

Independence of regulatory authorities – failed attempt to create fourth branch of Government? The case of Poland

Introduction

The concept of independent regulatory authorities (IRAs) is relatively new addition to the institutional landscape of public administration in Europe. Historically, very few of them existed in Europe (Thatcher 2005; Gilardi 2005). The expansion of IRAs and broader shift towards more autonomous government began in western Europe in the 1980s and 90s, inspired by New Public Management agenda and neoliberalism (De Somer 2012). Providing regulatory authorities with special guarantees of independence was justified as a measure increasing credibility of regulatory activities and enhancing their quality thanks to entrusting decision-making powers to experts insulated from direct political influence (Majone 1997; Meier 2008; Maggetti 2012). IRAs independence has at least two dimensions: 1) formal (de jure) independence requiring that regulatory agencies remain outside bureaucratic, hierarchical chain of command within the government; and 2) actual (de facto) independence which relates to agency's self-determination in the use of regulatory measures (Hanretty & Koop 2013; Ennsner-Jedenastik 2015). In this article, we focus solely on formal side of IRAs' independence, bearing in mind that it is necessary, but not sufficient to ensure the actual autonomy of regulatory bodies.

This article presents the results of the review of legal status of regulatory authorities in Poland, describing the scope of their independence guaranteed in the legislation. For this purpose, we developed a set of criteria for measuring the agencies' independence, largely based on concepts already formulated in the literature, but supplemented with standards set by the EU legislation, recommendations of international organisations (OECD, Council of Europe), as well as country-specific criteria. This review relies on the legislation currently in force, yet some observations about the historical evolution of the legislation are also provided. The final outcome

of this analysis is evaluation to what extent the concept of IRAs was absorbed by the Polish legal system. Review of legislation is preceded by theoretical part exploring the notion of regulatory agencies (authorities) and the key components of their independence.

Formal independence of IRAs: key components

There is no uniform, commonly accepted catalogue of regulatory agencies as well as minimum standard of the IRAs' independence. As regards categorization of regulatory authorities, the major criteria to distinguish them among other public bodies are: a) their special functions, namely controlling the power of markets and protecting competition and customers (Christensen & Laegreid 2007); and b) market on which they perform regulatory functions. In the context of the latter aspect, the label of regulators is most frequently used to indicate public authorities operating on the markets that went through liberalization reforms in recent decades. Liberalization (usually combined with privatization) was accompanied with establishment of regulatory authorities where the states ceased to operate as a monopolistic or major provider. Liberalization affected particularly various markets of public utilities, such as energy, telecommunications, audiovisual services, or railway. In addition to bodies performing supervision over those markets, the competition protection and consumer protection authorities should be included among regulators.

The institutional setups for regulatory authorities vary significantly across Europe. In recent years, as part of austerity policies, we can recognize the trend towards consolidation of regulatory authorities. For example, in Spain The National Authority for Markets and Competition (CNMC) was established in 2013 as super-regulator combining functions of five previously existing regulatory authorities: competition protection body and sectoral regulators covering telecommunications, audiovisual market, energy, railways and airports, and postal services (Xifre 2014). Also in 2013, the Netherlands merged the consumer protection authority, competition protection authority as well as postal and telecommunications services regulator into single Netherlands Authority for Consumers and Markets (Yesilkagit 2014). In Europe, there are also other examples of bodies combining supervision over various markets under one roof, e.g. German *Bundesnetzagentur* responsible for regulation of electricity, telecommunications, gas, post and railway sectors (OECD 2016), or Latvian Public Utilities Commission operating on energy, telecommunications, post and railway markets (Latvian Development Agency 2005).

Identification of the key components of the regulators' independence, is more challenging than creating their catalogue. In general terms, IRAs are required to remain independent both from the people and elected officials (Maggetti 2010; Guardiancich & Guidi 2016). As other public agencies, IRAs are organisationally separated from the government departments (ministries). However, as Thatcher (2005) stresses, what is distinctive for IRAs, it is difficult for elected politicians to remove the heads of IRAs before the end of their terms of office. This author points out also other indicators enabling to define the scope of IRAs actual independence. This includes politicization of the appointments, tenure of IRAs members, financial and human resources deployed to IRAs and the powers of politicians to overturn the decisions of regulatory authorities.

