Public Governance, Administration and Finances Law Review Vol. 8. No. 1. (2023) • 105–119.

DOI: 10.53116/pgaflr.6561

The Legal Status of Independent Regulatory Organs and Their Place in the Hungarian State Administration

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Abstract: Independent regulatory organs as a type of administrative body were included among the central state administrative bodies upon the entry into force of the Fundamental Law of Hungary. The key feature of independent regulatory organs is that they also have the power to legislate within the framework of the regulatory authority's activity; in other words, they can intervene in the relations of their administered sector through the creation of generally binding rules of conduct, which are enforced through the official activities falling within their scope of duties and powers. The characteristics of the legal status of independent regulatory organs and the components of their independence are therefore of particular importance in the system of public administration. The content and strength of their independence are not identical but are adapted to the professional content and EU and constitutional requirements of the specialised area of administration for which the Fundamental Law authorises the National Assembly to establish these bodies.

Keywords: independence, legislation, independent regulatory organs, cardinal act, regulatory authority

1. Introduction

This type of administrative body appeared in the Hungarian public administration system upon the entry into force of the Fundamental Law of Hungary (hereinafter: Fundamental Law). In 2012, two public administrative bodies became independent regulatory organs, the National Media and Infocommunications Authority (hereinafter: NMIA) and the Financial Supervisory Authority (hereinafter: FSA). In 2013, the FSA merged with the Hungarian National Bank, and another independent regulatory organ, the Hungarian Energy and Public Utility Regulatory Authority (hereafter: HEPURA) was established. The number of independent regulatory bodies did not increase until recently, but in 2021 the Supervisory Authority for Regulated Activities (hereinafter: SARA) was established and in 2022 the Hungarian Atomic Energy Authority (hereinafter: HAEA) became an independent regulatory organ.

In light of the above, the independent regulatory organs have been part of the Hungarian public administration for ten years, but their establishment can be divided into two distinct periods.

The study aims to place independent regulatory organs within the system of state administration and to identify the main elements of their legal status. To this end, the study first reviews the creation of independent regulatory organs and then outlines the main features of their legal status. In this context, the study examines the specificities of the creation of independent regulatory organs, the tasks with which they can be entrusted, the main elements of regulatory activity, and the elements of independence of independent regulatory organs.

However, before doing so, it should be noted that independent regulatory organs and autonomous bodies,[1] although closely related from an organisational law perspective, are not the same type of body. Indeed, independent regulatory organs do not necessarily have an autonomous legal status and autonomous bodies do not necessarily have autonomous regulatory powers; in other words, they do not always have legislative powers. There are, of course, some organisations where the two coincide, where the organisation both has autonomous legal status and is an independent regulatory organ, but this is not always the case. From a constitutional point of view, both types of bodies are of course exceptions and justify an exceptional status, but there is a significant difference in their constitutional status, in particular in terms of their independence and the guarantees that guarantee it (if the two statuses do not coincide). It is also generally accepted that, if an organisation is autonomous, this affects its overall status as a body, which means that, in addition, whether or not it has legislative powers, it has autonomous status, with a condition of independence at the level of the branches of government. The autonomy of independent regulatory organs, and the content and strength of their independence are not identical but are adapted to the professional content, EU and constitutional requirements of the field of specialised administration for which the Fundamental Law gives the National Assembly the power to establish these bodies (Lapsánszky et al., 2017, p. 100).

2. The creation of independent regulatory organs

The predecessors of the independent regulatory organs had already appeared at the constitutional level, when the former Act XX of 1949 on the Constitution of the Republic of Hungary (hereinafter: Constitution) was amended in 2010, upon the designation of the FSA and the NMIA. The reason for the elevation of the two bodies to the constitutional level – to secure their constitutional status (Temesi, 2013, p. 177) – was

