1996 "On the School of Magistrates of Republic of Albania", amended), Academy of Sciences (law no. 53/2019 "On the Academy of Sciences in the Republic of Albania", scientific research institutes, etc. These entities have limited independence. This is because the financing and the general guidelines of the state policy they carry out are mainly determined by the executive branch of the state. Independence is related to the appointment and dismissal of their members, their internal organization, etc.
- d) *the nature of the activity of the public entity*, if it is established *as an instrument* in a certain field to guarantee public interests. These types of entities are presented as a subcategory of auxiliary entities. These entities carry out typical activities of the executive branch of the state, which the latter could exercise directly with his apparatus, meanwhile, it prefers to entrust them to these units. The reason for this solution is, as a rule, the existence of a more efficient and rational organization of public power. So, we are dealing with a form of separation or transfer of executive power to the power of the public entity which, in addition to the organic law, has the right to issue legal acts, and independently manage assets, balance sheet, and administration. Their instrumental or servile relationship is manifested in the fact that the state often has the power to appoint and dismiss administrators and always the power to formulate directives or orientations for the

implementation of the institutional goals of the public entity (but the directives, i.e. are programmatic, they are not orders, but can be considered as orientations in the field of activity of the public entity. There is a small difference between auxiliary and instrumental entities, because the latter are subjects of public law that not only have an auxiliary character in the exercise of public responsibilities of the central government, but also their constitution and reporting is an attribute of public bodies of the executive power. While auxiliary public entities are presented as subjects that exercise public responsibilities that essentially belong to the central government to fulfill, but that have been transferred to them through the law. In these cases, that is, in auxiliary public entities, the public bodies of the central government enjoy the attributes of financing, supervision of the progress of the activities that are the responsibility of the entity, and control through the competent structures. As examples of instrumental public entities, we mention the Institute of Social Security (ISSH), established and operates based on law no. 7703, dated 11.05.1993 "On social security in the Republic of Albania", as amended, the National Accounting Council, which is established and operates through law no. 25/2018 "On accounting and financial statements". In these types of entities, the level of autonomy is only related to the discretion of exercising the function, because the lines of direction, appointment, and control belong to the executive branch of the state.

- e) the last category includes that kind of public entities that have a promotional nature of various private organizations in business fields. A special category of public entities is *public economic entities*. These entities meet all characteristics of public entities, i.e. they are created by law, non-state subjects, i.e. independent and serve the general public interest. They do not pursue profitable goals in their activity. The main purpose of their establishment is to encourage and promote the economic interests of their members inside and outside the country. For example, the National Chamber of Crafts, the National Chamber of Commerce and Industry of Albania, or the Union of Chambers of Commerce and Industry are public, independent juridical persons created by law.

The Challenge of “Independence” of Regulatory Agencies in Albania

From the above analysis, the issue of autonomy is mainly raised only for public sectoral entities known, as independent regulatory agencies (IRA). IRAs are widely perceived to constitute the hallmark of modern systems of regulation. Independence is the most commonly discussed characteristic of IRAs. Their ‘independence’ and positioning in the governance system varies according to different traditions of law and public administration models. Independence means the degree to which the agency makes decisions without the interference of politicians in terms of the offering of inducements or threats and/or the consideration of political preferences (Hanretty and Koop, 2013, p.196) Considering that the regulatory agencies are created mainly by the Parliament, and in certain cases, as happens with the Water Supply Authority, by the Council of Ministers, the connection with the political factor represents both a form of legitimacy and control, as well as a

serious risk of interference in the management of the specific sector. But, in one way or another, they are set at a distance from the executive branch of the state. Nevertheless, regulatory agencies can never be fully independent from the political process. They will always operate under the authority of law and governance structures that can be altered. Thus, regulators must be able to respond to the long-term political direction which will ultimately justify their continuing existence. The question arises whether this de jure independence of regulatory agencies is sufficient to guarantee de facto independence, especially for a country in a perpetual transition like Albania.