Larsen et al. (2006), in the context of relations with the elected politicians, realistically noted that ensuring absolute independence is not possible, as regulators remain the part of government apparatus and the political decision-makers can find the way to influence their activities, e.g. through financial allocations or appointments and dismissals. In response to these risks, they propose irrevocable appointments for fixed term and ban on reappointments. As regards financial aspects, funding the IRAs from fees levied on the regulated industries (instead of transfers from state budget) is seen as particularly favorable solution contributing to regulatory independence.

In order to conceptualize the IRAs independence, it is useful to review not only the academic literature, but also standards set by international organizations in binding act or soft law. In the European context, the EU legislation provides the most specific guidelines on the necessary level of some regulatory bodies. Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity (the Third Energy Package) requires that the national regulatory authority dealing with electricity market is legally distinct and functionally independent from any other public or private entity. In particular, the Member States need to ensure that the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties. The members of the agency's board should be appointed for fixed term of five up to seven years, renewable once.

Relatively detailed standard of independence was introduced for regulators operating on railway market by the Directive 2012/34/EU of the European Parliament and of the Council of

21 November 2012 establishing a single European railway area. The railway sector regulatory body should enjoy independent in organization, funding decisions, legal structure and decision-making. This includes some more specific requirements. Firstly, the regulator should exist as a stand-alone authority, what excludes performing the regulatory functions by organizational unit of the government department (ministry). Secondly, the managing body should be appointed under clear and transparent rules and in transparent, merit-based procedure by the government or other public authority which does not perform ownership steering over providers of railway services. Thirdly, the Member States may choose one of the following solutions relating to term of office of the heads of railway sector regulators: 1) appointment for fixed and renewable term; or 2) permanent appointment with dismissal possible solely on disciplinary ground.

With regard to regulatory authorities for electronic communications, the revised Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services adds further elements of the IRAs' independence. The appeals against the decisions of regulatory authority should be considered by body independent from all parties, primarily the court. This requirement excludes the model, where the parent ministry has the right to repeal administrative acts issued by the regulatory authority. Furthermore, the head of regulatory authority or member of collegial management body could be dismissed only if they no longer fulfill the conditions required for the performance of their duties which are laid down in advance in national law. The grounds for dismissal should be specified in a statement delivered to the relevant person.

With regard to competition authorities, the EU law provides the Member States with extensive autonomy in designing their institutional setup. However, the European Commission emphasizes the principle of their independence as one of the preconditions for effective enforcement of the EU competition rules. The Commission's recommendations focus on enhancing decision-making autonomy of national competition authorities and sufficient resources (European Commission 2014a). However, the Commission's review of European practice reveals that the general principle of independence of competition authorities does not exclude various forms of accountability and supervision performed by other state institutions. For example, the government bodies or parliaments may issue general guidelines or instructions addressed to competition authorities, but binding instructions on resolution of individual case are excluded. The relevant ministry may also request the competition authority to investigate particular case or

conduct sector inquiries. It is also common practice that competition authorities report to the executive branch and/or parliament about their activities on annual basis. In terms of budgetary and organisational independence, the spending autonomy is an European standard, but only the Italian competition authority is funded exclusively via its own revenue (mandatory contributions from the companies). Others rely on separate budget allocations in the state budgets. Status of the staff of competition authorities is usually determined by the general civil service rules. Appointment of the managing bodies (in most of the cases for fixed term) is predominantly the competence of the executive branch with few exceptions, where the parliament is also involved (European Commission 2014b). The table below summarizes the review of EU legislation with regard to attributes of IRAs' independence.

Table. EU acquis' standards on independence of regulatory bodies

TYPE OF REGULATORY BODY	RELEVANT EU LEGISLATION	REQUIREMENTS ON INDEPENDENCE
Energy regulatory body	Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity (the Third Energy Package)	<ul style="list-style-type: none"> • Legally distinct and functionally independent from any other public or private entity; • Autonomy in decision-making from any political body; • Separate annual budget allocations with autonomy in the implementation of the allocated budget; • Adequate human and financial resources to carry out its duties; • The members of the agency's board appointed for fixed term of five up to seven years, renewable once.
Electronic communications regulatory body	Directive 2002/21/EC on a common	<ul style="list-style-type: none"> • Appeals against the decisions of regulatory authority should be considered by body independent from all parties, primarily the court.

