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## ADMINISTRATIVE REFORM AND DEBATES OVER PUBLIC AGENCIES' ROLE IN SERBIA\*

*Over the past 10 years, there has been a proliferation of agencies in the Serbian public sector with varying degrees of independence and delegation by the government. Agencification in Serbia has been rarely discussed in scholarship, and in most recent public debates it is often criticized as being “an unnecessary budgetary burden”, a “grave threat to democracy” and the “party based atomization of state administration”. In the context in which Serbia is in need of a larger government in order to consolidate democracy, improve respect for human rights and enhance economic development, the agencies have also become collateral public damage from the mantra of the ‘requirement to save’. Having in mind that Serbian economic and political development over the past decades has been more than troublesome, this article looks into the public perception of agencification and related political debates, including some policy proposals. The article offers preliminary explanations of possible causes of the specific perception of agencies in the Serbian public, as well as an account of the consequences of current perceptions of agencification. Special emphasis is put on the de legitimization of the authority of scientific knowledge in society.*

Keywords: *Public agencies. Administrative law. European integration. Anthropology of state. Public perception of law.*

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## 1. INTRODUCTION

The establishment of public agencies in Serbia over the past decade has attracted a lot of public interest. However, little is known in the public about agencies and the process of agencification, and these have rarely been topics in the academic discourse. The Serbian general public—gripped by the ‘fateful’ issues (primarily the disastrous territorial, demographic and economic outcomes of the disintegration of Yugoslavia), popular notions about the egalitarian character of democracy, a conceptualization of sovereignty reminiscent of the nineteenth century rather than the twenty-first, as well as the deeply rooted belief that all important state functions are just party-, regional-, kinship- or interest-based sinecures—has been informed about agencies, the purpose of their establishment and their role in the contemporary transformation of public administration in the context of pre-election party conflicts. Entangled in the dynamics of the election fever, the discourse on agencies has been focused on narratives that generally instigate negative connotations of the agencies, the scope of their work and their competencies. The demonization of agencies in public discourse has reached such an extent and penetrated so deeply that, in Serbia, public agencies have almost become synonymous with corruption.

In this article, we examine: 1. the complementing of a democratically elected government with expert regulatory bodies; 2. the broadening of the agencification process, and the difference between the causal relationship and the coincidence of agencies’ appearance alongside the democratization and Europeanization of the Serbian public administration; and 3. the proliferation of agencies and similar independent bodies in the context of participacy. In addition, we present general narratives on agencies in the Serbian public, which give us grounds to believe that in further research it will be possible to follow the formation of cultural perceptions of the state, democracy, human rights, expertise and so on, and even the very authority of science *of* and *in* society. In taking perspectives from administrative law, socio-legal studies, the anthropology of science and the anthropology of public policy, we offer preliminary explanations of the possible causes of the specific perception of agencies in the Serbian public, as well as explanations for the possible consequences of such perceptions of agencification, putting special emphasis on the de-legitimization of the authority of scientific knowledge.

The transformation of Serbian administration has been influenced by two major intertwined processes. The first is the transformation to the modern market economy; the second is integration into the European Union. Due to the extent and pace of reforms implemented for accession to the European Union, the process of reforms is, in the public (both expert and general), often equated with the process of the country’s integration

in the EU. After the disintegration of the Socialist Federal Republic of Yugoslavia, during the union with Montenegro,<sup>1</sup> Serbia underwent a problematic and slow process of social and legal changes, including market reforms and a privatization process, which took place in the midst of the regional wars and UN sanctions. For this reason, Serbia was to a great extent lagging behind other transition countries in Eastern and Central Europe regarding the implementation of reforms. In that context, the Serbian transition is usually referred to as “delayed” or even “failed”.<sup>2</sup>

The European Union’s integration of Serbia includes the transformation of the country’s legal system to a great extent. Therefore, an adequate core of civil servants is required for both the harmonization with the EU *acquis communautaire* and the implementation of newly established standards and procedures. The growing number of tasks in both developed and developing countries are increasingly performed by public agencies as bodies with varying institutional settings and competences. Public agencies,<sup>3</sup> however, have only been widely introduced into the Serbian legal system fairly recently, after the political change in 2000. In this paper, we will not go into details of the position or role of any single agency in Serbia. Primarily, we shall analyze the general regime set for the foundation and operation of agencies, as well as the different ways they have been created in Serbia and the generated interpretations of their role. As was argued by the Sigma assessment in 2009, the organization of administration in Serbia lacks clarity and accountability. The assessment specifically outlined that:

