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INTRODUCTION

The sector-specific regulation aims at the development of common market in network-bound sectors, which is important for the development of the entire market economy. The most important role to achieve the above mentioned goals lies within the independent regulatory authorities. The regulation is focused on effective competition, protection of end-users as well as infrastructural safety. The Polish model of the sector-specific regulation and independent regulatory authorities was created under the influence of European regulations which have forced (or at least accelerated) the process of lifting the legal monopolies within the infrastructure sectors. This paper discusses the essence of the sector-specific regulation and especially points out the main goals of regulation and position and tasks of the Polish regulatory authorities.

The concept of the regulation and regulatory authorities was initiated and developed by the European law. As far as regulation as a legal phenomenon is concerned, we can say that the legislation of activities of the European Union (EU) had to lead to liberalization of the infrastructural sectors and harmonization of the Member States law. The first liberal steps at the European level were made at the end of the 20th century and were related to the telecommunications sector. Nowadays, with some exceptions (in postal sector), demonopolisation processes are complete. However, at the same time, this does not mean that the Commission puts an end to legislation process within the infrastructural sectors. On the contrary, the institutions of the EU still propose and accept new regulatory acts aiming to standardize (through regulations, especially in railway sectors) and harmonize (through directives) the Member States law with reference to infrastructural sectors. They should be means to achieve the main goals of the regulation, effective competition and provide of the services of general interest.

According to foregoing sentences we can say that the European Union law imposed on the Member States the duty of the demonopolisation of the infrastructural sectors. It was necessary because over the years the infrastructural services were carried out under legal monopoly. This means that undertakings providing public services acted under exclusive or special rights. Therefore, the fundamental aim of regulating is to exclude monopoly from network-bound and make the regulatory authorities responsible for proper functioning of competition in the infrastructural sectors.

Opening infrastructural sectors to competition, in most cases, is conducted by means of directives which are adopted under Article 114 (3) of the Treaty on the Functioning of the European Union – the TFEU – (the harmonizatory directives) (Kawka, 2006:

s. 47). The directives show main goals of regulation and oblige Member States to introduce European provision to their national laws (Galewska, 2007: s. 16 and next). It is necessary to say that mentioned directives require Member States to appoint the independent regulatory authorities which are responsibile for regulatory tasks. At the same time, directives do not impose neither form of organization nor composition of regulatory authority. This means that Member States can entrust regulatory tasks to public or private bodies, monocratic or collegial bodies and they can entrust tasks to more that one body.

This paper has been divided into four sections. In the first section, it shows the goals of the regulation which are included in sectoral acts law (both in European and Polish law acts) and which are distinguished by the doctrine of the administrative sciences. These lead to describe two category of regulations: the regulation for competition and the social regulation. In the next one, it presents a general overview of Polish regulation. The third section describes the authorities of public administration in Poland. The fourth one contains consideration about Polish independent regulatory authorities. Describing the public administration in Poland is necessary to understand the essence of the position of Polish regulatory authorities and doubts they produce. The last section describes the tasks of regulatory authorities.

2.THE GOALS OF REGULATION

2.1.THE REGULATION FOR COMPETITION

The effective competition is the most important case in developing economy. It influences reduction of prices, rising of qualities of universal service as well as different technical innovations which are essential in the development of economy and infrastructural sectors, too. Emergence of competition within infrastructural sectors is conditioned by following issues. Firstly, legal monopoly has to be abolished. Secondly, legal basis must exist to make possible the creation and development of effective competition. In principle, with some exceptions, the first condition was already fulfilled. Namely, the EU has abolished purely the exclusive and special rights in telecommunications, electricity and gas sectors as well as in railway sector. Postal sector is an exception because some postal services can be reserved to universal service provider(s) until 31 December 2012 (see further below). With reference to second condition, both European and national law include bases to exist of competition. In this area, the most important role is played by the provisions of the European Union primary law, exactly Articles 101–108 of the TFEU within Articles 101 and 102 determine both European and national competition law. In European Union secondary law, the bases of competition exist, too. In particular, the European regulations create the competition law[1].

