

**Tatjana Jovanic**, MA, LL.M, PhD  
Assistant Professor  
University of Belgrade Faculty of Law, Belgrade, Serbia  
[jovanictatjana@gmail.com](mailto:jovanictatjana@gmail.com)

- **Propositions** -

**The concept of a public/regulatory agency in Serbia, the influence of politics, participatory democracy and the neutrality of regulators as challenges in developing regulatory states in Western Balkan countries**

Agencification in Serbia is a result of both decentralisation of the administrative state and the increased need for specialisation and scientific approach to policy making. Another important reason for agencification in Serbia, the same being identical for all the other countries of ex Yugoslavia, is the attempt to harmonise legislation with the EU in many fields of sector-specific policy.

The notion of a 'public agency' in Serbia is somewhat confusing. Many agencies are created ad hoc, some of them, relatively independent, may be considered regulatory agencies or while others are just exercising executive function; some others bear the name 'agency' but represent just decentralised departments of a respective Ministry. In order to harmonise the legal framework of agencies in Serbia, the Law on Public Agencies had been passed in 2006. This Law attempted to harmonise the main features of the internal organisation and some aspects of independence of the agencies, however it may be considered as a 'fall back' Law. It means that it shall apply if laws establishing various agencies do not provide for some other solutions. With other words, its rules are mostly non-binding.

*The purpose of my propositions would mainly focus on four interwoven issues:*

- 1) The concept of public/regulatory agency in Serbia: overview of selected agencies which may be considered as regulatory agencies; their common traits and differences with regards to organisational architecture and the regime of independence and transparency. Specific laws establishing such agencies (e.g. Law on Energy, Law on Electronic Communications) will be contrasted to Law on Public Agencies.
- 2) The influence of politics and politicians in the decision to create agencies and in the governance of agencies: motives for conferring regulatory powers to agencies; forms of control; independence and accountability regime
- 3) The emerging role of regulatory agencies as expert bodies in 'disciplining' political voluntarism and the importance of a membership in pan-EU regulatory networks (selected examples from Serbia: Energy Agency, Republic Agency for Electronic Communications..)
- 4) The final issue will be the most comprehensive and will not relate only to Serbia, but generally to new democracies in CEE, notably Western Balkans region. The institutional setting of market regulation should not be interpreted only as formal harmonisation with the EU law through the establishment of independent regulatory bodies. As a process, market regulation will be successful only when appropriate cultural, economic and political preconditions of economic democracy are fulfilled.

The rise of public (regulatory) agencies is not based on same grounds which led to their establishment in the US or EU, but is often a result of simple transplantation of laws, in order to align market regulation to match European standards. Agencies emerged with the aim to influence the market in spe, rather than representing mechanisms of a social reaction to market failures, which could subsequently manifest as deformations of the market. In this process of market building, in a society which lacks differentiated stakeholders, the tradition of balancing interests through public participation in the regulatory process not only that regulation may not have the same effect, but as well not even the same nature as in developed market economies. Transition is not only about the creation of markets and reform of institution, but as well establishment of the institutions of a political, participatory, democracy. In a situation when such institutions are un(der)developed, the political sphere, manifestly or latently, dominates the economy. In relationship to independent regulatory bodies, this structural anomaly is manifested as the pressure on independence and neutrality of regulators, especially those whose goals have implications in the political sphere, such as competition protection, transparency and fight against corruption.

Note: The author has prepared a co-authored paper entitled:

**“PARTICIPATORY DEMOCRACY AND THE NEUTRALITY OF REGULATORS AS CHALLENGES IN DEVELOPING REGULATORY STATES IN WESTERN BALKAN COUNTRIES”**

(presented at 4. Scientific International Symposium on the Development of Public Administration in South East Europe, Ljubljana, Slovenia – June 2011), not published, which is attached to this Proposal. Should there be an interest in presenting and/or publishing this paper, the author would be grateful to be informed.