Agencies, as specific ad hoc organisational forms of administrative technical services, appeared in Serbia after 2000, allegedly as an answer to the need for harmonising national legislation with that of the EU. In practice they were a political attempt to create a parallel state administration, which would be free of Milosevic’s affiliates. Now it has become a maze of administrative agencies without clear accountability lines, which complicates significantly the state administrative organization.<sup>4</sup>

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<sup>1</sup> First as the Federal Republic of Yugoslavia (1992–2003) and later as the State Union of Serbia and Montenegro (2003–2006).

<sup>2</sup> N. Miller, “A Failed Transition: The Case of Serbia”, *Politics, Power, and the Struggle for Democracy in South East Europe*, (eds. Dawisha Karen and Parrott Bruce) 146–188. Cambridge, New York: Cambridge University Press 1997; F. Bieber, “The Serbian Opposition and Civil Society: Roots of the Delayed Transition in Serbia”, *International Journal of Politics, Culture, and Society*, 1/2003, 73–90

<sup>3</sup> We have opted to use the term ‘public agencies’, bearing in mind that terms such as government agencies and administrative agencies are also comparatively used for bodies of public law performing a variety of administrative and regulatory tasks. We have done so predominantly to reflect the terminology used by the Serbian legislation.

<sup>4</sup> Sigma, Serbia Administrative Legal Framework Assessment – May 2009, Paris 2009, 3–4.

With this in mind, we offer a general overview of the current trend of agencification in Serbia, and contemplate some impediments for this part of the administrative reform.

## 2. AGENCIFICATION AND ADMINISTRATIVE REFORM

The agency model of administrative organization is not a recent one. Agencies and other independent institutions were employed to perform a number of tasks in the United Kingdom as early as the eighteenth century, and this model was later transferred to the United States.<sup>5</sup> However, there has been a notable increase in the establishment of agencies since the 1980s. Over the past 30 years and across jurisdictions, a broad redefinition of both the organization and functions of public administration has taken place.<sup>6</sup> These were predominantly the result of changing relation between the state and the economy and the widespread processes of privatization, deregulation and re-regulation and the new functions that the state was to perform.<sup>7</sup> An important aspect of the administrative reform is the widespread use of public agencies as a model of administrative organization that is used to perform an increasing number of tasks requiring a high level of specialized knowledge.

It is often referred to in the literature as the process of *agencification* of public administration, both at national and supranational levels. Public agencies have been characterized in the literature as “the forth branch of Government”<sup>8</sup>, potential “hierarchy beaters”<sup>9</sup>, “one of the main features of a rising regulatory state”<sup>10</sup>; this comes alongside thorough analyses of the main features of their organizational setting, power delegation, control, and the democratic deficit attached to non-elected decision-making bodies. When considering the benefits and risks of employing agency models in the context of reforms in transition countries, Laking pointed to several lines of criticism directed toward agencies: the “loss of control of agency operations; abrogation of political accountabil-

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<sup>5</sup> M. Everson, “Independent Agencies: Hierarchy Beaters?” *European Law Journal*, 1/1995, 182.

<sup>6</sup> C. Pollitt, *et.al.* “Agency Fever? Analysis of an International Policy Fashion”, *Journal of Comparative Policy Analysis: Research and Practice*, 3/2001, 271-290.

<sup>7</sup> G. Majone, “The rise of regulatory state in Europe”, *West European Politics*, 3/1994.

<sup>8</sup> <sup>9</sup> P. Strauss, “The place of agencies in government: separation of powers and the fourth branch”, *Columbia Law Review*, 3/1984, 573-633.

<sup>9</sup> M. Everson, 180-204.