The Polish antitrust law is included in the Competition and Consumer Protection Law of 16 February 2007. Besides, the Polish regulatory acts include rules of competition, too. This means that at the national level the issues of competition are divided

[1] See: Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, 2003, L1/1 and Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertaking, 2004, L24/1.

into two branches of law: antitrust law and regulatory law. However, it is good solution because of a few reasons. Firstly, the antitrust law protects competition in sectors in which it exists. However, the competition law in network-bound sectors is not sufficient because competition should be created first and later protected. Secondly, the antitrust law includes rules of prohibition and the regulatory law includes rules of warrants. In other words, the antitrust law shows which activities undertakings should not perform and the regulatory law shows which activities undertakings should perform. Thirdly, the antitrust law is repressive (*ex post* activities) and the regulatory law is preventive (*ex ante* activities) (Skoczny, 2004: s. 12 and next). Foregoing means that inside infrastructural sectors the antitrust law and regulatory law are in force and nowadays their role is irreplaceable. However, according to view of the doctrine of the administrative sciences the antitrust law takes precedence over the regulatory law. So, the tendency heads for limiting regulatory activities on condition that the antitrust law and the activities of the President of the Office of Competition and Consumers Protection (antitrust authority in Poland) are sufficient to protect competition in infrastructural sectors. This means that regulation is treated as temporary phenomenon, if the goals of regulation are achieved, the activities of the President of the Office of Competition and Consumer Protection will be sufficient (Skoczny, 2003: s. 118).

2.2.THE SOCIAL REGULATION

According to liberalization processes, consumers and end-users should be elementary and final beneficiaries of the liberalization process. Even effective competition in infrastructural sectors should contribute to the protection of consumers' interests. In other words, opening up services to competition frequently leads to lower prices and a greater range of choice for consumers. This means that guarantee of maximum benefits for end-users should be the final goal of the regulatory activities. It is worth noting here, that realization of the pro-social part of regulation is included in Polish public interest theory, French conception of public service as well as German concept called *Daseinsvorsorge*. Generally speaking, in accordance to foregoing conceptions, the activities of the enterprises should not be made merely in order to achieve profits.

The concept of the public welfare services has a long tradition in literature. With references to views on doctrine of the administrative sciences, the public welfare services satisfy the basic needs of people and network-bound sectors provide important services without which nations cannot function. Despite, the analysis of the law, both European and national, leads to conclusion that legal acts use the following concepts: 1) the services of general economic interest and 2) the universal services.

The elementary concept, which is the basis to future consideration, is the concept of the services of general economic interest, because this concept is included in the primary legislation, exactly in Articles 14 and 106 (2) of the TFEU. Besides, services of general economic interest find their legal basis in Article 36 of the Charter on Fundamental Rights of the European Union. At the same time, there is no definition of services of general economic interest both in the TFEU and at the level of secondary legislation. This means in particular, that the TFEU gives the Member States a wide freedom to define mission of general economic interest. So, it has to be stressed that the lack of definition of the services of general economic interest in the TFEU is not criticized by doctrine. This solution justifies the changes which still occur within the economy and the con-

cept of the services of general economic interest is a dynamic and fluid one. Thereby, an elementary role to define discussing concept belongs to the European Court of Justice (the Court). However, the Court does not define the concept of the services of the general economic interest generally but, in their judgement, enumerates services which are recognized as the services of general economic interest. In other words, the Court describes the key element of services of general economic interest that is useful to designate them. This means that the Court has not proposed one universal definition of concept of services of general economic interest but the Court shows the extent of the concept by mentioning services which belong to the services of general economic interest (Dudzik, 2002: s. 291). It results from the fact, that in the developmental technology conditions several services which were essential for nations in the past, have now lost their importance. In addition, because of development of technology many services are treated as services of the general economic interest. So, it is worth noting that in general circumstances, the Court creates the concept of the services of the general economic interest. Firstly, in the Court opinion, describing services has to have economic character. This means that they have to be served by enterprises which aim to achieve profits. Secondly, the services have to realize the general interests. This means that the category of the services of the general economic interest does not include services which do not have economic character and which are state duties, for example, guarantee of internal and exterior safety, organization of judicial system, foreign policy as well as executing public power. Within the concept of the services of the general economic interest educational services and social insurance services are also not included.

Apart from the concept of the services of the general economic interest in creating the concept of regulation, the concept of the universal services is necessary, too. The obligation of providing of the universal services may be imposed either on all undertaking active in the market, or on limited number of operators called provider(s) of last resort. Apart from the services of the general economic interest qualities, the universal services have owner qualities. This means that each universal service belongs to the category of the services of the general economic interest but not all services of the general economic interest are the universal services (Szydło, 2005a: s. 134).