[1] Autonomous bodies are central public administration bodies with a special status, established by the National Assembly and not controlled or supervised by the Government. Autonomous bodies shall be deemed to be central state administration bodies according to Section 1(2) of Act XLIII of 2010 on Central State Administration Bodies and the Status of Members of the Government and State Secretaries (hereinafter: the Act). At present, the following are considered autonomous bodies in the Hungarian administration: a) the Public Procurement Authority; b) the Integrity Authority; c) the Hungarian Competition Authority; d) the National Authority for Data Protection and Freedom of Information; e) the National Election Office; and f) Directorate-General for Auditing European Aid.

to create the possibility of conferring legislative (decree-making) powers,[2] as the Hungarian Constitutional Court (hereinafter: HCC) in its Decision 37/2006 (IX.20.) ruled that the Constitution "forms a closed system for the creation of legislation: it designates the issuer, designates the name of the legislation, provides for their hierarchical relationship to each other and, through Article 32/A, also guarantees the consistency of the hierarchy of sources of law with the Constitution". In HCC Decision 121/2009 (XII.17.) on the unconstitutionality of the old act on legislation,[3] the HCC explained that "only the Constitution can specify a source of law in both senses – legislation and legislative power – since the Constitution is the ultimate source of the validity of the law in law. Since the Constitution itself determines the types of legislation and its binding force, there can be no source of law other than those listed in the Constitution". Thus, the conferral of legislative powers on these two organs of public administration has been achieved by the National Assembly through an amendment to the Constitution, by naming them in the Constitution.

András Jakab, in his private draft of the constitution, took the view that the mention of the FSA and the NMIA in the Constitution, which are conspicuously not constitutional bodies – but state administrative authorities – would undermine the authority of the text, and, possibly because of subsequent amendments (which inevitably arise from time to time in the state administration), would again only contribute to the loss of authority of the text of the Constitution (Jakab, 2011, p. 19). However, Jakab's argument is valid; it is necessary to point out that the state administrative bodies to be given legislative powers necessarily have their place in the Constitution, through some technical legal solution, since this is the only way to give them the power to legislate.[4] In light of the above, Article 23 of the Fundamental Law *established* independent regulatory organs as a *new type of body with a* constitutional definition, *breaking with the technique of designation* (Fazekas, 2015, p. 15). This type of body – without detailed rules on its legal status – was elevated to the status of a central state administrative body by Section 1(2) of the Act.[5]

Under the current Article 1(3) of the Act, there are four[6] independent regulatory organs in Hungary: a) the NMIA;[7] b) the HEPURA;[8] c) the SARA;[9] and d) the HAEA.[10]

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[2] The naming of the two – then autonomous – state administrative bodies in the Constitution was forced by the HCC Decision 33/2010 (III.31.), which declared the delegation of the power to issue regulations to the President of the FSA unconstitutional, based on the reasoning of HCC Decision 37/2006 (IX.20.) and HCC Decision 121/2009 (XII.17.).

[3] Act XI of 1987 on Legislation.

[4] See the Explanatory Memorandum of the Fundamental Law, which stipulated that only the bodies with legislative powers should be listed in the Fundamental Law, precisely given their legislative powers.

[5] It should be noted, however, that the term is not unknown in Hungarian legal literature (see Ferenczi, 2000, pp. 311–326).

[6] From the entry into force of the Fundamental Law until its integration into the Hungarian National Bank on 1 October 2013, the FSA was also an independent regulatory organ.

[7] It was established by Act CLXXXV of 2010 on Media Services and Mass Media (hereinafter: MSMM Act).

[8] Act XXII of 2013 on the Hungarian Energy and Public Utility Regulatory Authority (hereinafter: HEPURA Act).

[9] Act XXXII of 2021 on the Supervisory Authority for Regulated Activities (hereinafter: SARA Act).

[10] See Act CXIV of 2021 amending certain Acts in connection with the status of the Hungarian Atomic Energy Authority.

3. The legal status of the independent regulatory organs

The independent regulatory organs are central state administrative bodies with special powers, independent of the direction and supervisory powers of the Government, with constitutional status, established by the National Assembly in a cardinal act for the performance and exercise of certain functions and powers within the scope of executive power, and performing regulatory authority activities, with legislative powers.[11]

The legal status of independent regulatory organs is thus determined by the fact that a) *they can be established by a cardinal act;* b) *they can perform tasks and exercise powers within the scope of the executive power;* c) *they have legislative-regulatory powers, they perform the so-called regulatory authority activity;* and d) *they are independent of the Government*. In the following, the legal status of independent regulatory organs – their place in public administration – will be examined based on the above characteristics.

