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Agencies between expertise, politics and law:
The case of countries in transition in South Eastern Europe

- *FIRST DRAFT-*

Agencies are an organisational form that ensures better usage of expertise than ordinary public administration organisations. They serve as promoters of technocratic decision-making and functioning. However, there are certain unintentional effects of agency model. Coordination and policy coherence gaps may raise the questions of political accountability and provoke robust political interventions. However, the influence of politics is limited by the legal standards. There are the problems with legal control over agencies, also.

Countries in transition have limited experience with agency model of public administration, although quasi-independent bodies are not quite new institutions there. However, proliferation of agencies in transitional countries causes many new problems and enhances the previously recognised ones. Traditional legal procedures of internal administrative control and courts' supervision over agencies are not suitable. This opens space for dangerous politicisation hidden behind expertise.

The paper presents the results of an empirical research conducted in Slovenia, Croatia and Montenegro in January 2012, based on semi-structured interviews with 29 officials in three countries – agency managers, administrative judges and politicians and officials in the ministries. The main purpose was to establish the main problems and issues in the functioning of agencies and the agencification process, especialla with regard to the legal aspect, the politicisation and policy involvement, and the management of agencies. The goal was to retrieve information on the problems as they are seen and ranked by the interviewees.

Key words: agency model of public administration – Croatia, Montenegro, Slovenia, politicisation, legal control over agencies, technocracy

1. The Introduction: Agencification in Transition Countries Between Law, Politics and Expertise

Agencification is a broad trend in both Western and Eastern democracies. South-East Europe is not an exception. Managerially inspired administrative reforms, a new concept of services of general economic interest – with independent regulatory bodies as an integral component – and the European Union pressure towards the new candidate countries to implement the new concept during accession negotiations, technical assistance particularities, and domestic muddling-through Scillas and Haribdas of administrative development, are among the main drivers of agencification in SEE countries (see also Musa and Koprić, 2011). The

However, semi-autonomous and autonomous organisations within public administrations in the region have rather long tradition. There is also a long and strong tradition of general administrative procedural law and a bit shorter tradition of the court control over public administrations. According to such a tradition, all public bodies have to apply general administrative procedural law principles and provisions, with two-instance proceedings as a result (Koprić, 2011). This is not in line with standards and requirements for independent regulatory bodies, and can cause the legal problems for other agencies.

Furthermore, standards from Article 6 of the European Convention of Human Rights and Fundamental Freedoms asks for a two-tier system of administrative justice with "full jurisdiction" administrative dispute, public hearing, the right to appeal to the higher court, and protection of issuing administrative law cases within a reasonable time. If applied to agencies, this can also substantially undermine their autonomy – such a solution opens space for judicialisation, i.e. for too deep intervention of administrative judiciary into the administrative and agency matters.

The issue of independent public governance in the form of public agencies is primarily the question of insurance of their autonomy in several dimensions, not only in procedural issues (Kovač et al., 2011):

- organisational: being organised outside the ministry and state administration as independent legal entity, even though being subject to public law limitations (such as legal regime of public finances use, public procurement, civil service system, judicial control);
- legal and functional: legal personality, clear competences and relations (especially between the agency and its parent ministry and users, additionally controlling bodies over agency's decisions and acts) set as *materia legis*;
- personnel: nomination of the director and council members by professional criteria within public tender by the government or parliament even, discharge possible on the basis of breach of duties only, employees not us public servants;
- financial: access to independent sources such as fees (initial resources must assured by the founder, clear definition of the liability for agency's obligations and its property, access to non budget resources with the fees charged in accordance with tariff, passed by agency itself with prior consent of users representatives and parent ministry).

The independence of the agencies is nevertheless relative and can be intensified or reduced, but must not finally annul the impact of democratically elected authority and users. If contrary, the principles of rule of law and social state and basic public interest are affected (Pirnat, 2004, Verhoest, 2011).

Three SEE countries have different trajectories of EU accession: Slovenia became the EU member in 2004, Croatia will join the Union in 2013, while Montenegro is at the beginning of the accession journey, as a candidate country from 2010. Different are also paths of gaining independency; and domestic political and other circumstance are also different. Having all these in mind, we are trying to find out the main problems with agencies in three countries. Semi-structured interviews were chosen as a methodological tool for the first phase of research. We managed to interview about 30 interviewees, agency managers, functionaries responsible for administrative and regulatory development within ministries, politicians, and administrative judges. Our intention was to get different insights about managerial, political, administrative and legal problems with agencies in three countries.

In the following chapter, similarities and differences between three countries will be analysed. Then, the public administration reform and agencification process in three states are described. Research results are presented and analysed in subsequent chapter. Certain conclusions and the next steps in research are presented at the end of paper.

2. The Triplets of the European South East? Some Similarities and Differences Among Three Countries

All three states share some common characteristics with regard to their political and administrative development, with some differences (see Table 1).

The first common feature is *belonging to the common state* in the longer historical periods – all three states belonged to the Yugoslavia (Kingdom of Yugoslavia 1918-1941), the socialist federation of Yugoslavia 1945-1990 (Socialist Federative Republic of Yugoslavia); Montenegro continued to be a part of the Federal Republic Yugoslavia[1] (only with Serbia) till 2003, when the State Association with Serbia was established; this Association ended in 2006. Moreover, Croatia and Slovenia were parts of the Habsburg Monarchy for approximately 400 years (Slovenia from mid 15th century, Croatia from early 16th century), while Montenegro was a part of the Ottoman empire with special autonomy (beginning of the 16th – late 19th century) and strong formal ties with Serbia. These developments influenced the creation of the legalistic administrative tradition of Germanic type in Croatia and Slovenia, which was partly transferred to Montenegro during the common statehood. Moreover, the administrative culture of socialist type was later developed. Hence, the success of the ongoing administrative reforms in all three states has a task, to a different degree, to fight the rigid structures, politicisation, which often goes hand in hand with corruption, as well as the inertia of formalism (details about *muddled governance* in SEE, see in: Koprić, 2012a).

Secondly, all three states went through the parallel processes of *independent state building* and *democratic transition* in the last two decades – Slovenia and Croatia declared their independence in 1991 after referenda held in 1991,[2] while Montenegro separated from Serbia in 2006.[3] The efforts to

[1] They have been called the First, Second, and Third Yugoslavia.
[2] In Slovenia and Croatia the independence was supported by 88 per cent and 94 per cent of votes.

build completely new political, administrative, legal and economic systems were connected to the processes of state building (army, police, diplomatic service, policy making) and those efforts put great pressure on the institutional, human and financial capacities. Moreover, the aggression of Yugoslav Army against Croatia and domestic Serbs rebellion against legitimate government in Croatia 1991-1995,[4] and Montenegro's participation in the wars in the region (being a part of the common state with Serbia), created additional pressures and post-war problems which defined policy options during the period of transition. These developments have influenced different speed and the level of democracy and the rule of law in three states.

Thirdly, all three states have established the *EU accession* as the main foreign policy goal after the independence. Slovenia managed to catch up with other CEE states in the EU accession process and went through negotiations process in the period 1998-2002, with full membership on 2nd May 2004 within the Eastern enlargement. With the significant delay, Croatia was granted the candidate status in 2005, and the accession treaty was signed in December 2011, with the full membership being expected on 1st July 2013.[5] Finally, in last five years Montenegro has embarked on the road to the EU membership, with the Stabilisation and Association Agreement signed in October 2007 and entered into force in May 2010, the membership application in December 2008, and the EU candidate status in 2010. The beginning of the negotiation process is expected in spring 2012. The EU accession policy in all three states has led to significant efforts and measures of political and administrative elites in order to meet EU requirements. This relates especially to the harmonisation with *acquis communautaire* in different policy sectors, but also to the reform of public administration according to the European administrative standards as parts of the European administrative space (Olsen, 2003). As confirmed by the Europeanization researches (see Goetz, 2005; Schimmelfennig and Sedelemeier, 2005), the public administrations of the transition countries exhibit elements of convergence under the EU pressures for the reform. One element of the convergent development might be found in the European administrative standards adopted within the administrative legal framework which was developed and supported by the OECD-EU joint venture Sigma, especially in Croatia and Montenegro. At least a shallow Europeanization on the level of convergence of discourse and decisions (see Pollitt, 2001)[6] might be found, especially with regard to the legal framework for civil service, administrative procedure and specific public administration practices, such as public procurement, internal financial management, administrative justice, and similar.