The concept of the universal services protects especially non-economic consumers, for example those who have low earnings or live in the largest geographical zone. In other words, the idea of the universal services guarantees access for everyone, whatever the economic, social or geographic situation. So, ubiquitous access is the most important feature of universal services. Hence, in many cases, universal service to mentioned people can be unprofitable for enterprises. So, if they do not offer the universal services, state will impose a duty to service the universal services. It should be emphasized, that in first order the universal services have to be serviced in economical condition. However, if normal function of economy market can not assure access to the universal services, a state will intervene and will impose on undertaking(s) duty to provide the universal services. It is important to note that Member States do not have to intervene or take additional measures if the public interest objectives (such as accessibility, quality and affordability) are ensured by the functioning of the market mechanism alone. However if Member States find the market alone does not ensure the provision of the relevant public goods, market failure, EU law allows Member States to designate (one or several) universal services providers as provider(s) of last resort and compensate them (Piątek, 2003: s. 194).

The idea of the universal services exist within all infrastructural sectors. Despite, only in the telecommunication the concept of the universal services is using by the legislator. In different infrastructural sectors, the concept of the universal services is present but legislator uses different concept, for example public services (in railway sector).

3. REGULATION IN POLAND. GENERAL REMARKS

The shape of Polish regulation is achieved by means of the following laws: The Telecommunications Law of 16 July 2004, The Postal Law of 12 June 2002, The Energy Law of 10 April 1997, The Railway Transport Law of 28 March 2003 and The Water and Sewerage Law of 7 June 2002. The mentioned laws included especially the goals of the regulation, regulatory authorities and their tasks.

The foregoing acts have implemented the provisions of the European sectoral directives. Thereby, it can be said that at the national level the regulation for competition and social regulation can be distinguished. The Polish sectoral acts fulfil the European provision with references to the concept of the services of general economic interest and the universal services. Especially, the extent of the universal services is clearly defined in Polish law. According to European demonopolisation, in Poland the exclusive rights have been abolished, apart from the postal sector. In the sphere of regulating postal sector, the EU has adopted three postal directives. In the first postal directive[2], EU planned to keep a space of the reserved services to universal services provide(s) until 31 December 2004. However, in second postal directive[3], EU postponed the term of opening up postal universal services to competition until to 31 December 2008. Currently, the third postal directive is in force[4] which once again postponed the term of opening up postal universal services to competition by 31 December 2010. At the same tame, Directive 2008/6/EC permitted several Member States to abolish reserved services until 31 December 2012. This means that the market of the universal postal services in some countries cannot open up to competition because it will have an unfavourable influence, especially on the level of their quality and price. Poland belongs to countries which can keep a legal monopoly for service the postal universal services until 31 December 2012. In Poland, postal universal services are provided by *Poczta Polska S. A.* (state-owned: *przedsiębiorstwo państwowe*).

Besides, the analysis of the both European and national law leads to conclusion that in electricity and gas sectors the existence of legal monopoly is possible, too. In the

[2] Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of services, 1998, L 15/14.

[3] Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, 2002, L 176/21.

[4] Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, 2008, L 52/3.

light of Article 3 (8) Electricity Directive[5] and Article 3 (5) Gas Directive[6] the Member States may decide not to apply the provisions, for example, reference to authorization procedure for new capacity (electricity sector) and authorization for the construction or operation of natural gas facilities (gas sector) insofar as their application would obstruct the performance, in law or in fact, of the obligation imposed on electricity or natural gas undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the EU. The interests of the EU include, among others, competition with regard to eligible customers in accordance with Electricity and Gas Directives as well as Article 106 of the TFEU. The Energy Law does not contain similar regulation on the model of mentioned articles. However, according to provision of the Law on the Freedom of Business Activities (of 2 July 2004), the President of the Energy Regulatory Office can refuse a concession (*koncesja*) to undertakings which want to start a business activity on the electricity and gas market if, earlier, he issued concession, by means of tender, to different undertaking(s) and issuing another concession will disturb the stable conditions of transmission and distribution of energy or gas (Szydło, 2005a: s. 230).