3.1. The creation of independent regulatory organs – The cardinal act

According to Article 23 (1) of the Fundamental Law, the National Assembly may establish independent regulatory organs to perform and exercise certain functions and powers belonging to the executive power. Concerning the establishment of independent regulatory organs, the Fundamental Law thus imposes two conditions on the freedom of the legislative power to establish organisations: a) *only through a cardinal act;* and b) *only a body exercising executive power may be classified as an independent regulatory organ* (Balogh, 2012, p. 284).

Regarding the first condition, the creation of a cardinal act, the most important question – and one that has given rise to academic debate – is *whether the Fundamental Law gives a general mandate to create a cardinal act to establish independent regulatory organs, or whether an explicit reference in the Fundamental Law to the creation of a cardinal act is required.*

The scope of independent regulatory organs – according to some literature (Jakab, 2012, p. 262; Balogh, 2012, p. 283) – cannot be expanded arbitrarily, not even by a cardinal act, since Article 23 of the Fundamental Law does not constitute a new mandate to create a cardinal act, but is a cross-reference to other provisions of the Fundamental Law, which already provide for cardinal acts. Of the independent regulatory organs, the NMIA and the now-defunct FCA (first generation of independent regulatory organs), as illustrated in Table 1, met the above requirements. Article IX (6) of the Fundamental Law, authorises the establishment of a body to supervise freedom of the press, media services, press products and the communications market. In case of the FCA, the legal basis, other than Article 23 of the Fundamental Law, was provided by Article 42 of the Fundamental Law, which was in force at the time.

[11] The definition is based on Article 23 of the Fundamental Law.

Table 1.
Legal basis for the creation of independent regulatory organs

Independent regulatory organs	Legal bases other than Article 23 of the Fundamental Law
NMIA	Article IX (6)
FSA	Article 42
HEPURA	–
SARA	–
HAEA	–

Source: Compiled by the author.

There is no doubt that the argument has merit, but it is too restrictive, since neither Article IX nor Article 42 of the Fundamental Law explicitly refers to the creation of independent regulatory organs, only to the creation of a supervisory authority in this area by a cardinal act. This is the regulatory approach taken in Article VI (4), but the National Authority for Data Protection and Freedom of Information was not established by the National Assembly as an independent regulatory organ but as an autonomous public administration body. A more correct and permissible interpretation concerning the freedom of the National Assembly to organise the administration system is that Article 23 of the Fundamental Law *is an autonomous cardinal legislative authorisation,* without the need to invoke any other constitutional legal basis for the creation of an independent regulatory organ. In case of the second generation of autonomous regulatory bodies – HEPURA, SARA, HAEA – there is no legal basis other than Article 23 of the Fundamental Law.

When interpreting the relationship between the Fundamental Law and the cardinal act establishing the independent regulatory organ, it must be borne in mind that Article 23 of the Fundamental Law regulates the function, the characteristics of the tasks and powers of independent regulatory organs in very broad terms only, and therefore the width of the legislator's scope of action is a matter of interpretation.

It is necessary to start from the premise that one of the functions of the "cardinal acts is to reduce the burden of the text of the Fundamental Law with a constitutional guarantee, that the Fundamental Law does not have to provide exhaustively for all the essential rules of the basic institutions, but that these rules should be adopted with the broad consensus of the members of the National Assembly. In the absence of this function of the cardinal acts, the Fundamental Law itself would have to contain all the detailed rules – essential but detailed – relating to the basic institutions, which would result in an overly detailed and unclear constitution".[12]

Taking this into account, the relationship between the Fundamental Law and the cardinal act establishing the independent regulatory organs can be described as follows: Article 23 of the Fundamental Law only *sets out common minimum rules for* independent regulatory organs, while the specific rules, in respect of which each independent