Political influence on regulatory agencies is a serious concern in Albania. This concern is articulated by different social actors, such as political parties, the Supreme State Control, economic researchers, journalists operating in the media, NGOs, etc. The forms of political influence are not only favorable decision-making towards the government but also the appointment to executive or board members of political exponents of the ruling party. This violates the formal guarantees in the exercise of the function by the regulatory agencies in Albania. Regardless of the respect of de jure criteria, de facto political regulatory agencies in Albania have always seen it as a source of interest to put trusted people in charge. The executive branch in Albania has a great impact on influencing the Parliament to appoint their representatives. The law often sets out rules on an appointment, terms of office, restrictions on reappointment, and the prohibition on being a member of a political party. Meanwhile, several parliament members and representatives of the ruling majority are appointed as board members or executive directors of IRAs. The press secretary of the leader of the ruling party has been appointed head of the AMA television sector body in Albania. As a result, there is a large gap between law requests and what happens in practice. This is a clear infringement of their independence.

The pivotal role of the independent agency has come under challenge, particularly in the case of economic regulation in Albania. In recent years governments seem to have become re-involved in core regulatory functions, re-inserting their views on, for example, investment objectives and pricing policies (in the energy sector) and industry structure (in the case of banking). For example, the Central Bank of Albania failed to identify and forewarn the actual credit fraud schemes in the banking sector crisis. Failure can be defined or interpreted in many ways. regulatory attitudes towards representing the consumer and competition issues represent another challenge in Albania. The decision-making role of independent agencies in Albania is proving to be more closely linked to politics than based on scientific theories or methodologies. A main challenge faced in Albania during these 30 years of transition is that the IRA became a notary of the executive branch ratifying their requests in several fields, like the increase of water or energy prices. Tariff setting remains highly politicized, and governments are sensitive to popular resentment against price increases, often necessary to cover costs.

According to the researcher and former Chairman of the High Control of the State Bujar Leskaj (2016) the concessions granted in many key branches of the economy and services in Albania, such as hydrocarbons, production and distribution of electricity, etc., show the lack of respect for the public interest in concessions and public-private partnerships (PPP) of recent years. They are

proof of the failure and capture of regulatory mechanisms(<https://shtetiweb.org/2016/12/05/teoria-e-kapjes-dhe-realiteti-shqiptar/>). Leskaj (2016) asserts that in Albania, regulatory capture, or state institutions captured by private interests, constitutes a disturbing form with serious consequences for public finances in the near and medium future. Prestigious international institutions, such as the IMF and the World Bank, or even local institutions such as the Competition Authority, have raised concerns about these consequences. When the interests of private companies or the political formations that support these companies are prioritized over the interests of the public, it leads to a net loss for our society as a whole.

The report of the Friedrich-Ebert-Stiftung emphasizes that in the media sector, regulators, and public institutions have not been interested in shedding light and improving this scheme of dependence on political interests or other strong interest groups. Consequently, while the transparency of media operations remains low, media independence inevitably suffers (Balkan Media Barometer, report, 2013, p.9). According to this report, the main concern is that the regulator is politically dominated. (Ibid, p. 36)

Establishing regulatory agencies without guaranteeing their organizational and functional independence might be a failed or false strategy for all, stakeholders, government, utilities, investors, and consumers. The independence of the regulatory agencies is the main component that must be guaranteed not in the formal legal aspect but it must also be achieved in practice. Otherwise, there is no reason why such a structural model should be followed in economic and social sectors.

CONCLUSIONS

Regulatory agencies occupy an important place in the institutional architecture of a democratic state. The Albanian legal framework recognizes them as a special form of public entities, which enjoy the highest form of functional and organizational independence in relation to other entities. Their institutional organization, especially with two levels of management, allows them to have a basic advantage in decision-making. Independent agencies represent specialized institutions that are formally separated from the executive branch of the state and political influence. Independence boundaries remain a challenge both to the world of research and to the world of practice. Boundaries between agencies and politics are permeable and will undergo constant adjustments.