In water and sewerage industry the legal monopoly exists too. Generally, permission (*zezwolenie*) is the precondition to start activity in water and sewerage market. However, the municipal units (*jednostki organizacyjne gminy*) are entitled to act without permission. Furthermore, their activities can lead to refuse permission to undertakings who want to begin activity in water and sewerage market. So, in conclusion, in the case, when municipality executes activity in water and sewerage by their units, in principle, her organs refuse permission for other undertakings and this means that at the level of the territorial self-government, in water and sewerage market, monopoly can exist too.

The most important part of the regulation is the existence of the independent regulatory authorities which are responsible for regulation of infrastructural sectors. So, the Polish regulatory authorities will be described below. However, before the Polish authorities of public administration will be outlined generally. It is necessary to understand many issues connected with position of the regulatory authorities.

4. THE AUTHORITIES OF PUBLIC ADMINISTRATION IN POLAND

The Constitution of the Republic of Poland (PL) states that the structure of PL is based on the division and balance of a legislative, executive and judicial powers. The legislative power belongs to the Seym and the Senate, the executive one to the President of PL as well as to the Council of Ministers and the judicial one to courts (to the High Court, courts of law, administrative courts and military courts) and to tribunals (to the Constitutional Tribunal and the Tribunal of State) (Banaszak, 2005: s. 57).

In the context of the system of separation of powers, public administration is a state activity which is neither legislative nor judicial. Public administration is thus identified

[5] Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, 2003, L 176/3.

[6] Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, 2003, L 176/57.

with executive power. In the Polish doctrine of administrative sciences, organs of public administration are divided into the following groups: chief organs of governmental administration, central organs of governmental administration and organs of territorial self-government (Izdebski, 2006: s. 43 and next).

The following ones belong to the chief organs of governmental administration: the President of PL as well as the Council of Ministers so the Prime Minister and the Vicepresidents of the Council of Ministers, individual ministers and chairmen of committees which are specified in statutory laws. Currently, it is only the Chairman of Committee of the European Integration. The President of PL is the highest representative of PL and guarantees continuity of the power of state. He is elected in a direct election for the period of five years.

The Competences of the Council of Ministers are included both in the Constitution and the Law of the Council of Ministers dated 1996. Individual ministers are appointed in order to manage specific departments of governmental administration. At the same time, the minister has two positions: he is a member of a collegiate body (the Council Ministers) and he manages a specific department. A minister is appointed either with the whole the Council of Ministers or separately. Generally, a minister issues regulations which are executively related to a statutory law and specify provisions of a statutory law.

Creating central organs of governmental administration does not have basis in the Constitution. A partial regulation is included in the Law of the Council of Ministers. Central organs of governmental administration are not members of the Council of Ministers, with the exception of the ones included in a statutory law. They are created by a statutory law, sometimes by lower acts. Their creating and recalling is a continuous process so the number of central organs is not constant. They are generally monocratic organs. In most cases, they are appointed by the Prime Minister. Central organs of governmental administration work under the supervision of the Seym, the Council of Ministers, the Prime Minister and individual ministers. The category of central organs of governmental administration is essential because the regulatory authorities belong to the central organs of governmental administration.

In Poland there are organs of territorial self-government (*samorząd terytorialny*), too. Territorial self-government executes tasks which are not reserved by the Constitution or statutory law for another public power. In Poland territorial self-government can be divided into: local self-government represented by municipalities (*gminy*) and of districts (*powiaty*) and regional self-government represented by the self-government of voivodships (*województwa*). Organs of individual territorial self-government are divided into: legislative organs and executive organs. They issue local law acts which are binding on the territory.

5. THE POLISH INDEPENDENT REGULATORY AUTHORITIES

Independent authorities are a new category of bodies in Poland. The setting up of such regulatory authorities aims at the development of common market in network-bound sectors, which is important for the development of the entire market economy. The appointment of regulatory authorities resulted from Polish membership in the EU and harmonization of Polish law with European law. The existence of the regulatory au-

thorities is an inseparable part of the idea of regulation. EU law includes basic principle which relates to Member States which must ensure that performing regulatory tasks is separate and independent from any operator they regulate. In addition, the European directives directly show legal and real independence of the regulatory authorities. Furthermore, with reference to European law, national regulatory authority can work on the basis of public and private law. Moreover, Member States are free to determine the number of the regulatory authorities and can freely distribute regulatory tasks among regulatory authorities (Hoff, 2005: s. 39). This means that Member States can entrust executing regulatory tasks to more than one authority. In addition, the European law does not provide for explicit calls to separate independent regulatory authorities from the core executive, but it is quite easy to find such calls in the acts of the EU. In other words, independence of the regulatory authorities means that authorities have to be independent from governance and enterprises making their activities in the infrastructural sectors.