TYPE OF REGULATORY BODY	RELEVANT EU LEGISLATION	REQUIREMENTS ON INDEPENDENCE
	regulatory framework for electronic communications networks and services	<ul style="list-style-type: none"> • The head of regulatory authority or member of collegial management body could be dismissed only if they no longer fulfill the conditions required for the performance of their duties which are laid down in advance in national law; • The grounds for dismissal should be specified in a statement delivered to the relevant person.
Railway sector regulatory body	Directive 2012/34/EU establishing a single European railway area.	<ul style="list-style-type: none"> • Independence in organization, funding decisions, legal structure and decision-making; • The regulator should exist as a stand-alone authority; • The managing body should be appointed under clear and transparent rules and in transparent, merit-based procedure by the government or other public authority which does not perform ownership steering over providers of railway services; • The Member States may choose one of the following solutions relating to term of office of the heads of railway sector regulators: 1) appointment for fixed and renewable term; or 2) permanent appointment with dismissal possible solely on disciplinary ground.
Audiovisual media services regulatory body	Directive 2010/13/EU on the coordination of	<ul style="list-style-type: none"> • It should remain legally distinct from the government and functionally independent of their respective governments and of any other

TYPE OF REGULATORY BODY	RELEVANT EU LEGISLATION	REQUIREMENTS ON INDEPENDENCE
	<p>certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (significantly revised in November 2018)¹</p>	<p>public or private body;</p> <ul style="list-style-type: none"> • It should be able to exercise their powers impartially and transparently; • It should not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law; • Adequate financial (separate budget) and human resources and enforcement should be secured; • Managing bodies should be appointed in transparent and non-discriminatory procedure and the members of those bodies could be dismissed only if they no longer fulfill the conditions required for their functions.
Competition protection authority	<p>Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective</p>	<ul style="list-style-type: none"> • Member States should guarantee that the national competition authorities perform their duties and exercise their powers impartially and in the interests of the effective and uniform application of those provisions, subject to proportionate accountability requirements • They should not seek nor take any instructions from government or any other public or private entity when carrying out their duties and exercising their powers • However, the government has right to issue

¹ See also: Recommendation Rec (2000) 23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector.

TYPE OF REGULATORY BODY	RELEVANT EU LEGISLATION	REQUIREMENTS ON INDEPENDENCE
	enforcers and to ensure the proper functioning of the internal market	<p>general policy rules that are not related to sector inquiries or specific enforcement proceedings</p> <ul style="list-style-type: none"> • Persons performing decision-making powers in the national competition authorities could be dismissed only if they no longer fulfil the conditions required for the performance of their duties or if they have been found guilty of serious misconduct under national law • Member States shall ensure that the members of the decision-making body of national administrative competition authorities are selected, recruited or appointed according to clear and transparent procedures laid down in advance in national law. • National competition authorities shall enjoy independence in the spending of the allocated budget for the purpose of carrying out their duties

Source: Review of EU legislation.

Among soft law documents referring to IRAs' independence, it is worth to mention the Recommendation Rec (2000) 23 of the Committee of Ministers of the Council of Europe to member states on the independence and functions of regulatory authorities for the broadcasting sector (Council of Europe 2000). According to this document, the member of regulatory authorities operating on this market should be appointed in transparent and democratic manner, may not receive any mandate or instructions, and should be protected against dismissal for political reasons. In terms of budgetary independence, the Recommendation Rec (2000) 23 promotes a mechanism under which financial capacity of the regulator does not depend on ad-hoc

decisions of other bodies. Accountability mechanisms proposed by the Council of Europe are limited. They are required to publish decisions and reports. External supervision over their activities should be limited to review of lawfulness of all actions, as well as transparency and correctness of financial operations. The Recommendation does not explicitly allow for setting objectives or guidelines for regulatory authority by other public body.

OECD documents also play an important role in shaping the concept of independent regulatory authorities. The OECD’s analysis of best practices for regulatory policy paid much attention to clear distribution of roles and responsibilities between regulators and other bodies, especially government departments. For instance, it is underlined that the principal responsibility for developing policies in the areas of regulators’ activities, should remain within the relevant government bodies (departments), though IRAs should be involved in the policy processes. Furthermore, it is a role of respective supervisory body (e.g. ministry) to specify the objectives and expectations for each regulator, accompanied with set of performance indicators. Progress towards objectives and targets should be reported by the regulator on a regular basis (OECD 2012, 2014).