<sup>10</sup> F. Gilardi, “Policy Credibility and Delegation to Independent Regulatory Agencies: a Comparative Empirical Analysis”, *Journal of European Public Policy*, 6/2002, 873-893.

ity; evasion of general rules for staffing and budgets; exposure of government to financial and employment risks; opportunities for political patronage and corruption”.<sup>11</sup> As we will point out in our analysis, all of these criticisms have been associated with the development of agencies in Serbia and have dominated the public discourse, gravely endangering their reputation.

There is no unified agency model on a national and supranational level. Agencies differ in their independence (relations to government, core public administration, parliament) and the number and nature of conferred tasks. Diversity of institutional design and the extent of competencies become even greater in supranational structures such as the European Union. Intensifying the integration within the European Union, member states have transferred a significant number of their competencies to the EU—which, on one hand, resulted in a greater number of tasks, and on the other hand, created a need for personnel enlargement in the EU administration.

Motives for establishing agencies at the national level have also been widely considered in the literature.<sup>12</sup> These include the establishment of specialized bodies with sufficient levels of expertise in technical, scientific, economic and other fields to command a growing number of regulatory and information tasks. Agencies are deployed to deal with a mounting burden of tasks regarding individual decision-making, issuing permits, certificates and the provision of other services for citizens. In addition to the aforementioned motives, the Serbian context is also characterized by a growing number of qualitatively new tasks that its public administration faces in the context of European integration—not just the usual challenges, brought about by globalization, but the liberalization of numerous markets and new kinds of regulation and supervision by independent bodies. Therefore, transition countries have an additional motivation to establish more public agencies and other independent organizations. Consequently, the public agency model has become “widely diffused” in countries of Central and Eastern Europe, and Peters argues that “selecting the agency format for governing represents a now common choice for structural reform, but it is not always certain that it can produce all the benefits that often are ascribed to it”.<sup>13</sup> Following this thesis, we shall proceed to a further analysis of the agency model in Serbia.

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<sup>11</sup> Laking, “Agencies: Their Benefits and Risks”, *OECD Journal on Budgeting*, 4/2005, 8.

<sup>12</sup> Everson, 1995; Pollitt, et al. 2001; Giraldi, 2002; D. Geradin, Laking, 2005. N. Petit, *The Development of Agencies at EU and National Levels: Conceptual Analysis and Proposals for Reform*. BYU School of law: Jean Monnet Working Paper 01/04.

<sup>13</sup> B. G. Peters, “The politics and management of agencies”, *Transylvanian Review of Administrative Sciences*, 2011, Special Issue, 8.

### 3. PUBLIC ADMINISTRATION REFORM AND THE INTRODUCTION OF THE AGENCY MODEL IN SERBIA

The agency model was fully introduced in Serbia only relatively recently (since 2000),<sup>14</sup> as public administration reform was hampered by the wars and sanctions of 1990s, the legacy of both a planned and self-managed economy and a one-party regime, and the absence of a developed civil society and democratic traditions. Over the past 10 years, there has been a proliferation of agencies in the Serbian public sector with varying degrees of independence and delegation by the government. *Agencification* in Serbia has rarely been discussed in the scholarship, and in most recent political debates it is often criticized as being “an unnecessary budgetary burden”, a “grave threat to democracy” and the “party-based atomization of state administration”.

With the fall of Milosevic’s regime and inclusion of Serbia in transnational integration processes, it was necessary to introduce a number of modern institutions able to facilitate economic, legal and societal change.<sup>15</sup> Societal and political change in Serbia, alongside public agencies, incorporated the introduction of a number of independent regulatory and control bodies, which include the Ombudsperson, the Commissioner for access to public information and personal data protection, the Anti-discrimination commissioner, the Anti-monopoly commission, and the State audit institution, etc. These were new bodies for the Serbian political sphere; thus the start-up of their work was more than challenging, and it was necessary to negotiate many budgetary obstacles and the lack of political will (predominantly from the government’s side) to enable the smooth enactment of activities. The challenges included finding appropriate office space, hiring qualified personnel and, later on, ensuring the implementation of decisions made by these bodies.<sup>16</sup>

Agencies, as specific administrative organizations, were widely instituted in the Serbian system from the very start of the reforms in 2001. As administrative legislation of that time did not provide for the establishment of public agencies, it was done by the government’s Decree on

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<sup>14</sup> However, there were examples of two administrative organizations set up as agencies in the early 1990s for the purposes of privatization – the Agency for Foreign Investments, Property and Production Transformation, which was later succeeded by the Agency for the Evaluation of Capital Value (before ceasing to exist in 1997).