Generally, the regulatory tasks are divided into two models. Firstly, the tasks of regulation can belong merely to central bodies of governmental administration. Secondly, they can be divided into two categories of organs, well, central bodies of governmental administration and ministers (chief bodies of governmental administration) (Piątek, 2003: s. 42). In Poland, the second model is representative, which means that regulatory tasks belong to both ministers and central bodies of governmental administration. Admittedly, appointment of central bodies of governmental administration was the Polish answer to European requirement of regulatory authorities and ministers of infrastructural sectors are permanent element of governmental administration. The main difference lies in the fact that central bodies of governmental administration execute their tasks by means of administrative decision and ministers through regulations. Besides, the solution, according to ministers as regulatory authorities, is criticized by the doctrine of the administrative sciences and the institution of the EU.

The following independent regulatory authorities were appointed in network-bound sectors: the President of the Office of Electronic Communications (responsible for both telecommunications and postal sectors), the President of the Energy Regulatory Office (*nota bene* it was first regulatory organ appointed in Poland) and the President of the Office Railways Transport. All of mentioned organs are central bodies of governmental administration clearly exemplified by statutory legislation with reference to infrastructural sectors. They are appointed and recalled by the Prime Minister. The regulatory authorities execute their tasks with the help of relevant offices: the Office of Electronic Communications, the Energy Regulatory Office and the Office Railways Transport. The head offices are located in Warsaw and delegacies are instituted in each province. The structure and tasks of organizational units of the offices are issued by the regulatory presidents. With reference to foregoing, it can be said that in Polish model of regulatory authorities the monocratic bodies which are supported by the offices can still be found functioning.

The administrative procedures are conducted by the regulatory authorities in accordance with the Code of Administrative Procedure of 1960. However, regulatory decisions may be appealed to the Court for Protection of Competition and Consumer, which is competent not only to assess legality of the decision, but may also alter its contents.

In addition, regulatory tasks are executed by bodies of territorial self-government in the water and sewerage industry.

Generally, the tasks of the regulatory authorities are focused on issuing permission which are necessary to begin business activity in infrastructural sectors, ensuring access

to networks and services (tasks on the wholesale markets), guaranteeing basic rights for consumers and minimum levels of availability and affordability (tasks on the retail markets) as well as the regulatory presidents impose fines and resolve disputes between undertakings. Moreover, all regulatory authorities are obliged to cooperate with the European Commission and other regulatory authorities from Member States as well as with the authorities responsible for competition (Szydło, 2005b: s. 210 and next). Below, the most important tasks of the Polish regulatory authority are shown.

The President of Office of Electronic Communications:

- issuing a general authorization in accordance with Article 3 of the Authorization Directive (2002/20/EC)[7]. In this context, at the Polish level telecommunications activity is treated as a regulated sector, which is regulated in detail by the Law of 2 July 2004 in the Freedom of Business Activities. Telecommunications undertakings involved in performing telecommunications activities are required to make an entry into the register, which is maintained by the President of the Office of Electronic Communications. Moreover, issuing permission (*zezwolenie*) or general authorization for postal activity,
- issuing individual permits for the use of frequencies and numbering. Frequencies and numbering are an example of rare resources, therefore the Authorization Directive 2002/20/EC enable Member States to issue individual permits to use their,
- analysis of the telecommunications market and designating the telecommunications undertakings that have a significant market power. According to Directive 2002/21/EC (Framework Directive)[8] and the Telecommunications Law, the President of the Office of Electronic Communications analyzes only relevant markets,
- imposing regulatory obligations referring to access to network and connection between networks (regulatory obligations on the wholesale markets). The President of the Office of Electronic Communications imposes regulatory obligations if, as a result of analysis market, he concludes that the relevant market is not effectively competitive. In this cases, the President of the Office of the Electronics Communications designates undertaking(s) that have a significant power in the market and imposes regulatory obligations,
- imposing regulatory obligations on the retail markets with reference to assuring the services of the general economic interest,
- choosing an operator providing universal services. The President of the Office of the Electronic Communications designates the telecommunications undertakings to provide the universal services on the basis of the lowest cost of providing publicly available telephone services. It is also on the basis of information on the quality of providing such services as specified in the offer submitted by the telecommunications undertaking, with regard to its capability of providing the universal service or individual component services there of. Currently, the President of the Office of Electronic Communications has designated only one undertaking, which is obliged to provide universal services – *Telekomunikacja Polska*,

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[7] Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorization of electronic communications networks and services (Authorization Directive), 2002, L 108/21.