Comprehensive model for measuring the formal independence of regulatory authorities was developed first by Gilardi (2002, 2005), followed by Hanretty & Coop (2012). For the purposes of this research, we rely on both measurement frameworks, but supplemented with some components that we identified as particularly relevant from the context of the Polish legal system. We also resigned from weighing (indexing) the individual aspects of regulators’ independence in order to avoid arbitrary choice of the most important components of the agencies’ autonomy. Instead, our analysis focuses on defining the distinctive features of the Polish model of regulatory authorities with regard to their independence. Table below presents the complete set of criteria to be explored with regard to the Polish regulatory authorities.

Table. Criteria for assessment of formal (de jure) independence of regulatory authorities

Criterion	Specific issues
Constitutional status	Status regulated by the constitution Specific guarantees of independence enshrined in the constitution
Governance	Procedure for appointment of the managing body (bodies) Criteria for appointment of the managing body (bodies)

	Tenure of the managing body (bodies)
	Renewability
	Possibility and grounds for dismissal
Organisational autonomy	Setting internal structure (units, branches)
	Planning activities
	Budgeting
	Contractual autonomy
	Staffing
External accountability	Activities reporting
	Budgetary reporting
	Control powers of the executive bodies or legislature
	Guidelines issued by external body in individual matters
	Guidelines issued by external body in general matters
	Appeal against administrative acts issued by the regulatory body

Measuring formal independence of regulatory authorities in Poland

In this part we share the results of the analysis of the status of six Polish regulatory authorities operating in the following areas: audiovisual media services, financial services, competition and consumer protection, energy market, electronic communications and railway transport. We translated the general criteria described in the table above into more specific questions and conducted review of legislation relating directly to the relevant bodies, but also horizontal laws applicable to them, e.g. on civil service or public financial management. Table below presents the results of the review. The symbols used in the table are explained as follows:

- a) „✓” – formal independence is fully guaranteed;
- b) „✓/✗” – formal independence is partially granted;
- c) „✗” – there are no guarantees of formal independence;
- d) „---“ – criterion is not applicable to relevant body.

	KRRiT (audiovisual media regulator)	KNF (financial services regulator)	UOKiK (competition protection authority)	URE (Energy market regulator)	UKE (electronic comm. regulator)	UTK (railway market regulator)

Constitutional status	✓	✗	✗	✗	✗	✗
Composition of managing body	✓	✓/✗	✓/	✓/✗	✓	✓/✗
Requirements for candidates to managing body	✓	✓	✓	✓	✓	✓
Tenure	✓	✓	✗	✓	✓	✓
Early dismissal	✓	✓	✗	✓	✓	✓
Renewability	✓	✗	✗	✓/✗	✗	✗
Power to issue general policy guidelines by other body	✓	✓	✓/✗	✓/✗	✓/✗	✓
Power to issue instructions or guidelines on individual administrative matters by other body	✓	✓	✓	✓	✓	✓
Procedure for adoption of annual plans	---	---	---	---	✗	---
Procedure for adoption of annual budgets	✓/✗	✓/✗	✓/✗	✓/✗	✓/✗	✓/✗
Reporting obligations towards other bodies	✗	✓/✗	✓	✓/✗	✓/✗	✓
Reporting on implementation of financial plans	✗	✗	✗	✗	✗	✗
Supervisory measures of government or parent ministry	✓	✗	✗	✗	✗	✗
Supervisory powers of the parliament	✗	✓	✓	✓	✓	✓
Appeal body in administrative matters	✓/✗	✗	✓	✓	✓/✗	✓/✗
Contractual autonomy	✓/✗	✓/✗	✓/✗	✓/✗	✓/✗	✓/✗
HRM autonomy	✓/✗	✓/✗	✓/✗	✓/✗	✓/✗	✓/✗
Organisational autonomy	✓	✓/✗	✓/✗	✓/✗	✓/✗	✓/✗

1. Constitutional status

The only regulator with constitutional status is KRRiT.

2. Composition and mode of appointing managing bodies

The only collegial bodies are KRRiT and the PFSA. The KRRiT consists of five members

appointed: 2 by the Sejm (lower house of the Parliament), 1 by the Senate and 2 by the President of the Republic of Poland (hereinafter: the President of the Republic of Poland). Those members elect their Chairman from among themselves. The KNF consists of the Chairman, two Deputy Chairmen and five members: three competent ministers or their representatives, the President of the National Bank of Poland, or a member of the Board of the National Bank of Poland and a representative of the President of the Republic of Poland. The chairman of the KNF is appointed by the Prime Minister from among persons meeting the criteria discussed below. The Presidents of UOKiK, URE and UTK are appointed by the Prime Minister from among persons selected through an open and competitive recruitment. The President of UKE is appointed by the Sejm with the consent of the Senate at the request of the Prime Minister.