Another common characteristic of the three countries is that they belong to the group of so called *small(er) states*. Croatia is the largest among them, with four and a half million of inhabitants, followed by Slovenia with slightly more than two million, and finally, with Montenegro having only slightly above six hundred thousands of inhabitants. Slovenia and Montenegro fall into category of small states which is usually set at two million population, but Croatia can also be considered as a member of the small(er) states. Moreover, the share of capital city population is significant – in

[3] Montenegro has been an independent state since June 2006. An Independency referendum was held on 21st May 2006 and barely succeeded (European Union requested at least 55 per cent votes for independency, while actual result was slightly above this). Before that, but after dissolution of socialist Yugoslavia, Montenegro was a part of so-called third of Federal Republic of Yugoslavia (1992-2003) and State Alliance with Serbia (from 2003 to 2006).

[4] Slovenia also suffered military actions by Yugoslav army, but for a shorter period of time (June 1991).

[5] Approximately 66% of voters supported the EU membership on the referendum held on 22 January 2012.

[6] Pollitt (2001) makes a distinction between four stages of convergence – discourse, decisions, actions and results, which help to understand why the Europeanization, as well as general convergence of administrative models, is still hard to find.

Slovenia 10% of total population lives in the capital, in Croatia it is almost one fifth of the total population, while in Montenegro almost one third of the total population lives in the capital. The small country size factor might be regarded as conducive to the constraints posed by the economy of scale to both the general socio-economic development (see Sevic, 2001), as well as to the public administration (Sarapuu, 2010), especially with regard to the politicisation, civil service, civil society-state relations, and administrative capacities. Some studies underline the importance of individuals and personal relationship, multi-functionalism of jobs and employment of rare specialists in small states and suggest that the 'higher degree of 'personalism' in small states causes more 'flexible' adoption of administrative rules as opposed to the values of rationality and universality in bureaucratic systems' (Randmaa-Liiv, 2002)

The three states exhibit different territorial structure, that is influenced both by the size of the country and by political party relations – Croatia has introduced two layers of local government – 556 municipalities and 20 regions, while Slovenia and Montenegro have only local units (221 and 21 respectively). There should be also noted that the ethnical issue is most prominent in Montenegro,[7] and then Croatia,[8] while in Slovenia the society is more homogenous on the ethnical dimension. This picture shows different levels of differentiation of the political and administrative system and also centralisation and decentralisation. Finally, all three countries belong to the group of multiparty, parliamentary democracies (Slovenia and Croatia have a directly elected president too).[9]

Finally, with regard to the economic development, the three states differ significantly. The GDP PPP rates indicate that Slovenia's economic development is among highest within the group of the CEE countries, while Croatia's GDP is comparable to the average of CEE countries. In comparison to that, Montenegro's GDP is almost three times lower than Slovenia's and comparable to the lowest GDP in CEE member states.[10] Still, all three states were hit hard by the economic and financial crisis, especially Slovenia and Croatia which suffered the -8.0 and -6.0 growth in 2009, but Croatian GDP growth rate remained negative also in 2010. Croatia also suffers from high unemployment (9.1 in 2009). The effects of economic crisis were felt in the state administration reorganisation in 2010 and 2011 in Croatia and Montenegro (see infra).

Finally, as the data from the table 1 show, there is a significant difference among three states in relation to the government effectiveness, the quality of regulation and the rule of law, as well as the e-government and the degree of the supportiveness of political, administrative and economic environment for economic development. In comparison to Montenegro, Slovenia and Croatia rank higher with regard to the government effectiveness (81.3 and 70.3, compared to 57.9 in Montenegro), regulatory quality (74.6 and 70.3 compared to 51.7 in Montenegro) and e-government (rank 29 and 35,

[7] National structure is rather complicated, with 45 per cent of Montenegrins, almost 29 per cent of Serbs, 8.5 per cent of Bosnians, almost 5 per cent of Albanians, etc. The national diversity strongly affects political party system which is divided among national lines – the party in power for more than 20 years is supported by Montenegrins, while the main opposition party is supported by Serbians.

[8] Croatian Constitution recognizes 22 national minorities which constituted approximately 12 per cent of total population in 2001 census. Serbian ethnical minority is the largest, with 4.5 per cent share, followed by Bosnian, Italian, and other minorities.

[9] In his categorisation of countries according to the six "hybrid regime" indicators, Ekman finds that to the group of countries with "hybrid regime" (pseudo-democratic countries) belong, among others, Albania, Bosnia and Herzegovina, and Macedonia, while Montenegro, Serbia, Croatia and Romania can be classified more advantageously as so-called flawed democracies (Ekman, 2009: 10-13).

[10] The GDP per capita PPP (current USD) for 2010 in Czech Republic was 18.245, in Estonia 14.345, in Hungary 12.852, and in Poland 12.293. The Montenegrin GDP is comparable to the Romanian and Bulgarian (7.538 and 6.325).

compared to 60 for Montenegro). On the other hand, Croatia and Montenegro are more similar with relation to the rule of law (60.7 and 55.0 compared with 82.5 for Slovenia) and corruption perception (both ranked 66, in comparison to 35 for Slovenia). In contrast, Croatia is worst positioned when it comes to the doing business index (ranked 84, in comparison to rank 42 for Slovenia and 66 for Montenegro). These differences might be explained by the different starting points and general political and economic context, the duration of the reforms, and other socio-political characteristics. For example, the corruption perception indices for 2011 show that the corruption in Slovenia is significantly lower than in Croatia and Montenegro, although it has increased in comparison to 2010, which might be attributed to the general dissatisfaction by the institutions and frequent scandals in Slovenian politics.[11]

Table 1: Overview of the main characteristics of the three states

	Slovenia	**Croatia**	**Montenegro**
population*	2.049.261	4.456.096	661.807
size (km2)*	20.273	56.542	14.026
capital (population in 000)*	Ljubljana (253)	Zagreb (770)	Podgorica (200)
GDP per capita 2010* (eur)	15.300	8.500	
independence	1991	1991	2006
type	parliamentary democracy	parliamentary democracy	parliamentary democracy
territorial governance	211 local units	556 local units 20 regional units	21 local units
EU relations	AA 1996 1997 candidate status 1998-2002 negotiations 2003 accession treaty signed 2004 EU membership	2001 SAA 2005 candidate status 2005-2011 negotiations 2012 accession treaty signed (membership expected 1 July 2012)	SAA 2010 candidate status (waiting for negotiations in 2012)
GDP per capita (USD) World Bank 2010**	22.851	13.754	6.510
GDP annual growth 2009 and (2010)**	-8.0 (1.4)	-6.0 (-1.2)	-5.7 (2.5)
unemployment rate 2009**	5.9	9.1	N/A
corruption perception index 2011 (rank) ***	5.9 (35)	4.0 (66)	4.0 (66)
doing business 2011 rank / 183 countries ****	42	84	66
the rule of law*****	82.5	60.7	55.0
the government effectiveness *****	81.3	70.3	57.9
the regulatory quality *****	74.6	70.3	51.7

[11] Montenegro advanced in the Perception Index – from 3.7 in 2010 to 4.0 in 2011. At the same time Croatia has got slightly worse index in 2011 (4.0, in comparison with 4.1 in 2010), while Slovenia has faced significant worsening (5.9 in 2011, in comparison with 6.4 in 2010) (all results from http://www.transparency.org).