[8] Directive 2002/21.EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), 2002, L 108/33.

- imposing fines in telecommunications and postal sectors (Przybylska, 2008: s. 76 and next).

The President of the Energy Regulatory Office:

- issuing a concession (*koncesja*) for business activity in electricity and gas sectors,
- resolving disputes between undertakings as well as between undertaking and end-users, especially the President of the Energy Regulatory Office decides in cases refusing enter into an agreement with reference to transmission and distribution energy (resolving disputes on the wholesale markets) and with reference to access to network (resolving disputes on the wholesale and retail markets),
- designating, by means of tender, a supplier of last resort which leads to protection of the end-users.

The President of the Office of Railways Transport:

- issuing a licence (*licencja*),
- approving changes for access to railway infrastructure,
- supervising railway security,
- imposing fines.

In this place, several detailed remarks with reference to independence of the regulatory authorities and division of regulatory's tasks between central bodies of governmental administration and ministers, are worth noting. Nowadays, the real independence of the Polish regulatory authorities is doubtful and is under discussion, both within the doctrine of the administrative sciences and institutions of the EU.

Firstly, according to Law 2006, the independence of the regulatory authorities was significantly reduced. The mentioned law removed the statutory provision which guaranteed five years of tenure for the regulatory presidents and enumerated circumstances when they could be dismissed at the end of his tenure[9]. Both the principle of tenure and its period guaranteed the independence of the presidents of the regulatory offices. This means that currently, the principle of the subordination of the Prime Minister is in force because he can dismiss the regulatory presidents anytime. Strictly speaking, the government, which is responsible for state policy, has a large influence on regulation area because the regulatory presidents can be dismissed at any moment and for no clear-cut, definite reasons (Hoff, 2008: s. 199 and next).

Secondly, the position of the regulatory presidents is subject of discussion because they belong to central bodies of governmental administration which means that it is difficult to say about their independence because they are supervised by the ministers who can issue commands. Additionally, the regulatory authorities do not belong to category of organs mentioned in the Constitution. Hence, a change in Polish Constitution and regulation of the position of regulatory organs are more often proposed.

Thirdly, the Commission has reservation about independence of the regulatory authorities. This tendency is clear especially in telecommunications sector. For example, in 12th report on the implementation[10] the Commission has expressed concern for in-

[9] Until 2006, regulatory presidents could be dismissed only in the following circumstances: 1) material infringement of the Law with accordance infrastructural sectors, 2) adjudication prohibiting their from holding managerial positions or performing functions in state authorities related to extraordinary responsibilities, 3) committing an international offence subject to *ex officio* prosecution, confirmed by a legally valid sentence of a court, 4) illness permanently hindering performance of tasks and 5) lodging a resignation.

[10] Communication from the Commission to the European Parliament, the Council, the European Eco-

dependence and impartiality of the President of the Office Electronic Communication in the light of the scope of the government powers of dismissal. In addition, in the newest report (13th report)[11] the Commission confirms its concerns. Apart from concerns included in the mentioned reports, Commission has taken more formal measures. Namely, it has sent reasoned opinion in which it shows incorrect implementation of the Framework Directive 2002/21/EC, especially Article 3 (2,3), and at the same time Commission has opened proceedings under Article 258 of the TFEU[12]. So, according to Law 2008, principles of appointment of the President of Office of Electronic Communications have been changed and now the telecommunications regulatory organ is appointed (for five years) and dismissed by the Seym. It means that the independence of the President of Office of Electronic Communications is stronger that before 2008 year.

Additionally, the amendments of the Polish statutory law have led to abolition of the advisory bodies regulatory authorities. Besides, the regulatory offices are financed with the state budget. The foregoing challenges the principle of the independence of the regulatory authorities, too.

Appendix contains general information about Polish sector-specific regulation.