<sup>15</sup> M. Milenković, “The Adoption of European Standards in the Sphere of Economic Law and (Anticipated) Cultural Change in Serbia”, *Issues in Ethnology and Anthropology*, 1/2010, 111–135 (in Serbian).

<sup>16</sup> See further: USAid (n.d.), Background information about Serbia’s Independent Agencies, 1–3; available at: <http://serbia.usaid.gov/upload/documents/jrga/Background%20information%20about%20Independent%20Agencies.pdf> Last visited 19 March 2013.

the General Secretariat and Other Services of the Government.<sup>17</sup> The establishment of several agencies as government services through bylaws was much criticized by the political opponents of the government at the time; the legal basis for their establishment, and the legal nature of the newly founded entities<sup>18</sup> were also partly debated in the literature. In our opinion, introducing a new form of administrative organization in 2001 in such a way and in a country that had barely come out of international isolation in fact facilitated the negative perception of public agencies from the very beginning.

In 2004, the Public Administration Reform Strategy was adopted to facilitate the depolitization, decentralization, professionalization, rationalization and modernization of Serbian public administration, coupled with regulatory reform.<sup>19</sup> Only in 2005, and with a number of public agencies already in operation, was the Law on Public Agencies passed, which defined the basic structure for the establishment, operation and control of agencies. However, it does not constitute any single agency but rather introduces a general framework that might still be altered by other laws when establishing any new agency.

The Constitution of Serbia provides that public administration affairs shall be performed by ministries and other public administration bodies stipulated by the law, and that particular public powers may also be delegated to specific bodies to perform regulatory functions in particular fields or affairs.<sup>20</sup>

In accordance with the Law on Public Agencies,<sup>21</sup> these bodies are established for “developmental, expert and other regulatory tasks” if they act and fulfill their purpose in a relatively autonomous social field that does not require continuous and direct political supervision through the ministry and the government. The body establishing public agencies must be entrusted to do so by the law (passed by the Serbian Parliament) (Art. 2). This is especially important as a substantial number of agencies are still established through government decisions, but after the critique of

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<sup>17</sup> Government of Serbia, Decree on the General Secretariat and Other Services of the Government. *Official Gazette of the Republic of Serbia*, no. 21/2001.

<sup>18</sup> A. Martinović, Reform of the state administration in the process of state’s political and economic transition. *Zbornik radova Pravnog fakulteta*, 2006, vol. 40, no. 2: 155 76 (in Serbian).

<sup>19</sup> Government of Serbia, *Public administration reform strategy*. Belgrade 2004 (in Serbian).

<sup>20</sup> Articles 136 and 137 of the Constitution of Republic of Serbia (National Assembly of the Republic of Serbia, Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 83/2006).

<sup>21</sup> National Assembly of the Republic of Serbia, Law on Public Agencies, *Official Gazette of the Republic of Serbia*, no. 18/2005, 81/200

public and legal scholars and the enactment of the Law on Public Agencies, this would only occur if provided for in the relevant legislation. Public agencies may be entrusted with the following tasks: 1. enacting bylaws for the implementation of laws and other general acts of the parliament and government; 2. individual decision-making; and 3. issuing public certificates and keeping records (Art. 3). They are independent in their operations and their work cannot be directed by or coordinated with the work of government (Art. 4). Public agencies have legal personality, and they are financed from the services they provide and through the central budget, donations, sponsorships and other sources as prescribed by law (Art. 5–6). Clearly, it was envisaged that a number of agencies be established and partially run with the foreign aid received in the reform process. Finally, the law stipulates that the legal framework put in place in connection with the legality of conduct, political impartiality, education and skill of civil servants will apply to the employees of public agencies (Art. 7). However, it does not envisage for this general framework for public administration to be applied to the salaries in public agencies, which will be discussed in some more detail later on. The law also details the process of establishing agencies by the government, regional authorities and local municipalities; the management of public agencies and their tasks, the protection of the public's interest in agency conduct, relations between agencies and the users of their services, and the financing and termination of agencies.<sup>22</sup> However, many agencies were established by the relevant legislation passed in parliament and, therefore, their organizational structure and relationship with the government varies.