[12] HCC Decision 17/2013 (VI.26.).

regulatory organ may differ, are laid down in the cardinal act themselves. The HCC has interpreted the limitation of the criteria that can be included in a "cardinal act" to mean that they cannot conflict with the Fundamental Law; in other words, a condition has already been laid down by the constitutional rules, the cardinal act cannot provide a different rule. In case of independent regulatory organs, such a procedural criterion is the person of the nominator (the Prime Minister or the President of the Republic) or, in the case of a nomination by the President of the Republic, the person of the proposer (the Prime Minister).[13]

3.2. Executive tasks and powers

As pointed out earlier in the study, the Fundamental Law, in addition to the creation of independent regulatory organs by a cardinal act, stipulates that *only a body exercising executive power can be considered an independent regulatory organ*.

According to Article 15 of the Fundamental Law, the Government is the general organ of executive power and the principal organ of public administration, which means that the Government is responsible for all matters that the Fundamental Law or other legislation does not assign to another body and that the Government is politically and legally responsible to the National Assembly for the functioning of the executive branch and the implementation of laws in general. Because of this, the structure of the administrative organisation is essentially determined by the Government's degree of influence and the existence of its direction and supervisory powers vis-à-vis the administrative bodies, since in the absence of these types of activity, the Government cannot fulfil the role of the supreme organ of public administration. However, independent regulatory organs – and autonomous public administration bodies that do not appear in the constitutional arrangements – "polarise" the executive branch (Csink & Mayer, 2012, p. 80), since the autonomy of these bodies can be interpreted as relative independence from the Government within the executive branch. The monopolistic – supreme – role of the Government in the administrative organisation is thus overshadowed by the scope of independent regulatory organs – and autonomous public administration bodies – which means that the body that takes public authority decisions in the sectors administered by independent regulatory organs, in individual cases, does not bear any substantive professional and political responsibility for these decisions since the Government's influence is very limited (Fazekas, 2020), and independent regulatory organs are not accountable to either the National Assembly or the Government.

However, it only follows from the Fundamental Law that the organisation of public administration may include an autonomous status, but *which* sectoral policies to entrust to independent regulatory organs is already a *discretionary decision of the legislator*.

[13] HCC Decision 17/2013 (VI.26.).

Table 2.
Sectors administered by independent regulatory organs and EU legislation

Independent regulatory organ	**Sector managed**	**Union act**	**Does an EU act require the independence of the authority?**
NMIA	Media	Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation, or administrative action in the Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)	Yes
	News Release	Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 on the establishment of a European Electronic Communications Code	Yes
HEPURA	Natural gas supply, natural gas security	Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC	Yes
	Electricity	Directive 2019/944/EC of the European Parliament and of the Council of 5 June 2019 concerning common rules for the internal market in electricity and amending Directive 2012/27/EU	Yes
	District heating	–	–
	Water utilities	–	–
	Waste management	–	–
SARA	Tobacco retail	Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 laying down technical specifications for the establishment and operation of a traceability system for tobacco products	No
	An independent bailiff organisation	–	–
	Gambling	–	–
	Winding-up bodies	–	–
HAEA	Nuclear energy administration	Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations	Yes

Source: Compiled by the author.

Nor is the principle of sectors requiring an independent regulatory organ directly *readable* from the narrow provisions of the Fundamental Law. Independent regulatory bodies are generally needed in areas where technical rules need to change rapidly, and therefore the abstract way in which the legislation is drafted does not allow the addressees to foresee the extent of administrative influence and the content of administrative decisions. At the same time, independent regulatory organs are generally needed in sectors where market liberalisation has been or is underway and the state itself is a market player, or in some cases a monopoly player (Fazekas, 2015, p. 17). However, it is also important to stress that EU legislation[14] in several cases explicitly requires – as Table 2 sets out – that an administrative body, independent of government, be established in the Member States to administer the sector in question.