UN e-government ranking******	29	35	60

* The data retrieved from the national statistical offices and the Eurostat
** The World Bank http://data.worldbank.org/
*** www.transparency.org
** **www.doingbusiness.org
***** The World Bank Governance Indicators http://info.worldbank.org/governance/wgi/index.asp
****** UN DPADM E-government
http://www.unpan.org/DPADM/EGovernment/UNEGovernmentSurveys/tabid/600/language/en-US/Default.aspx

3. The Public Administration Reform and Agencification Process in Three States

3.1. Slovenia

The reforms in the public sector in Slovenia are a permanent phenomenon, which has intensified from late 1990s within Slovenia's preparation to gain full membership in EU (May 2004, more on the reforms, theirs incentives, results and periods see in Kovač, 2011). The regulation of public agencies has always been one of the key reforms programmes, structurally, within civil service system or public sector financing, although these reforms have not been carried out consistently (cf. Virant, 2004, Kovač et al., 2011). As a consequence several models of autonomous entities have developed with differentiating level of autonomy even within certain type such as public agencies (Bohinc, 2005, Pollit and Talbot, 2004).

In 2002 Slovenia passed a package of so called "reform legislation", including The Law on Public Agencies (LPA) and The Law on the State Administration, which had created a legal basis for systematic agencification to strive for deconcentration, rationalisation and professionalization of public administration. From 2003 the employees in public agencies are included in civil service system and, from 2008, an unified pay scheme in public sector. Issuing legal acts by agencies is subjected to general rule-making and administrative procedures, as well to the administrative court control. The idea of independent administrative institutions is closely linked to privatisation of (economic) public services with coordination of general public and private interests (Pirnat, 2004). Moreover, the EU has had significant impact on the agencification in Slovenia in certain fields, like market security, insurance supervision, energy and telecommunication sectors, where the first agencies were established accompanied by highest level of legal and managerial autonomy.

The LPA regulates state and municipal agencies, with regulatory, executive, distributive or developmental tasks. Pursuant to the LPA, a public agency is an independent legal entity, founded by state or municipality in order to enable more efficient execution of administrative tasks or if constant political supervision over task implementation is not necessary or appropriate. Still, the public agency can be established merely on the basis of the law regulating specific area, with subsidiary use of the LPA and other general legislation such as the Law on General Administrative Procedure (LGAP). A capacity to act in legal transactions (legal personality) is given to the agency by registration in court with prior nomination of members of agency's council and acting director. The LPA regulates the foundation of the agency, its bodies (council with members appointed by the founder and from one third to one half of users, which takes care of the public interest, issues general acts, annual programme and plans and reports; and the director with the 5 years mandate, who represents the agency, issues individual acts etc. and is responsible to the ministry on the basis of performance contract), general acts issued by the agency, tasks and activities of the agency, supervisory forms and bodies, relations between the agency and its parent ministry(ies), relations with users, transparency, financing etc.

When establishing (state) public agency certain administrative tasks are delegated from state administration to more flexibly regulated and legally independent entities outside constitutionally limited administrative bodies within the state itself. Agencies can adapt to the needs of the users more promptly and function by more rationalised management of the resources, with simultaneous control to avoid side effects of such delegation or even privatisation of public tasks (cf. OECD, 2002). Therefore the agencification process is in compliance with fundamental public sector reforms, when certain conditions are fulfilled such as, for example, the satisfactory extent of the autonomy of the

agency with no constant need for coordination with other fields as well as the legal, organisational, functional, personal and financial independence to act professionally and apolitically (Verhoest, 2011, Kovač et al., 2011). The key goals when establishing (new) public agencies are the legal theory and in Slovene practice therefore the following, each in combination effect with the others (Kovač, 2006):

- to differentiate strategic policy making from operational implementation of administrative tasks holders (steering from rowing, Pollitt and Talbot, 2004);
- to strive for political neutrality of professionally driven implementation of public tasks with relative independence from the daily politics and short-term particular interest of parties in power
- to include the civil society and users' representatives within public governance to ensure higher legitimacy and democracy of the authority (cf. Bugarič, 2010, Verhoest, 2011).

The first public agency in Slovenia was the Security Market Agency, established in 1994, followed by Insurance Supervision Agency and Energy Agency in 2000. The increase of the number of state public agencies is evident – from one public agency in 1994, five agencies in 2000, 16 agencies in 2010, and 18 agencies in 2012, at the state level. The majority of state public agencies in Slovenia function in the financial-economic area.[12]The level of agencification in periods shows the intensity of the process of establishing new state public agencies (now 18, all by the field laws and governmental founding decrees). With regard to the establishment, state public agencies are usually, especially in the last period, transformed from already existing and functioning departments of the ministries, like autonomous bodies within ministries ("*organi v sestavi ministrstev*", cf. British autonomous agencies, Pollit and Talbot, 2004). Therefore one cannot speak of totally new entity, since the employees and other resources are allocated from the ministry with no added public expenditure. It has to be noted that there is still a great number of autonomous bodies and services within ministries, even in areas which are in other countries delegated to the public agencies (e. g. food safety or intellectual property, see OECD, 2002, Verhoest et al., 2011).

In legal sense public agencies in Slovenia act as public authority holders *ex imperio*, issuing general subsidiary legislation and deciding in individual administrative procedures on the basis and within the scope of the field law (with acts *de iure gestionis*, in detail in Kovač, 2006). *Lex specialis* usually determines special procedural rules compared to LGAP and even the Law on the Administrative Disputes to speed up decision-making with limited participation of the parties (users), exclusion of oral hearing, shorter terms, non suspension effect or even exclusion of the right to appeal, limited mandate of supervisory bodies to annul agency's decision etc. (Pirnat, 2000). Some of these provisions

[12] Four agencies function on the field of Ministry of finance (MF) (Securities Market Agency (ATVP), Insurance Supervision Agency (AZN), Agency for Public Legal Records and Related Services (AJPES), Agency for Public Oversight of Auditing (ANR)), five are in the field of Ministry of the economy (ME) (Energy Agency (AGEN-RS), Public Agency of the Republic of Slovenia for Entrepreneurship and Foreign Investments (JAPTI), Competition Protection Agency (JAVK), Slovenian Technological Agency (TIA), Post and Electronic Communications Agency (APEK) - the latest two are under parent MHEST as well), two exclusively (and five all together) in the field of Ministry for high education, science and technology (MHEST) (besides TIA and APEK and JAK especially Slovenian Research Agency (ARRS) and Slovenian Quality Assurance Agency for Higher Education (NAKVIS), three in the field of Ministry of transport (MT) (Agency for Railway Transport (AŽP), Slovenian Traffic Safety Agency (AVP), Civil Aviation Agency (CAA)), two on the field of Ministry of culture Slovenian Book Agency (JAK) – also covered by the MHEST, and Slovenian Film Center (SFC)), and one in the field of Ministry of public administration (MPA) (Public Procurement Agency (AJN)) and Ministry of health (MH) (Agency for Medicinal Products and Medical Devices (JAZMP)).

have been assessed by the Constitutional Court of Slovenia as the breach of Article 22 of the Constitution on equal protection of the rights in different legal fields but more often the Court finds special clauses as reasonable according to the field specifics (for instance no appeal against Security Market Agency decisions and its immediate finality is regarded as justified according to rapid need to adapt to market developments).