There are several classifications of agencies in Serbian legal scholarship. Lilić categorizes them as follows: 1. public agencies (in the narrow sense); 2. agencies (public agencies in the broad sense); and 3. state agencies. This differentiation designates the first and second categories as being those bodies that have public authorization to perform professional developmental, regulatory and administrative tasks, whereas state agencies primarily perform the tasks of state administration conferred upon them.<sup>23</sup> Tomić distinguishes between 1. administrative (state) agencies (having an administrative and executive character, and being part of state administration); and 2. public agencies as expert public bodies outside the state administrative apparatus, conducting certain tasks of public interest (However, part of wider public administration, albeit mostly distinguished

<sup>22</sup> For a detailed overview of the Law on Public Agencies, see Z. Balinovac, Overview of the Public Agencies Act, *The government and state administration system in the Republic of Serbia – compilation of laws and explanatory articles*, (eds. Z. Balinovac and J. Damjanović), Belgrade 2006, Dial, Grafolik.

<sup>23</sup> S. Lilić, “Javne agencije i upravna reforma”, *Razvoj pravnog sistema Srbije i harmonizacija sa pravom EU*, (ed. S. Taboroši), Belgrade 2010, University of Belgrade, Faculty of Law (in Serbian).

by their status).<sup>24</sup> Finally, in analyzing different types of existing agencies in Serbia, Dimitrijević finds that they:

...can be divided into four or five groups: non-state public agencies as entities with public authoritative functions—public services (e.g., Agency for Privatization), public agencies as other organizations with special status outside a state administration (e.g., Agency for Telecommunications), public agencies as state agencies, and the “professional government services”—government agencies (e.g., Agency for Improvement of Public Administration), public agencies as a separate public (state’s) administrative organizations within the government administrative system (e.g., Security Information Agency) and, at the end, agencies that may not fall into any of these four groups—agencies *sui generis* (i.e., Agency for Deposits Insurance, Bankruptcy and Liquidation of Banks).<sup>25</sup>

From the above theoretical classifications, a conclusion can be drawn that abundant legislative activity of several successive governments has created a complex network of different public entities. This intricate structure is not problematic in itself, since different forms of organization are usually a manifestation of the complexity of administration. Nevertheless, the way in which many of these agencies are organized has created a problematic public perception of agencies and laid fertile ground for various complaints to be made about them (in addition to standard objections, such as political parties’ abuse of agency powers, money squandering and so on). However, the greatest damage thus generated lies in the *impossibility of building trust in the expertise itself*.

Competencies covered by the agencies in Serbia now range from health care (the Agency for Accreditation of Health Care Institutions in Serbia, the Medicines and Medical Devices Agency of Serbia) to those in the field of transport (the Road Traffic Safety Agency, the Civil Aviation Directorate), to telecommunications (the Republic Broadcasting Agency) and energy (the Serbian Energy Agency), to name just a few.<sup>26</sup> Comparatively, agencies are sometimes used to facilitate time-limited processes. The example of such an institution in Serbia is the Agency for Privatization, which was established in 2001 to facilitate the time-limited process

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<sup>24</sup> Z. Tomić, Upravne i javne agencije u Srbiji. *Pravo i privreda*, 2008, vol. 45, no. 5–8: 413–426 (in Serbian).

<sup>25</sup> P. Dimitrijević, Public agencies in Serbia, TED conference, 1–3 February, Budapest. 2012, [http://teddialogues.org/wp-content/uploads/2012/01/dimitrijevic\\_ShortProp.pdf](http://teddialogues.org/wp-content/uploads/2012/01/dimitrijevic_ShortProp.pdf) Last visited 19 March 2013.