However, the legislator must proceed with caution when establishing independent regulatory organs, since their independence or autonomy – like those of autonomous state administration bodies – disrupts the fundamental regulating principle of state administration, namely subordination to the Government and thus the Government's parliamentary responsibility, which is only slightly offset by the direct accountability of the head of the independent regulatory organ to the National Assembly. It can also be seen from Table 2 that the sectors administered by independent regulatory organs do not always require an autonomous authority, even under EU legislation.

3.3. Regulatory activity

The term "regulator" in the name of the independent regulatory organ refers to the fact that it is a so-called *regulatory authority*. A regulator is not a separate type of public administration (Lapsánszky, 2014, p. 3), but a theoretical category, a collective term for public administrations that perform regulatory authority activities, regardless of the type of public administration they belong to (Fazekas, 2018; Csink & Mayer, 2012, p. 81; Kovács, 2009, pp. 19–32).

The essence of regulatory activity is that the public authority managing the sector in question typically *has comprehensive intervention and management powers that affect the*

[14] See e.g. Article 30(1) of the Audiovisual Media Services Directive, under which each Member State designates one or more national regulatory authorities, bodies, or both. Member States shall ensure that they are legally distinct from the government and that they are independent in terms of their functions from their government and any other public or private body. This is without prejudice to the right of Member States to establish regulatory authorities to supervise different sectors.
According to Article 57(4) of Directive 2019/944/EC of 5 June 2019 concerning common rules for the internal market in electricity and amending Directive 2012/27/EU, Member States shall guarantee the independence of the national regulatory authority and ensure that it exercises its powers impartially and transparently. To that end, Member States shall ensure that when carrying out the regulatory tasks conferred upon it by this Directive and related acts, the regulatory authority:
- be legally distinct and functionally independent from other public or private entities
- ensure that its staff and the persons responsible for its management:
  - act independently of any market interest
  - not seek or take direct instructions from any government or other public or private entity in the performance of their regulatory functions

overall functioning of the market. Indeed, the regulatory authority's activity includes, among others (Lapsánszky, 2014, pp. 9–10; Lapsánszky, 2015, pp. 59–71), *market regulation* powers related to the maintenance and development of market competition. Market regulation can be considered an official and specific law enforcement activity, characterised by the continuous ex officio substantive review of market regulation decisions, the adoption of new market regulation decisions, and the use of market analysis and fact-finding tools. It is also specific in that a decision taken by the authorities as a result of market regulation has an impact on competition in the market as a whole and on the functioning of the market as a whole, although it only has concrete and direct legal effect on the relations between the addressees of the decision. *Market surveillance* is the other most fundamental instrument alongside market regulation. It is also a specific public authority activity, a special type of public authority supervision with specific characteristics. Market surveillance includes general professional assessment, market analysis type monitoring of economic and social conditions subject to market surveillance for decision making and overall regulatory supervision from a legality perspective, as well as supervisory powers specific to "general" public oversight. "Market surveillance is, therefore, comprehensive control and supervision covering a specific and distinct economic sector, market, service or a specific part of it, in which all the objectives of administrative control activities are simultaneously and uniformly achieved, i.e.: prevention, detection of infringements of the law, and the preparation of legislation, amendment of legislation and other decision-preparation activities" (Lapsánszky, 2014, p. 10). In addition to market regulation and market surveillance, the regulatory authority's activities also include an *extensive classical set of instruments of public authority* (individual licensing, record keeping, consumer protection tasks), which is complemented by several operational, organisational and coordinative activities. Legislative powers are not a general feature of regulatory activity, but it is an essential element of the legal status of independent regulatory organs that they also have legislative powers, and it is in this light that this element of regulatory activity is examined in more detail in this paper.