The employees in the public agencies are treated as civil servants pursuant to The Law on Civil Service (2003), albeit the law is in force for the public agencies in several chapters only, what leads to a slightly different legal status in comparison to the civil servants in state administration. The employer is therefore the agency itself, not the state, and there is no differentiation between the officials and other staff with specific criteria, conditions and procedures of employment. Pursuant to the field laws the agencies' employees are mostly (without Securities Market, Insurance Supervision and Post and Electronic Communications Agency, which employ 50-80 people each) included in common governmental personnel plan, which is a tool of the Government to limit the employment and pay resources in the agencies. The number of employees varies significantly, with Agency for Public Oversight of Auditing Book Agency (ANR) of 5 and Book Agency (JAK) of 7 people to Agency for Public Legal Records and Related Services (AJPES) with 247. The total number of employees in 18 agencies in 2011 amounted to approximately 800 employees, with average annual growth of 5-6% (total employment in public sector in Slovenia in 2011 was cca 159.000). Most of the agencies employ 6-60 staff, with only few exceptions (three agencies with less than 15 employees, one agency with 78, one with 116 and one with 247 employees).

The legal analysis of Slovene *lex generalis*, LGAP (Kovač, 2006, cf. Bugarič, 2010), and the field laws, clearly reveals that the autonomy of state public agencies in Slovenia is partial, with relatively high level of legal and organisational autonomy but limited functional and personnel and especially low financial autonomy. *(table 2 will be discussed in the final paper).*

In conclusion, the process of agencification in Slovenia has intensified and is still progressing, especially with regard to the aspects of autonomy, namely personal and financial. Over time the level of independence is arising, with different pace of the agencification in individual field (lately for instance new forms in transport and culture areas). The legal framework is acting as a driving force, but is not the only relevant factor of the agencies' autonomy. Still, the agencification process is also influenced by the economic crisis, as well as the overall public sector. In 2011The Government designed an explicit reform programme regarding public agencies, institutions and funds as a part of the general public sector reform program ('The Origins of further development and organisational and normative regulation of the public sector'). The analysis and measures to be taken in the course of 2012 are in accordance with theoretical, comparative and practical recommendations (Vlada, 2011, cf. Kovač et al., 2011, interviews, 2012). The measures to be taken relate to:

- the rationalisation of the public sector as a whole, and especially in the public agencies the reduction of management costs for 10 %, improvement of management systems, outsourcing;
- the differentiation of the public agencies to the regulatory and general ones (cf. on types in Laking, 2005) with increased level of the autonomy of the regulatory agencies in comparison to others and state administration (more autonomy in appointment of heads of the agency, personnel planning and pay system, finances and organisation, with special focus on the independence of the agency from the ministry and government);

- the budgetary resources to be allocated in accordance with the programmes and public services opposed to present financing of certain organisational forms as a key element of good governance (cf. Verhoest, 2011).

3.2. Croatia

The development of the Croatian political and administrative system from the beginning of the 1990s can roughly be divided into two eras. The first phase, 1990-1990 was marked by a transition to democracy and the introduction of a free market economy, together with the process of independent state building, including the 1991-1995 war period. The unfavorable economic and social circumstances of war period (economic downturn, unemployment, refugees, war veterans and other social problems) together with the strong semi-presidential political regime with authoritarian features, have led to retarded political development, reinforcing the negative side-effects of the transition, such as corruption, extreme politicization and social inequalities. The second phase began in 2000 when a broad left-wing coalition came into power, changed the Constitution and introduced the parliamentary system, initiating the processes of democratization, decentralization and EU accession. Still, the political and administrative tradition based on the strong state and the collectivist culture is heavily influencing political and administrative development. Some of the indicators are slow administrative reform and an unfinished decentralization process, weak institutions and underdeveloped civil society. Within this political context, the public administration went through the phases of establishment (1990-1993), consolidation (1993-2001) and Europeanization (after 2001), with prospects for modernization only after 2008 (Koprić, 2012).

In the period 2001-2011 the public administration went through continuous reform process, which was not based on the strategic vision but more a reactive approach to the incentives posed by the EU (e.g. civil service legislation, administrative procedure and administrative justice legislation, which were supported by the Sigma and the EU), economic crisis and inefficiencies in the public sector. The Strategy of state administration reform was adopted in 2008 but it has served mainly as a general non-obligatory guideline, and was not backed up by adequate implementation and monitoring mechanism. Similarly, the local government as well as public services, which constitute two remaining but equally important parts of public administration, remained outside the reform process, former from 2001, and later from the beginning of 1990s. Three most prominent elements of the state administration reform relate to the civil service system, administrative procedures and administrative disputes, but at the same time, the organizational changes were introduced sporadically and were designed according to the needs of the moment. Some key elements of managerial reforms, such as performance management, pay-on performance or quality management, including customer satisfaction, were not even considered as the elements of reform.

The process of agencification in Croatia reveals features of high intensity, incoherence and the absence of common framework for the establishment and functioning of agencies. The most prominent feature of agencification in Croatia is that its intensity was not covered by adequate legal framework, as if the agencies are a kind of minor accident, which does not need to be especially treated by legal framework. The 1993 Law on Institutions was used as a formal basis for creation of certain number of executive, standardisation and expert type agencies, while independent regulators as well as some executive type agencies were created outside any legal framework, based exclusively on single provision of the Constitution, which mentions ‘legal persons with public authority’ (independent regulators) or one single provision of the Law on Government, which allows the Government to create agencies, directions and services (executive type agencies). As a consequence, the individual aspects

of autonomy and control of approximately 70 agencies in Croatia (legal status, status of employees, level of managerial autonomy, legal control, policy involvement, reporting, financial control, and financial autonomy) are very diverse and it is almost impossible to group agencies into certain types. In general, it is possible to differentiate between cca 65 agencies outside state administration (with regulatory, executive, expert, developmental or standardisation tasks) and approximately 10-15 semi-autonomous organisation (the number varies on a weekly basis).

In general, the agency type administrative organisations are not completely new organisational forms in Croatia, as well as in other ex-Yugoslav countries, since decentralised forms of public administration existed in the socialist period. Still, during the last two decades agencies have been created in every functional area, for different reasons, and without a strong legal framework or a strategic document which would introduce agencies as a particular institutional type. In the 1990s agencies were modestly introduced into the public administration system. Some were inherited or transformed from the past regime, and some were created as a response to the needs of the changed economic and political environment. For example, in the early 1990s three autonomous regulatory type bodies were created for the supervision of the financial market (and later merged into one large regulatory agency), as well as several executive type agencies for economic and regional development. Furthermore, the new regulatory needs in the public service were institutionally embodied in boards and collegiate bodies, for example for the regulation of competition, telecommunication and postal services. In addition to the agencies outside state administration, there was a frequent use of the semi-autonomous organizations for the accomplishment of certain tasks within the state administration in form of the state administrative organizations, the administrative organizations within the ministry and similar organization without legal independence and subordinated to the government or the ministry (and also subjected to the general legal framework for state administration).

The pace of the agencification shows that the process experienced its greatest impetus during the 2001-2009 period, which is connected to Europeanization process, within the EU accession preparations. In comparison to 22 agencies created in previous period, the 2000s witnessed the creation of 53 agencies for new tasks or as a result of decentralisation of the units from the central state administration. On average, the annual number of agencies amounted to 5.88 agencies per year, compared to the 2.75 in previous period. As explained in accompanying documentation, most of the agencies were established as a response to the EU accession negotiations. Still, the absence of clear legal framework and the fact that the autonomy of agencies is much higher than in the state administration, were also conducive to the high intensity of agencification in that period.