3. Requirements for candidates for managing bodies

For any regulatory authority, the relevant provisions provide for certain requirements that candidates for internal bodies should fulfill. The members of the KRRIT are appointed from among people who are distinguished by their knowledge and experience in the field of electronic media. The regulations also provide for a number of prohibitions regarding the performance of various functions by a member of the KRRIT and undertaking some kind of activity that could lead to a conflict of interests. With regard to other bodies, the regulations provide for rather standard requirements related to, for example, citizenship, education, knowledge, managerial competences, length of service or not criminal record. In addition, with regard to the KNF, the provisions provide for prohibitions regarding a particular type of capital or personal ties with entities subject to supervision.

4. Tenure

Fixed term in the office is the solution adopted for most regulatory authorities. The KRRITs term of office is 6 years. The chairmen of the KNF, the Presidents of the URE, UKE and UTK are appointed for five-year terms. With reference to the President of UOKiK, appointment is made for open term.

5. Possibilities and grounds for early dismissal

In reference to the majority of regulators, a solution was adopted that made the possibility of early dismissal dependent on the existence of statutory prerequisites. Only in case of the President of UOKiK, the dismissal is possible at any time and at any ground.

6. Renewability of mandate

In most cases, the provisions do not preclude the re-appointment of a regulatory authority. Restrictions in this regard have been introduced in respect of members of the KRRIT who can not be appointed for another term of office, and in relation to the President of URE, who may be appointed again only once.

7. The ability to issue guidelines and instructions by external body in general matters

As regards the possibility of issuing guidelines and instructions in general matters, formal independence of regulatory bodies in many cases faces limitations. In the case of the President of UOKiK and the President of URE, the possibility of issuing binding guidelines and instructions was granted to the Prime Minister performing the policy of the Council of Ministers. The President of UKE is subject to the supervision of relevant ministers (respectively IT and transport). The supervising ministers have the right to issue binding guidelines and instructions. The laws do not provide the basis for issuing guidelines and instructions of the KRRIT, KNF and the President of UTK.

8. The ability to issue guidelines and instructions to the authority in individual administrative matters

Although in many cases regulatory bodies may be provided with binding guidelines and instructions, they may in no case relate to decisions as to the merits of a case handled by an administrative decision. Incidentally, it is worth pointing out that the provisions of specific laws sometimes provide solutions that may be considered to enable other bodies to exert a specific influence on the activities of regulatory bodies. Among the examples of solutions, one may indicate the requirement for the regulator to obtain the opinion of a given body, acting on a request or in agreement, or exceptionally acting with consent.

9. Annual plans

Only the President of UKE may be required by the minister to draw up a plan of operations. The President of UOKiK includes certain strategic tasks, such as the preparation of government competition development programs and government consumer policy projects. It should be emphasized that acts in the form of annual activity plans or multi-annual strategies may be adopted by individual bodies on their own initiative.

10. Procedure for adopting the annual budget (financial plan)

Annual financial plan should be in line with the state budget act. All regulatory authorities act as heads of units and, at the same time, administrators of relevant budget parts. Therefore, their

duties include approval of the draft financial plan and its verification for compliance with the budget act. The revised draft financial plan is submitted to the Minister of Finance. The approved and verified draft financial plan forms the basis of financial management by the date of preparation of the financial plan on the basis of information on amounts of income and expenses resulting from the Budget Act. After receiving the above information financial plan projects are adjusted to ensure their compliance with the budget act.

11. Annual report

With the exception of the President of UOKiK and the President of UTK, regulatory authorities are required to report on their activities. Such reports shall in any case be submitted annually to the competent authorities. In the case of the KNF, it is the Prime Minister. UKE Governors, URE submit reports to the competent ministers. However, they are not subject to formal acceptance, the possible absence of which could result in negative consequences (although the report of the President of UKE is subject to opinion).