In addition to the above, regulatory activity also necessarily involves instruments that result in the regulatory authority establishing general rules of conduct and standards. Within legislative powers, a distinction can be made between the power to enact legislation properly and the power to issue acts of a non-legislative but normative nature. Regulatory authorities almost invariably have the latter power, but the power to legislate is to a large extent determined by the constitutional system of the country concerned. In case of regulatory authorities, the legislative power is not a conceptual element, but it is a specific feature of the regulatory activity of independent regulatory organs that – *also* – *have legislative power.* Independent regulatory organs may, therefore, act in the exercise of their public powers, and establish generally binding rules of conduct (standards) for the sector concerned. The chairpersons of the independent regulatory bodies issue decrees based on a statutory mandate, within the scope of their functions as defined in the cardinal act, which may not conflict with any Act, government decree, prime ministerial decree, ministerial decree, or decree of the Governor of the Hungarian

National Bank.[15] The legislative power is thus subject to two conditions: a) the cardinal act must determine the scope of the functions within which the President of the independent regulatory bodies may issue a decree; and b) the law must define the specific legislative subject matter.

A specific feature of the regulation of the power to issue regulations is that the scope of the regulations that may be issued by the chair of the independent regulatory organ is partly contained in the status laws[16] of each independent regulatory organ, and partly in the sectoral laws.[17] A characteristic feature of the legislative subjects covered by the status law is that they either authorise the adoption by decree of *technical and information rules, regulations* on internal organisation and *competencies* (regulations on the replacement of the chairman of the independent regulatory bodies) or regulations on the fees for supervisory and administrative services *(so-called fee regulations),* which ensure the budgetary independence of the independent regulatory organ, for all sectors administered by it. However, in addition to the above subjects, the sectoral law also contains several delegations of power to *regulate the sector's* implementing law, mainly in *substantive law,*[18] and to *lay down detailed and specific rules of procedure for the public authority.*[19]

Finally, it is important to highlight that, in addition to legislation, independent regulatory organs typically have the power to issue non-legislative but normative positions, communications and recommendations – *so-called soft law documents* – that guide the regulated sector on their enforcement activities.

3.4. Independence from the Government of the independent regulatory bodies

As has been pointed out earlier, the autonomous (independent) status within the system of state administration, in other words, the relative independence from the Government as the main body of public administration, is an exceptional legal status characteristic. This independence "can only be granted to a central state administration body in particularly justified cases: for example, when it is acting as a quasi-judicial body or when it is responsible for safeguarding constitutional rights" (Fazekas, 2010, pp. 229–230).

The independence of the independent regulatory organ thus essentially refers to the separation (decentralisation) from the hierarchy that is usually characteristic of public administration. However, it must be stressed once again that the autonomy of independent regulatory organs, the content and strength of their independence, is not the same as autonomous state administration bodies. The degree of autonomy is adapted to the

[15] Article 23 (4) of the Fundamental Law.

[16] E.g. HEPURA Act Article 21.

[17] E.g. Article 74 (4) of Act CCIX of 2011 on Water Utility Services.

[18] For example, under Article 38 (1a) (b) of Act XXXIV of 1991 on the Organisation of Gambling, the President of the SARA is empowered to lay down detailed rules for restricting the access of vulnerable persons to gambling in connection with the organisation of gambling activities following the principle of responsible gambling.

[19] E.g. Article 29 (d) of the SARA Act, which empowers the SARA to establish detailed rules for the control of the exercise of activities subject to a concession by the authorities; Article 182 (3) point 26 of Act C of 2003 on Electronic Communications (hereinafter: EC Act), which empowers the NMIA to establish rules for the procedures of the construction and construction supervision authorities concerning electronic communications facilities.

professional content, EU and constitutional requirements of the field of specialised administration for which the Fundamental Law authorises the National Assembly to establish these bodies. It should also be stated that it is inherent in the activity of the regulatory authorities that, in addition to the relative autonomy within the public administration, the independent regulatory organs must also be independent of the regulated, supervised market sector. The literature on administrative law (Fazekas, 2018, pp. 10–11) – and also the practice of the HCC[20] – typically emphasises three pillars of autonomy that the independence of independent regulatory organs must be ensured from the a) *institutional;* b) *personal;* and c) *professional* sides.

Institutional independence is ensured by how the independent regulatory organs are established, the allocation of tasks and powers and budgetary independence, and their relationship with the National Assembly and the Government.

Institutional independence is based on the fact that independent regulatory organs are created by the National Assembly in a cardinal act, as the study has explained in detail. Because of this, the Government's freedom of organisation does not apply to independent regulatory organs.