<sup>26</sup> The number of governmental agencies (entities actually holding the term “agency” in their names) in Serbia has been a topic of much speculation in the media and is estimated to be over 130, coupled with many other offices, bureaus and directorates that perform administrative tasks. See B92, Serbia is a record holder in a number of agencies, 2011: [http://www.b92.net/biz/vesti/srbija.php?yyyy=2011&mm=12&dd=17&nav\\_id=566448](http://www.b92.net/biz/vesti/srbija.php?yyyy=2011&mm=12&dd=17&nav_id=566448) (in Serbian) Last visited 19 March 2013.

of privatization in Serbia by 2005. However, 11 years later, the process has not been finalized and the agency is still operational.<sup>27</sup>

There are several dominant motives for the continuous establishment of new agencies in Serbia: 1. the generation of new state functions, which mostly arise as a consequence of harmonization with the European Union, but also from other forms of international integration; 2. requirements to unify expert capacities (existing and new) to perform specific regulatory and other professional tasks; however, in accordance with the analyzed discourses, we also point to 3. party-based employment of staff in the public sector/administration; and 4. requirements to attain salaries that are higher than the usual level in the ‘central administration’.

The Serbian public administration (and the public sector in general) is facing great challenges in confronting demands. The first demand is to reform and introduce a number of institutions and processes. Another is to reduce public spending, which has often been stipulated by international institutions such as International Monetary Fund, putting additional pressure on the transitional government. It is a widespread public perception/narrative that a crucial social and economic problem is the excessive number of employees in public administration; this falsely adds to agencies’ negative connotations in Serbia. It is indeed public services and enterprises (still largely owned and subsidized by the state), and not public administration bodies, that have the highest level of excessive hiring.

As mentioned above, there is a difference between the salary system of core state administration/civil servants and those employed in public agencies and other independent bodies. The first is done in line with the Law on Salaries of Civil Servants and Employees and the latter in line with the Law on Salaries in Public Agencies and Public Services.<sup>28</sup> While not going into detail on the civil servants’ system of advancement and pay in Serbia, discrepancies created among salaries in different parts of civil administration are seriously endangering the very idea of independent bodies. It creates a rivalry in the public administration and among different parts of the civil core that should be cooperating for the common good. Even though some of these discrepancies are actually created in order to keep those with specialized knowledge in the public service (for example, experts in telecommunications, finance and so on), the high level of ‘partization’ of employment in the public sector does not allow for this to be properly comprehended by the public.

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<sup>27</sup> As it was argued by the Sigma assessment: “public agencies in general are producing poor results and are in practice unaccountable to the government, as the accountability mechanisms established in the legislation are rarely applied in practice” See: Sigma, 3.

<sup>28</sup> Recruitment and salary systems for Serbian civil servants are analyzed in detail in: A. Rabrenović and Z. Vukašinović Radojčić Civil service reform in Serbia – overcoming implementation challenges., *Serbian law in transition – changes and challenges* (ed. M. Milošević), Belgrade 2009, Institute of Comparative Law.

To conclude, there is a trend of establishing new agencies each time a minor or major field is to be regulated, when a new system of supervision or certification is to be introduced, or when Serbia is to be included in an international program. There is no doubt that each of these tasks requires the engagement of professional staff and, above all, of additional personnel who could perform new tasks in public administration. However, there is a serious question to which there is no simple answer: is it appropriate to set up new administrative organizational structures for a large number of particular administrative tasks, which would all require necessary management, administrative and technical structures in order to be functional themselves? This fashion of *ad hoc* establishment of agencies casts doubt on the process of reform itself, and consequently on Serbia's European integration as well. In this way, the modernization, democratization and Europeanization of Serbian society are pushed into the background in public discourse, which is heavily burdened with party and ideological divisions, and in that context reforms have become perceived as pointless.

#### 4. PERCEPTION OF AGENCIES IN SERBIAN PUBLIC DISCOURSE

In 'critically' inclined social sciences, the culture of expertise is usually connoted in a negative way as a model on which global transnational neocolonialism is established.<sup>29</sup> According to this type of interpretation, a new colonial order has been globally established by soft domination that uses economics, law, popular culture and expert knowledge instead of war, and which is run by the "transnational managerial class".<sup>30</sup> Globalization is viewed as a process that executes the objectives of colonialism with greater efficiency and rationality than classical forms of colonialism.<sup>31</sup> The establishment of such a global order, the story goes, is often achieved through political reforms, including the reform of public administration through international assistance for economic, political and legal institution-building—typical of the EU.<sup>32</sup> It is based on the im-

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<sup>29</sup> R. D. Holmes, E. G. Marcus, *Cultures of Expertise and the Management of Globalization: Toward the Re Functioning of Ethnography*, *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems*, (eds. A. Ong and S. J. Collier), Oxford 2008, Blackwell Publishing, Ltd.