Regulatory sector	**Regulatory act**	**Regulatory Authority**	**Currently appointment**	**www page of regulatory office**
Telecommunications sector	The Telecommunications Law of 16 July 2004	the President of the Office of Electronic Communications	Anna Streżyńska	uke.gov.pl
Postal sector	The Postal Law of 12 June 2002	the President of the Office of Electronic Communications	Anna Streżyńska	uke.gov.pl
Electricity and Gas sectors	The Energy Law of 10 April 1997	The President of the Energy Regulatory Office	Marek Woszczyk	ure.gov.pl
Railway sector	The Railway Transport Law of 28 March 2003	The President of the Office Railways Transport	Krzysztof Jaroszyński	utk.gov.pl
Water and Sewerage sector	The Water and Sewerage Law of 7 June 2002	Organs of territorial self-government	–	–

nomic and Social Committee of the Region. European Electronic Communications Regulation and Markets 2006 (12th report), COM (2007) 155.

[11] According to the Commission's point: "NRA (national regulatory authorities) independence is a prerequisite for regulatory certainty. Measures to underpin the NRA's independence have been taken or are planned in Latvia and Hungary. However, concerns persist in Bulgaria and Luxembourg, and in particular in Poland in relation to the rules for the removal of the head of the NRA. The Commission has therefore included provision to strengthen the independence of the NRAs in its proposals for revision of the framework". See: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Region. Progress Report on the Single European Electronic Communications Market 2007 (13th report), COM (2008) 153.

[12] See: MEMO/07/255.

SUMMARY

Nowadays, the regulatory law is very important part of the public law because of various reasons. First of all, a regulatory law refers to competition on infrastructural markets. This means that the whole liberalization process should lead to effective competition between undertakings which provide services of general economic interest. The second reason is related strictly to protection of end-users. In this context, basic rule refers to the concept of the services of general economic interest and universal services. So, alongside the provision guaranteeing and protecting competition (the regulation for competition), provision with reference to guaranteeing consumer's benefis (the social regulation) can be distinguished. Even, when the competition in infrastructural sectors will exist and provisions promoting competition in infrastructural sectors will not be necessary, the idea of the social regulation, will still exist. The third reason is focused on safety of infrastructural sectors, especially energy and railway safety. This fact means that apart from regulatory activities, the regulatory authorities execute typical administrative activities. Finally, in the context of the independent sector regulation, the independent regulatory authorities play the most important role. So, it is necessary, at the national level, to issue regulatory tasks to authorities which are independent.

BIBLIOGRAPHY

Banaszak B., *Outline of Polish Constitutional Law*, Wrocław 2005.

Dudzik S., *Usługi świadczone w ogólnym interesie gospodarczym w prawie Wspólnoty Europejskiej,* [w:] *Prawo gospodarcze Wspólnoty Europejskiej na progu XXI wieku*, red. C. Mik, Toruń 2002.

Galewska E., *Implementacja dyrektyw telekomunikacyjnych*, Warszawa 2007.

Hoff W., *Recepcja pojęcia regulacji i organu regulacyjnego na przykładzie prawa polskiego*, "Państwo i Prawo" 2005, nr 8.

Hoff W., *Prawny model regulacji sektorowej*, Warszawa 2008.

Izdebski H., *Introduction to public administration and administrative law*, Warszawa 2006.

Kawka I., *Telekomunikacyjne organy regulacyjne w Unii Europejskiej*, Kraków 2006.

Piątek S., *Prawo telekomunikacyjne Wspólnoty Europejskie*j, Warszawa 2003.

Przybylska M., *The President of the Office of Electronic Communications as a national regulatory authority of the telecommunication sector in Poland*, "International Journal of Regulation and Governance" 2008, nr 8 (1).

Skoczny T., *Stan i tendencje rozwojowe prawa administracji regulacyjnej w Polsce*, [w:] *Ius Publicum Europeum*, Warszawa 2003.

Skoczny T., *Ochrona konkurencji a prokonkurencyjna regulacja sektorowa*, "Problemy Zarządzania" 2004, nr 3.

Szydło M., *Regulacja sektorów infrastrukturalnych jako rodzaj funkcji państwa wobec gospodarki*, Warszawa 2005a.

Szydło M., *Relacje pomiędzy Komisją Europejską a krajowymi organami regulacyjnymi. Czy nowy model administracji europejskiej?*, [w:] *Europeizacja polskiego prawa administracyjnego*, red. Z. Janku, Z. Leoński, M. Szewczyk, M. Waligórski, K. Wojtczak, Wrocław 2005b.