In principle, the functions and powers of independent regulatory organs may be established by law or by legislation issued based on a statutory authorisation, except the SARA, for which a municipal decree may not establish functions and powers,[21] and the HAEA, for which a statutory authorisation is not required for lower-level legislation to establish functions and powers.

Budgetary independence – as the foundation of autonomy – is basically guaranteed by the fact that the budgets of the independent regulatory organs are separate titles within the chapter of the National Assembly, and their expenditure and revenue budgets can only be reduced by the National Assembly.[22] This excludes the possibility of the government directly intervening in budgetary matters. Among the independent regulatory organs, the NMIA is special[23] in terms of budgetary independence, given that – as the only state body – its budget is governed by a separate act, which is submitted to the National Assembly by the committee of the National Assembly responsible for budgetary matters based on a proposal by the President of the NMIA.[24] To ensure the budgetary independence of the independent regulatory organs, it is common practice to impose a levy on market operators, under conditions specified in detail in the legislation, to ensure the financing and the financial basis of the independent regulatory organ.

While ensuring independence from the Government, the accountability of the independent regulator should be created, but the independent regulatory organs are only

[20] See HCC Decision 41/2005 (X.27.).

[21] However, this exception is only apparent, given that a local government may only adopt regulations to regulate local social relations not regulated by law or based on an express authorisation granted by law. Given this, a municipal ordinance cannot be a source of functions and powers for autonomous regulatory bodies.

[22] See Annex I, Chapter I of Act XC of 2020 on the Central Budget of Hungary for 2021.

[23] With this solution, the legislator has disrupted the principle of unity and completeness of the Budget Act, while this specificity already characterised the predecessor of the Media Council of the NMIA, the National Radio and Television Board (hereinafter: the Board). Article 32(1) of Act I of 1996 on Radio and Television Broadcasting provided that the budget of the Board shall be approved by Parliament in a separate Act.

[24] See Act CXXXII of 2020 on the National Media and Infocommunications Authority's 2021 Unified Budget.

accountable to the National Assembly and its committees. The rules on accountability are contained in the cardinal acts, but there are no other rules creating accountability to Parliament, nor can questions be addressed to the head of the independent regulatory organs (Chronowski et al., 2011, pp. 51–52). The relationship with the Government is ensured by rules requiring the independent regulatory organs to be consulted on regulatory proposals affecting their functions and, for some independent regulatory organs, the right to attend government meetings.

The personal independence of independent regulatory organs can be achieved by several means. Personal independence is ensured by the nomination and election of the head of the body independent of the public administration or with limited interference from the public administration, a term of office that spans the government's term of office, extensive rules on conflicts of interest and, in the case of the Media Council of the NMIA, decision-making by the body.

According to Article 23(2) of the Fundamental Law – as a limitation of independence – the head of an independent regulatory organ shall be appointed by the Prime Minister or, on a proposal by the Prime Minister, by the President of the Republic for a term of office determined by a cardinal act. The Fundamental Law thus confers the power to appoint the head of an independent regulatory organ to the Prime Minister, or the President of the Republic on the proposal of the Prime Minister. The President of the NMIA is appointed by the President of the Republic on a proposal from the Prime Minister. In all cases, the term of office of the President of the independent regulatory organ is significantly longer than the term of office of the Government. The term of office of the chairman is 7 years for the HEPURA and 9 years for the other independent regulatory organs. The term of office of the chairpersons of the independent regulatory organs can typically end before the end of their term only for objective reasons (death, reaching a certain age, final and binding criminal conviction, resignation) and can be terminated in very limited circumstances (e.g. permanent disability for reasons for which they are not responsible).

Personal independence is also ensured by the extensive conflict of interest rules for the heads, deputies and civil servants of the independent regulatory organs, which guarantee independence from the sector administered, from market players and the various branches of power. The general part of the conflict of interest rules is laid down in the Act on the Status of Employees of Bodies with Special Status,[25] while the specific – sector-specific – rules are contained in the cardinal acts establishing independent regulatory organs.