Still, the problem of financial crisis and ineffectiveness of the system caused the shift in the agencification process during 2010. Within the framework of the Economic recovery program 2010, the Government conducted the analysis of agencies and decided to cut the number of agencies in order to increase effectiveness, decrease spending and make the agency landscape more easily to manage. In sum, in 2010 only two new agencies were founded and 15 agencies were abolished (by mergers or termination), leading to a decrease of 20% in the number of agencies (to 63), with the intention to make additional cuts based on the new functional analysis of agencies. However, the change in government in December 2012 led to significant changes in state administration but also put the issue of administrative reform high on the agenda, mostly driven by economic and financial crisis. In addition, the new Government has announced the creation of five new agencies (for state property, for exports and investment promotion, and for national parks, etc.).

Finally, it has to be noted that the agencies have to proceed according to the Law on General Administrative Procedure and that their decisions are subjected to the control by the administrative

court, and in case of most executive agencies, to the second instance control by ministries. The reformed administrative justice system started to function on 1st January 2012, now with two instance control by the administrative court. Managerial autonomy is high, since the agencies do not have to be in line with any legal framework regulating organization and management, and the only restriction is financial (the approval of the ministry for additional resources). With regard to the civil service framework, it does not apply to the employees in the agencies, which are either subjected to the general Labour law or, in case of some executive and expert agencies, to the Law on salaries for public servants (also applying to those employed in education, health, culture etc.). Financial autonomy differs, in a way that regulatory agencies have greater autonomy, while most agencies are participating in the budget of parent ministries. Financial control is also not coherent – most of the agencies being users of the state budget are subjected to the State Audit Office control, but some of them, mostly regulators, are not audited. With regard to annual reporting, the reports are submitted to various institutions - parliament, government or the ministry, and in some cases, to the EU institutions. Finally, with regard to the democratic control and the participation of the users or stakeholders in the public agencies' functioning and organization, agencies differ significantly, with expert agencies usually including the representatives of the users, professional groups, academia, and similar into formalized structures and procedures.

3.3. Montenegro

Public administration in Montenegro is very similar to public administrations in other states emerged on the former Yugoslav territory. It is composed of state administration, other administrative bodies at the central level, local self-government, and public services (services of general interest). According to the Law on State Administration System of 2003, ministries are bodies competent for policy formulation, law drafting and administrative supervision, while other administrative bodies are competent for policy and law implementation (Marković, 2007: 179). Such a regulation was one of the main stimuli for agencification in Montenegro, along with the Europeanization process. It should be noted that the literature and other sources on agency model in Montenegro are very scarce, almost non-existent, which is a result of both low level of recognition of agencies as special type of administrative organisation, but also by absence of the bigger scientific community which could engage in such a research.

As in many other states, including the states in the region, Montenegrin public administration has been also characterised by the fast spreading agencies. There are six agencies within the state administration, as well as a few independent regulators and expert agencies. Executive agencies are: Agency for Promotion of Foreign Investments, Tobacco Agency, Environmental Protection Agency, and Agency for Peaceful Conflicts Solving, National Security Agency, and Personal Data Protection Agency. There are many other bodies at the central level that might be classified as the agencies or organisations with large autonomy, although they have other titles, like administrations (uprava; e.g. The Civil Service Administration), institutes (zavod; e.g. The Metrology Institute), boards (direkcija; e.g. The Public Works Board), etc. Among regulatory and expert agencies there are, for example, Agency for Electronic Communications and Postal Services, Regulatory Energy Agency, Agency for Electronic Media, Insurance Supervision Agency, Civil Aviation Agency, etc.

The Public Administration Reform Strategy for 2011-2016, titled AURUM paper, was adopted by the Montenegrin Government in March 2010. It plans preparation of systemic piece of legislation on agencies, on the basis of thorough analysis of current situation. However, this plan has not been realised yet. Because of that, there is no systemic legal regulation of agencies in Montenegro.

After less than a decade from 2003 Law on State Administrative System, reorganisation of Montenegrin state administration was implemented at the end of 2011 and beginning of 2012. The system suffered from high fragmentation, the absence of clear lines of responsibilities and the lack of coherence and policy coordination among the administrative organs. Moreover, the distinction between ministries and other organs was not clear, with the consequences to the blurred lines of accountability. This situation had negative impact on the efficiency and effectiveness, but also on the perception of the state administration by the public. The main drivers of that mini-reform were economic and financial crisis and fight against corruption. A few documents issued by the Government in the course of 2010 and 2011 stressed the need for rationalisation and downsizing state administration (Aurum paper, 2011; The comparative analysis of the employment in public sector, 2011; etc.). The Government prepared the document with proposals for rationalisation and mergers of administrative bodies, in parallel with strengthening institutional and financial control of ministries over other administrative bodies at the central level. This includes dissolution of a few bodies, mergers with the ministries, stronger control of ministries over functioning, public procurements and financing of previously semi-autonomous bodies and agencies, etc.

The new legal framework was introduced in January 2012 was designed in order to reorganise existing structure of state administration by following means: a) the integration of some administrative organs in the ministries, b) the introduction of new type of organisation - 'organ within the ministry' as directly subordinated to the minister, c) the introduction of the category of 'autonomous organs' (agencies with legal personality), d) the introduction of the legality control over autonomous agencies by respective ministry, f) the lower politicisation by introducing the new appointment and dismissal procedure for heads of administrative bodies, and h) the inclusion of the obligation of the state administration to increase the participation of civil society in the process of designing public policies and drafting legislation. The greater emphasis on integration and coordination of state administration led to significant decrease of the number of agencies within state administration – from 37 to 14 specialised autonomous bodies. Independent regulatory bodies and expert agencies are not tackled with this reorganisation, although a kind of pressure on them can be easily observed.

4. The Research Framework and Methodology

The purpose of the research was to indicate the main problems connected to the agency model in three countries, as they are perceived by the interviewees, in the area of legal framework and control, expertise and effectiveness of agencies, and the role of politics in managing and controlling agencies and the role of agencies in policy making. The goal was to obtain the information on the perception on the main problems of agencies and their ranking, as well as the issues which need to be further explored, both by the means of the scientific research and policy advice.

The research was based on the semi-structured interviews with officials in three countries. Some of the potential interviewees did not reply to the letter sent by the researchers by e-mail or fax (mostly politicians and agency managers). Four replies are still expected. In total, 29 interviews were held between in three week period, between 9 -27 January 2012. The interviewees were separated into three main groups - 15 agency managers (7 in Slovenia, 4 in Croatia and 4 in Montenegro), 7 administrative court judges (3 in Croatia, 1 in Slovenia and 3 in Montenegro), and 7 politicians and highly ranked officials from ministries (3 in Slovenia, 2 in Croatia and 2 in Montenegro). The interviewees have different educational background (law, business, medical doctors, other) and the

type and level of professional experience (politics, judiciary, ministries; some have served in various agencies; some were political party officials; administrative judges with different positions).

The interview encompassed set of questions related to the legal issues (legal framework ex ante and the ex post control of legality), politics (the issue of politicisation, political control, policy making) and expertise, autonomy and effectiveness (the capability of agencies to accomplish their task and their relation to the parent ministries). The interview included an introduction and the possibility for the interviewees to freely express their opinion on the issues which were accentuated at the beginning. At the end of the interview the interviewees were asked to rank the problems of agency in their respective area (law, politics, and expertise) as they perceive them with regard to their importance. The list of questions included approximately 15 general questions related to expertise and effectiveness, 20 questions related to the politics and policy making, and 16 questions related to the legal aspect. The grouping of the questions was not strict, but the researchers had the freedom to adapt to the individual interviewee, his/her background and professional experience.

The researches had the impression that the answers were honest and precise and that the interviews contained lots of useful information. However, it was shown that it is necessary to hear all three sides to achieve better understanding of complex problems related to agency model.