The provisions on the KRRiT reporting obligations should be considered as the most far-reaching. Every year, it presents the Sejm, the Senate and the President with a report on their activities for the preceding year and information on the major issues relating to radio and television. On the other hand, the Prime Minister presents annual information on his activities and basic problems of radio and television. The Sejm and the Senate may pass or reject the KRRiT. The rejection of the report by these organs results in the expiration of the term of office of all members of the KRRiT. The expiration of the term of office, however, does not take place if it is not confirmed by the President of the Republic of Poland.

12. Budgetary reporting

Each regulatory authority is required to prepare reports reliably and properly in terms of its substance and formal and accounting. Reports are prepared monthly and annually. The unit receiving the report is the Ministry of Finance - the State Budget Department. In addition, the KNF in an annual report submitted to the Prime Minister includes, in particular, a list of all the costs of the activities of the Commission and the Office of the Commission incurred in the budget year.

13. Supervisory powers of the Government or parent ministry

Most regulatory authorities are subject to fairly far-reaching control or supervision by the relevant authorities. The only body that has not been subjected to this kind of ongoing

verification is the National Broadcasting Council. With regard to the President of UOKiK and the KNF, statutory regulation in the scope of supervision is rather economical. In both cases, it is limited only to the indication that the authority exercising supervision is the Prime Minister. In relation to the President of UOKiK, the Prime Minister also has quite broad control competencies. He can exercise control over him in terms of legality, expediency, reliability and economy. The same Prime Rights are also vested in the President of the Council of Ministers in relation to the Presidents of UKE, URE and UTK.

14. Supervisory powers of the legislature

The laws do not provide for Parliaments powers to conduct ongoing control of regulatory bodies. It should be remembered, however, about the relevant competences of the Sejm and the Senate related to the adoption of the annual report of the KRRiT.

15. Appeal procedure in administrative matters

In most cases, the appeal procedure for administrative decisions issued by the Polish regulatory authorities is based on the model of direct appeal to the court of general jurisdiction. This does not apply only to the KNF, where the administrative court is competent. Regardless of the type of the case, the appeal against the decisions issued by the President of UOKiK and the President of URE should be submitted to the District Court in Warsaw - the competition and consumer protection court. In the case of other authorities, appeals against decisions are submitted to courts of general jurisdiction only in specific situations, for example where an administrative fine was imposed on the party.

16. Contractual autonomy

For each of the regulatory authorities discussed, the boundaries of contractual freedom are set by the budget act, regulations regarding the financial management of public sector entities and the principles of state property management, which means, among other things, that they must adhere to the principles of proper economy. The generally applicable provisions of law do not oblige any of these bodies to obtain the prior consent of another authority to enter into contractual relations.

17. HRM autonomy

None of the regulatory bodies has full human resources autonomy. To the greatest extent, it is granted to the Polish Financial Supervision Authority. The provisions of the Labor Code apply to employees of the KNF Office. In the case of other bodies, the limitation of the staff autonomy

results from the provisions of appropriate pragmatics, related to, for example, recruitment rules, special rights and obligations of employed persons or rules for determining remuneration. In relation to employees of the KRRiT Office, the provisions on employees of state offices apply. In turn, employees of UOKiK, URE, UKE and UTK are part of the civil service and civil service legislation fully applies to them.

18. Organisational autonomy

In most of the cases, the Prime Minister has the power to adopt statute of the institution and the head of institution issues another act providing more detailed rules on internal organization of the body. This does not apply to KRRiT that regulates its internal organization fully independently.

Conclusions

None of the Polish regulatory authorities enjoys full formal independence. Its scope in relation to individual organs varies. However, there are solutions adopted for all regulatory authorities: statutory catalogs of eligibility requirements for candidates and excluding the possibility of issuing binding guidelines and instructions in individual cases. Despite the restrictions imposed, no body was deprived of its independence in its entirety. This leads to the conclusion that approach of Polish legislation towards regulatory authorities is rather cautious and moderate. On the one hand, it provides solutions that formally enshrine the independence of regulators, and on the other hand, it envisages various types of instruments that limit the full freedom of action.

Polish solutions prove that the scope of formal independence of regulatory bodies is a complex issue, where it is difficult to develop uniform standards. These bodies undoubtedly enjoy broader scope of autonomy compared to the organs that are fully part of a hierarchically constructed government administration apparatus. However, they cannot be described as the "fourth branch of government", ie the system of institutions fully protected from any influence of the executive. This observation may be the starting point for a more in-depth reflection on the theoretical model of an independent regulatory body, and especially the construction of a set of criteria that should be considered as forming the core of this independence.

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