Independence can be facilitated by body decision-making, because this can facilitate independence by promoting self-awareness, reducing reliance on external cues, and empowering individuals to take responsibility for their own choices, but this is not the case for independent regulatory organs. One exception is the NMIA, one of its bodies being the Media Council. This five-member body has independent powers and responsibilities to manage and supervise the media sector. The President and members of the Media Council are elected by the National Assembly for a 9-year term.

[25] See Act CVII of 2019 for the status of employees of bodies with special status.

Professional independence is based on independence in the exercise of functions and powers. This is ensured by the fact that independent regulatory bodies are subject only to the law and exercise their functions and powers independently and by law. The decisions of independent regulatory organs are typically[26] not subject to an administrative appeal, nor can their decisions be amended or annulled by supervisory review. The administrative acts of independent regulatory organs are subject to administrative court actions.

Administrative proceedings are an instrument of subjective enforcement, so they can only be initiated by the party affected by the decision; the scope of the review is determined by the request for review, but the review can only be based on legality, not on mere technicalities or expediency (Trócsányi, 1991; Rozsnyai, 2013). The review activity of the courts is an institutional necessity, in contrast to the individual decisions of public authorities with specialised expertise,[27] from which it follows that the courts can be expected to ensure the accountability of public authorities through their subjective remedial role. However, judicial review, and thus accountability for the decisions of the independent regulatory organs, is constrained by the fact that the courts do not have the sectoral expertise – typically complicated technical, economic, IT and legal knowledge – that the apparatus of the independent regulatory organs possesses. Specialised expertise in administrative litigation can be provided by experts.

However, in addition to the independence to exercise their functions and powers, some independent regulatory organs have an explicit duty of cooperation with the Government or a member of the Government, or with other public authorities. The NMIA participates in the implementation of the Government's policy in the field of frequency management and communications, as defined by law,[28] while the SARA cooperates in the performance of its tasks with the Minister responsible for the supervision of state property, the Minister responsible for the regulation of the management of state property, and the Minister competent for the subject of concession activity, the Minister responsible for justice, the State Tax and Customs Authority, the law enforcement agencies, the body designated as the consumer protection authority and the body designated as the metrology authority.[29]

4. Summary

The study aimed to place the independent regulatory organs in the system of Hungarian public administration and to identify the most important elements of their legal status. In summary, it can be stated that the independent regulatory organs have constitutional

[26] In the case of the NMIA – because of the rules on the allocation of powers within the body (i.e. the President, the Media Council and the NMIA Office have their powers) – the possibility of appeal is provided within the body if the decision was taken by the NMIA Office in the first instance. Depending on the subject matter of the case, the internal appeal forum is the President or the Media Council, against whose decision only judicial review may be brought [see MSMM Act Article 165 (1) and EC Act Article 44 (1)].

[27] In constitutional and rule of law circumstances, it follows from the fundamental constitutional right to judicial remedy and access to justice that judicial review of individual decisions by public authorities is necessary.

[28] See MSMM Act Article 109 (2).

[29] See SARA Act Article 4 (1).

status, are central state administrative bodies with special powers, established by the National Assembly in a cardinal act for the performance and exercise of certain functions and powers within the scope of the executive power, and are regulatory authorities with legislative powers, exempted from the direction and supervisory powers of the Government, and, in some cases, autonomous. An analysis of some of the main features of the legal status shows that, in the case of independent regulatory organs, the various pillars of autonomy or, to use the correct terminology, independence, ensure full independence from the sector administered, while the extent of independence within the state administration is adapted to the professional content and EU and constitutional requirements of the specialised area of administration, which the Fundamental Law empowers the National Assembly to establish. The regulatory instruments exercised by the independent regulatory organs and their legislative powers, which are specific to the independent regulatory organs, allow for a significant degree of intervention by public authorities in the sectors they manage, but their professional and democratic control is very limited. It is precisely in light of the above that the democratic guarantees – openness, transparency and cooperation with market players – which can counterbalance this deficit are of particular importance.

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