Political influence on regulatory agencies is a serious concern in Albania. Establishing regulatory agencies without guaranteeing their organizational and functional independence might be a failed or false strategy for all, stakeholders, government, utilities, investors, and consumers. The independence of the regulatory agencies is the main component that must be guaranteed not in the formal legal aspect but it must also be achieved in practice. Otherwise, there is no reason why such a structural model should be followed in economic and social sectors.

REFERENCES

1. Bianculli, Andrea C., Fernández-i-Marín, Xavier & Jordana, Jacint, 2013. *The World of Regulatory Agencies: Institutional Varieties and Administrative Traditions*, Jerusalem Papers in Regulation & Governance.
2. C. Lay. "State Auxiliary Agencies" *Jurnal Jentera*. Vol. 12, No. 3, 2006.
3. Chris Hanretty & Christel Koop, 2013. "Shall the law set them free? The formal and actual independence of regulatory agencies," *Regulation & Governance*, John Wiley & Sons, vol. 7(2), pages 195-214, June.
4. Dobjani, E., 2016, *Administrative Law, General Part*, Emal, Tirane.
5. Friedrich-Ebert-Stiftung Report, 2013, *Barometri Ballkanik i Medias*, <https://library.fes.de/pdf-files/bueros/albanien/10891.pdf>, accessed 24 February 2024
6. Gilardi, F., and Braun, D., 2006, (Eds.). *Delegation in contemporary democracies*. Routledge, 2006
7. G. Majone, "From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance", *Journal of Public Policy*, vol. 17, no. 2, pp. 139-167, 1997. Available: 10.1017/s0143814x00003524
8. Lanneau, R. (2021). *Independent Regulatory Authorities*. In: Marciano, A., Ramello, G.B. (eds) *Encyclopedia of Law and Economics*. Springer, New York, NY. https://doi.org/10.1007/978-1-4614-7883-6_647-2
9. Law no. 43/2015 "On Power Sector"
10. Law no. 102/2015 "On Natyral Gas Sector"
11. Law no. 44/2015 "Code of Administrative Procedures of the Republic of Albania"
12. Law no.7850, dated 29.07.1994 "On Civil Code of Republic of Albania"
13. Law no. 7827, dated 31.05.1994 "On advocacy in the Republic of Albania"
14. Law no. 8480, dated 27.05.1999 "On the functioning of the collegial bodies of the state administration and public entities"
15. Levi-Faur, D., 2011, *The Odyssey of the Regulatory State: Episode One—the Rescue of the Welfare State* ". Jerusalem Forum on Regulation and Governance Working Paper No. 39, 2011.
16. Leskaj, B, 2016, Interview, (<https://shtetiweb.org/2016/12/05/teoria-e-kapjes-dhe-realiteti-shqiptar/>), accessed 24 February 2024
17. Nunes, R., Nunes, S.B. and Rego, G. (2015) *A New Governance Model for Independent Regulatory Agencies*. *Theoretical Economics Letters*, 5, 4-13. <http://dx.doi.org/10.4236/tel.2015.51002>
18. OECD 2014, *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*, OECD Publishing, Paris, 2014
19. Pierre, J. (1995) "Comparative Public Administration: The State of the Art" in J. Pierre, ed., *Bureaucracy in the Modern State: An Introduction to Comparative Public Administration*, Edward Elgar, Aldershot

20. Sobaci, M., Cetin, T., Nargelecekenler, M., 2008, Independent Regulatory Agencies in Turkey and their formal Independence Levels, <http://dspace.epoka.edu.al/handle/1/90>, assessed 23 February 2024.
21. Nunes, R., Nunes, S.B. and Rego, G. (2015) A New Governance Model for Independent Regulatory Agencies. *Theoretical Economics Letters*, 5, 4-13. <http://dx.doi.org/10.4236/tel.2015.51002>
22. Thatcher, Mark, 2005. The Third Force? Independent Regulatory Agencies and Elected Politicians in Europe,