5. The Main Findings

5.1. Slovenia

The driving forces of the agencification process in Slovenia are several, the EU harmonisation and the rationalisation of the public sector being the prevailing ones. The number of state public agencies in Slovenia has increased especially before full membership in EU (2000-2004) and in the period of global economic crisis (2009-2012). Most agencies are in the last years established as elimination of certain tasks or body outside field ministry. "*But the effect of Europeanization is visible only at the level of regulatory settings, while good governance and management in agencies seems to be unaffected by European trends*", is the common observation of several interviewed representatives of parent ministries and administrative judge. Or in other word: "*Agencies are formally autonomous, but factual independence must be earned by the agencies themselves*." The latter is to be done with professionalism and consistent line of not indulging to the pressure of politics and in Slovenia more often users with particular interests.

State public agencies in Slovenia are legally and as implemented in practice in the relation to their parent ministries therefore mostly autonomous. But empirical research of the autonomy of public agencies from politics proves the results of pure normative and comparative analysis that legal aspects are important but not sufficient condition to achieve the aimed independence and political neutrality in praxis. As stated in one interview: "*The guarantees of independence of agencies in the PAA are rather formal. However, what is more important is that there should be clear line in the statute on particular agency which aspect the independence of the agency should be guaranteed and where policy considerations governed by political leaders affecting the work of agency are quite legitimate*." Therefore, the biggest problem in Slovenia's agencification, felt especially by some agencies' manageres, involved in the research, is the lack of strategic guidelines on a state or at least field public policies level (apart from the LPA or field laws) which public services to be delegated to independent agencies are in compliance with overall public sector's development vision. Such state of the art is

partially a consequence of the transitional heritage of Slovenia with the lack of tradition in the professional governance of administrative tasks and leads to uncompleted projects, initiated under one government if not seen as a political priority by the government in power, is a conclusion of one interviewee from the biggest agencies. The common register of agencies would enhance the transparency in that respect, express the majority of interviewees.

According to unanimous conviction of heads of several agencies and politicians in ministries there are some minor deficiencies in Slovenia legal framework, but mostly the system of financing needs to be improved (interviews, 2012). Present financial procedures and accountable entities pursuant to the Law on Public Finances lead to the contradiction since some departments and agencies within ministries (*organi v sestavi ministrstev*) if they employ more than 60 civil servants and organise their own management service have significantly higher level of the autonomy in comparison to the public agencies with almost complete responsibility of their results by minister himself. Therefore two problems arise: non systematic level of the autonomy in different types of governance with *de facto* lower independence in the entities *de iure* being autonomous (cf. Pirnat et al., 2004, Virant, 2004) and discrepancy between autonomy and responsibility. Some agencies (Security Market, Traffic Safety, Public Records etc.) are financed from 40 to even 100 % with non budgetary fees, but the majority is budget dependent despite the fact that they are formally allowed gain their own revenues (due to the lack of employees to develop other services as the ones obliged to run, as emphasised by some).

Legal framework in Slovenia with general LPA and the field laws is appropriate wit value added in LPA as a unified form allowing specifics in substantive law. The major need for a change is to adapt the LPA for different types of agencies. Namely, the level of autonomy of individual agencies is *de lege lata* (the present law) and in real environment not the same in different administrative areas and the prevailing type of agency's tasks. The common conclusion is that the regulatory agencies as opposed to other authority bodies, should be regulated with special care in umbrella legislation *de lege ferenda* (the future law).

As the most urgent issues related to agencification some agency heads (in non-economic fields) emphasise the need for a clear legal framework with legal and organisational autonomy, but other assess this aspect as less important. But both express expertise and professionalism (with political independence) as the key issue in development of agency's "true" autonomy. The majority hope for less rigorous legal framework regarding management of organisation and human resources (more managerial autonomy) and some plead for more financial autonomy.

Contrary, politicians or the highest officials in Slovenian ministries, included in the research (e. g. ME, MT, MHEST, interviews, 2012), point out in order to achieve higher autonomy the need for:

- better coordination and cooperation between agency and ministry (a problem especially when two parent ministries are in charge or if a ministry covers several agencies which is a hindrance to consistent policy);
- the performance contract for agencies with increased transparency.

According to the opinion of one politician interviewed the role of the agency is supposed to be effective implementation of field tasks in compliance with ministerial strategic policies, which would include *ex post* policies evaluation. Furthermore, it is not the type or form of entity within or outside the ministry to execute the tasks which counts but the appropriate inter-ministerial and cross-sectional coordination on state level. The ministry and the agency should be both responsible for the agency's results - if there is a damage done the liability should be a burden of a ministry if the reason for the damage is in the system as a responsibility of the ministry (cf. Polidano, 1990). "*The director of the*

agency should be a member of minister's closest collegium, meeting on weekly basis, which is not happening in Slovenian reality due to overestimated and abstract fear from politicisation and lack of trust in our society", is one of the opinions among representatives of the ministries interviewed. The present form of reporting is not the optimum tool to check agencies' results because the performance criteria are not developed – the agencies report about activities done, act issued, events organised, finances used etc. but rarely outcomes achieved.

There is a common agreement that appointment and the change of heads of agencies must not be in the hand of the government in power (spoil system). According to the ministries and agencies' heads too, included in empirical research, there is rather insignificant impact of politics in appointment of heads of Slovenian agencies procedures, probably due to obligatory public tender. But on the other hand, the most frequent administrative disputes concern the appointments of agencies' directors, where poor quality of selection procedure, based on loose or just partially objective criteria and not demanding qualifications required for the post, is found according to the experience of the judge interviewed.

Additionally, there is a possibility of capture problem since Slovenia is a small state with limited number of field experts, even though that origin of a director of the company in the regulated market can be useful due to his expertise, is an observation of several interviewees. The latter is observed in several agencies' councils where members act rather as representatives of the particular interests instead of the public benefit. Within personnel aspect of autonomy there is a need to exclude employees in the agencies from civil service and unified pay system in public sector, as agreed by several interviewees, mainly among the heads of the agencies (from different fields), in order to be more flexible in their remuneration in compliance with mostly high educated employees with specific expertises.

The media is in Slovenia usually not interested and not familiar with the agencies' work, which is why some agencies initiate the reports in general public proactively. All agencies have their web pages in Slovene and English (some even in other foreign languages), regularly updated.

An important aspect of agencies' autonomy is furthermore judicial control. In Slovenia the judicial review of the legality of individual acts of the agencies is carried out by a special Administrative Court, which is appropriate form according to the opinion of the respondents in the empirical research in the ministries, agencies and judges themselves. But as stated by an experienced Slovenian administrative judge there is "*an urgency to develop expertise and professional competence of the decision-makers in administrative procedures and to institutionalise alternative dispute resolutions in administrative matters*" (ADR in public law is not legally allowed in Slovenia presently). The most often pitfall within judicial review is an insufficient motivation of administrative decision and restrictions (deprivation) on the right of a party to be heard and even confronted with the basic circumstances and facts relevant for the administrative decision before decision is issued.

In sum, as the most prominent issue of agencification in Slovenia the interviees report the fact that the agencies' status is not regulated and they are not percieved as the most relevant issue (or efficient tool) for policy implementation. Moreover, public agencies are often seen just as a substitute for law enforcement instead of classical administrative bodies (ministries). It has been argued that there should be a clear distinction of regulatory agencies apart from other entities, which are usually more smoothly incorporated or tied to the ministries. One of the obstacles is a lack of tradition in contemporary public governance, as a prevailing trend in the post-socialist or transitional states. Te key issues that have to be tackled in the new arrangement of agency governance are the prerequisites for the greater autonomy (financial, managerial), but also for more effective control (performance methodology, evaluation of policy). Moreover, besides the legal aspect, the good governance issues

should be emphasized in all levels and areas as well as paying greater to the financing and good management of agencies.

5.2. Croatia

The data gathered by the interviews point out to several key issues of agencification in Croatia.

a) Expertise, effectiveness and the capacities of the agencies

Staff and the expertise Agency managers are in general satisfied with the quality of their staff and are putting emphasis on the constant education and training, both in specialised fields and in general issues, such as administrative procedure. All of the interviewees have a certain level of freedom in determining the salaries and in some cases additional payments related to the performance, which together with the possibility for professional development and more flexible and competitive work environment, makes the employment in the agency more attractive in comparison to the civil service. Still, the performance of staff is not assessed on the basis of firm criteria, but it is left to the superior to decide. The staff in three out of four agencies is employed under the general labour legislation, what leaves the heads more space to determine their status by regular contract, and avoid the restrictions in salaries and status defined by the Law on salaries in public sector. The agency managers did not encounter problems of employers leaving the agency, but quite opposite, the vacancies are quickly filled with the new staff. All four agencies conduct tasks which are new (regulation of privatised sectors, quality assurance) and face the general problem of the labour market not offering some specific profiles, since the announcement entail specific requirements for the job. As a consequence, the first period in the agency is usually spent on education and training of the newly employed.

Effectiveness As one of very important prerequisites of the functioning agency model is the capacity of the parent ministry to cooperate with agencies and to engage in policy making in the respective policy areas. Some agency managers claim that their cooperation with the parent ministry is quite good, while other claim that the ministries are not able to cope with the complexity and the fast developments of the policy sector and do not pay enough attention to the agency. They picture the image of bureaucratic thinking within the ministries: ‘Thinking outside of the box is not something the ministry would bother to do’. Some agency managers also underline the problem of the horizontal institutions, such as the Legislation office and the Ministry of administration which do not recognize the agency and the regulations it prepares as being specific and different from the traditional administrative organisation and rule making.

Some of the agencies develop annual plans and goals which have to be achieved, and connect specific activities to sectors and monitor their implementation. Still, the more precise performance measurement is not used, and certainly not by the parent ministry. The agencies report to the ministries or the government and some of them also to the parliament, but did not encounter problems with the approval of their reports. Moreover, some of them have underlined that the parliament is not very interested in their reports, which might be explained by MPs not having the expertise to read and to comment the reports. Still, agency managers believe that the lack of discussion has negative impact on policy making and problem solving because the agency cannot create its own policy but can only put some issues on the table in the Parliament. This is especially relevant in the public services markets which are still in nascent state, because the problems are persistent and the parliament is not trying to solve them.

The agency managers believe that one of the confirmations of their good work, their expertise and integrity is a good international cooperation and equal stand in the European and other networks, their leading role among the agencies in the region, as well as the accreditation from international bodies. Similarly, their decisions are not frequently overruled in the administrative court, but quite contrary, they are mostly confirmed by the court with regard their legality. All agency managers report great influence of EU *acquis* on the establishment and functioning of the agencies.

Financial autonomy. The agency managers of the agencies which collect their own revenues, claim that they have high financial autonomy, while others believe that their financial autonomy is seriously restricted and that the Ministry of finance has the possibility to influence their work by financial restrictions. Moreover, the agencies are constantly adding new tasks in their portfolio, which is not followed by proportional increase in the budget. Some of the agencies claim that the comparative experience offers instruments for additional funding of the agencies but they believe that in some cases these practice might give wrong signals to the agency (if for example, the fees would be part of the agency budget, this might lead agency to give more emphasis on sanctioning).

Pressures from the outside. Majority of agency heads report that the pressures related to the agency decisions before or after they have been issued, come mostly from the regulated sector, not from politicians or the ministries. Moreover, they admitted quite sincerely that they have been put under pressure by regulated subjects, sometimes directly, but also indirectly, mostly through the media sponsored by the regulated subject (the subject is a big advertiser in the media) or is trying to 'create policy'. It is possible that the frequent negative articles on agencies in some media are not only a result of the journalist's interest in the matter, but might be a result of the attempt to intimidate the agency heads or to influence them to make decision in a certain way. The agency managers believe that the ethical conduct in the agency, especially at the management level which should both be a good example of ethical behaviour and demand the same from the staff, is a prerequisite for the integrity of agency. They argue that this is the only way to resist pressures and to diminish them eventually, and their own experience proves that point.

The agency heads also report that one of the serious obstacles for the good functioning of the agencies might come from the interwoven relations between the agency, regulated market and the state institutions within the same area where the mobility of staff and the conflicts among the staff might affect the agency in a negative way. Still, most of the agencies are putting serious effort to develop partnership and cooperation within the sector within their competences, developing joint projects, education, designing the methodologies and guidelines, etc. Hence, the formalisation of the relationship with the stakeholders and regulated subjects serves as an obstacle for informal pressures-

In sum, the agency managers underline the need for the *creation of the legal framework* for agencies which would differentiate between various types of agencies (regulatory, executive, etc. or state agencies and government agencies) and determine the strict rules for appointment and dismissal of the board members. In this way the space for the discretion would be restricted and the agencies would be protected from political and other pressures. They also believe that the greater emphasis should be placed on *the expertise and integrity* of the agency managers and staff, as well as the education and training. As additional issues they insist on the greater speed of the administrative court procedure and greater financial autonomy of agencies, since the restrictions might undermine the effectiveness of agencies. As one of the most important challenges they point out to the pressures coming from the regulated sector and to a lesser extent from politicians. They agree that the agency's value is measured by *'the worth of its service'* and *'the integrity and expertise of its leadership'*.

b) Political control, pollicisation and the policy making

The ministry officials claim that the most evident problem related to agencies in Croatian public administration is the lack of the legal framework which would define elements of agency structure, the prerequisites for the establishment of agencies, and which would recognize the difference between various agency types and set the basis for their proper functioning. One of the main problems is that the politicians do not understand the logic of agency and they use this model of administrative organisation for all kinds of tasks. They also frequently use 'Europe made me do it' excuse which is a motto for those wanting to escape the control or the common rules. To put it simply, the creation of the *agency jungle* which cannot be controlled has happened because 'nobody has really thought what is the nature of the agency, but only that it is a good instrument to escape general rules'. This had tremendous negative effect on the whole system. This is one of the reasons why the agencies have negative image in the public. Besides the legal framework, one of the means to enhance transparency might be a creation of the register of public agencies. The financial crisis might prove as a good incentive to engage in these activities and create both the legal framework and the public register.

The control of agencies is weak. The parliamentary debates involving agencies turn out to be a way of political conflict between the governing and the opposition party and not the means for solving the issue of particular agency or agencies in general. The hottest debates are those which might attract newspapers, involving some kind of a scandal. The agencies reports are not carefully examined; there are no clear criteria for monitoring the work of agencies, as well as performance standards. The administrative supervision of the agencies is almost non-existent.

From politicians' point of view, the situation in which some agencies enjoy a kind of 'monopolistic' position, collecting 100% of their revenues from fees and their activities is completely absurd, since such agencies are not controlled at all and can use public money to their own purposes. Moreover, the exemption of the employees in agencies (almost 15.000) from the public servant's status (most agencies, not all) is also without good arguments, and serves only to attract specialist to a better paid jobs, in comparison to the central state administration. The issue of salaries have to be solved systematically, and not in this way.

Appointment Agency managers believe that the agency boards and their members should be appointed on the basis of the public announcement and that the composition of the board should ensure the diversity of specialisation and the independence of the members. One way to ensure this is to create legal framework for agencies which could prescribe the composition and the appointment procedure for all agencies of the same type.

The highly ranked ministry officials agree that it is necessary to *design the whole system of public administration* in which the agencies would have special position which should be regulated separately. This would add to the greater effectiveness of the administrative system but also create order in the relationship between ministries and agencies and in the process of policy making. They believe that the agency should be accountable for the situation under its competences and that the regular control should be exercised by performance measurement and administrative supervision, as well as financial and judicial control. The register of public agencies should be designed. The first attempts to do so were unsuccessful because of the lack of political will to introduce order in the public administration system.

c) Legal framework and legal control

The control of the legality of the agency decisions, as well as other aspects of agency's functioning (the appointment of the board members, dismissal, etc.) is subjected to the control of the Administrative court. From 1 January 2012 the administrative justice system in Croatia functions at two levels, with four regional first instance courts, and one higher second instance court. The first instance court is in charge for all agencies, except one which managed to influence the legislative change and to subject itself to the revision on the second instance. The judges believe that this was not a good solution, since the second instance court is slower and has inherited a great number of cases from the previously unique administrative court. On the other hand, there are arguments for second instance decision-making, because two instance procedures makes the whole process longer and more expensive.

The judges are generally satisfied with the agencies' decisions and do not see their legality as a problem. They applaud to the knowledge of the material (sector) laws of the agencies' staff, but find their application of the general administrative procedure law slightly worse, but still not very problematic. Still, the agency staff would profit from additional education and training in general administrative procedure and administrative dispute. They find agencies' decisions inspired by the EU institutions decisions, which are very detailed and comprehensive. Agencies, on the other hand, find administrative court's decisions very useful and accept the criticism in order to improve their decisions.

The judges believe that the specialisation of judges would bring more disadvantages, especially in relation to the number of judges which is generally perceived low in comparison to the number of cases.

The agency managers are satisfied with the work of the Administrative court. They believe that the judges have developed expertise so far, and that some degree of specialisation is necessary in order for the court to be able to decide in the specific cases, especially *in meritum*. Still, a strict specialisation would not be a solution because *'the judges could try to develop their own policy in the sector'.* Agency managers also confirm the educational role of the court decisions, because their reasoned opinions tend to give agencies direction how to decide in certain cases with regard to the administrative procedure and general principles of law.

With regard to the Law on General Administrative Procedure, the agency managers believe that the law is not completely suitable for the agencies and that it should be amended to create additional provisions which would be applicable to agencies (with regard to oral hearing, and the right to be heard).

5.3. Montenegro

The most visible problems of the agencification and agency governance in Montenegro might be defined as follows:

1. *Legal position of independent regulatory agencies is still not fully in line with the European standards*. For example, in the cases resolved by the Agency for Electronic Communications and Postal Services there is a possibility that appeal would be lodged to the competent ministry, which means that the Agency decision is not final and independent from the state administration and the Government political influence. Furthermore, competent ministry and the other Government's bodies

are playing waiting games, making adoption of necessary secondary legislation difficult or even impossible for a long period of time.

2. *Courts are not well prepared for the new issues connected with services of general economic interest*. Those services are regulated by the *acquis communautaire*. Regulations are very detailed and specific, and should be supplemented by further regulation of domestic independent regulatory bodies. However, according to our interviewees, courts' approach is old-fashioned and formalistic. Judges are not educated and trained in the new issues. They are not inclined to accept new position of agencies, different than the position of traditional administrative bodies. New issues are not included in study programmes at the law faculties. This perpetuates difficulties with accepting new legal and administrative solutions. However, courts were able to prevent unlawful decisions of some agencies in certain cases. This indicates overall readiness of courts to defend rule of law, as well as a need of intensive training of judges and courts' professional staff in agency model issues.

3. *Illegitimate political influence tends to be legally channelled into the system*. Despite original legal regulation that is in line with the European standards, there is constant pressure within the Parliament searching for introducing effective political accountability of regulatory and expert agencies' management. Parliamentary discussions about agencies' annual reports have called for a possibility to remove agencies' management and boards and to appoint new ones. Furthermore, there is an unacceptable practice that ministries tend to adopt parallel regulations on issues that should be regulated by the independent regulatory bodies, but in different manner. In such cases, there is real risk that such regulation will not be in line with *acquis communautaire*.

4. A few interviewees agree that *systemic legal regulation on agencies and more precise regulation of state administration would add to institutional stability and better performance* of both kinds of bodies (agencies and traditional administrations). Preparation of such law was planned by the Public Administration Reform Strategy for 2003-2009, and again by the Aurum Paper (2011-2016).

5. *Sunset clause for agencies might be proper solution for development of performance standards, accountability of agencies, and rationalisation of the system*. If sunset clause existed, monitoring and periodical assessments of agencies' performance and outcomes would be less political, emotional, and stressful. It would add to the development of thorough performance management system in public administration.

6. Even now, *annual reports of agencies are step ahead in performance management system*, because traditional administrative bodies are still not subject to regular reporting. As one of interviewees said, "Agencies are under stricter control of the Parliament, because only agencies are subject to regular annual reporting." Agencies are obliged to submit annual financial report and annual report on functioning and results. However, there is a lot of space for development of proper performance indicators.

7. *Regulations in many regulatory and administrative fields are more or less harmonized with the European standards*. Agencies have had significant role in the harmonisation process, because they are devoted to their fields and dedicated to the European standards acquiring (data protection, environment protection, telecommunications, etc.). Interviewees report that agencies are very frequently asked to prepare draft legislations for respective ministries, which have not proper expertise and capacity for such efforts.

8. *Agencies are recognized by consumers as well-functioning mechanism for protection of their rights with regard service providers*. Because of that, number of cases with complaints is ever increasing.

9. In certain agencies *administrative procedures* about rights and obligations lead staff members that are not legally educated, caused a lot of cases before the Administrative Court. It can be also noted that procedural law, the General Administrative Procedure Act, is – according to our interviewees – is not fully applicable and suitable for administrative procedures in agencies. Some agencies have managed to influence content of special procedural laws, in order that they would be easily applicable, but some of those laws are of low quality. Even the Law on *Administrative Dispute* is not adequate for the cases in which agencies are one of the sides in dispute, because such cases are sometimes very complicated. A lot of new kinds of court cases have appeared since the establishment of the first independent regulatory bodies. The Administrative Court capacity is stretched thin by such a development, because the number of judges is rather modest and they cannot specialise in so many various matters.

In sum, it is possible to draw some general conclusions with regard to agency issue in Montenegro:

Two main drivers of agencification, are the domestic legal regulation based on NPM notion about executive agencies followed the Next Steps Initiative (see, for example, Marković, 2007: 53, 105-118, etc.), and European Union influence with regard to services of general economic interest. While the first one gave impetus to development of numerous executive agencies, the second one was decisive for independent regulatory bodies and expert agencies.

Influence of country's smallness to the problems of independency in both directions, towards political bodies and towards business firms. The resulting politicisation of agencies prevents them from institutionalising of meritocracy (Parrado, Salvador, 2011). Their management have to be flexible with regard to various unlawful influences with regard to personnel (employ relatives of important persons, for example), in order to be able to protect minimal independency in subject matter and to stick to the European standards. All other bodies are functioning in the same, very tight social and political frame, having also great respect for dense networks of family ties.

Various bodies should be developed, while the social, economic, administrative, educational and personnel base of society is rather weak. In such conditions, design of agency model should be extremely attentive and precise. Otherwise, damages can overweight possible positive effects of agency model.

Montenegro somehow follows Slovenia and Croatia, in its endeavour to join the EU, repeating certain mistakes, and adding its own. However, many of them are caused by specific circumstances (smallness of country, scarce resources, short period of independency, etc.).

6. Some Conclusions and the Prospects for Further Research

Semi-structured interviews are solid methodological tool for getting right information about the problems that agency model causes in transitional period combined with Europeanization process. We managed to get access to right, well-informed and honest interviewees. The next steps in research will be broadening network of interviewees; collecting easily accessible data from Internet pages, submitted reports, and other formal public documents; media analysis; and conducting a survey.

We conclude that it might be useful to interview consumer protection organisations' representatives, trade unions, and representatives of employees in agencies, maybe also some others, to get full information and detailed understanding of problems connected with development of agency models in respective countries.

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