<sup>30</sup> M. Boas, D. McNeill, *Global Institutions and Development: Framing the World?* London 2004, Routledge.

<sup>31</sup> S. B. Banerjee, S. Linstead, *Globalization, Multiculturalism and Other Fictions: Colonialism for the New Millennium?* *Organization*, 2001, vol. 8, no. 4: 683–722.

<sup>32</sup> P. Holden, *In Search of Structural Power: EU Aid Policy as a Global Political Instrument*. Farnham 2009, Ashgate Publishing.

posed logic of ‘development’ that shaped the worldviews in many cultures of the ‘third world’ in a way that diminished local traditions and helped ‘developers’ control the lives of ‘developed’.<sup>33</sup> This type of criticism is aimed at the supposed consequences of the ‘expertise’ imported from the West for entities in the Third and the Fourth Worlds—devastation of the economy and social security system, regression of educational systems, the underdevelopment of science and technology, and so on.<sup>34</sup> Acceptance or refusal of reforms induced by international organizations and ‘Western’ outsiders is studied in the critical social sciences as an antagonistic process of defining and redefining of identities, based on which insight can be gained indirectly about what a certain population thinks of itself and others, and its culturally defined, folk concepts of the state, law, economy and, administration. Research on the reform of public policies and the state itself has become, over time, a special field of research in which anthropology of the state and anthropology of policy intertwine so as to investigate both the cultural background and cultural responses to the idea that all life can be “managed” by “experts”.<sup>35</sup> It was also referred to by a renowned sociologist as “state capture”.<sup>36</sup>

Without entering into a discussion of whether the culture of expertise actually causes poverty among non-Western populations (which is the dominant narrative of ‘anti-globalization’) or if it rather coincides with attempts to simultaneously diagnose and cure the causes of poverty, we focus on a case in which it is evident that the consequences of agencification are positive, yet they are perceived as if they were not.

In contemporary Serbia, where expert agencies generally have negative connotations in the public (which sees agencies as an instrument of domination and corruption), criticism of the culture of expertise would not be any different from the global average. In Serbia, however, there is another twist to this—experts are not only criticized as arrogant reformers, servants of tycoons or heapers of budgetary funds, but also as fake specialists and impostors. In this article we use the agencification process to open a debate on the misunderstanding of scientific authority and professional expertise in times of social change. We fear that in a period of global re-traditionalization, in a time when we are hearing calls to ‘end capitalism’ and make a new ‘global social revolution’, the victims of such

<sup>33</sup> A. Escobar, *Encountering Development: The Making and Unmaking of the Third World*. Princeton, NJ 1995, Princeton University Press.

<sup>34</sup> S. Razack, *Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms*. Toronto 1998, University of Toronto Press.

<sup>35</sup> D. Mosse, “Anti social anthropology? Objectivity, objection, and the ethnography of public policy and professional communities”, *Journal of the Royal Anthropological Institute*, 4/2007, 935–956.

<sup>36</sup> V. Pešić, “State Capture and Widespread Corruption in Serbia”, CEPS Working Documents, 2007, no. 262. [aei.pitt.edu/11664/1/1478.pdf](http://aei.pitt.edu/11664/1/1478.pdf) Last visited 7 December 2012.

a revolution would not only be capitalism, human rights and democracy, but also, we postulate, the very authority of science *in* and *of* the society would likewise suffer significant consequences. In Serbia, both by over-emphasizing and underestimating the incorporation of expert knowledge in public administration is widely used to manipulate the democratic system, especially in election years. Narratives stating that agencies pose a ‘grave threat to democracy’, ‘an unnecessary budgetary burden and duplication of institutional structures’ within ‘party-based atomization of state administration and corruption, like employment of political parties’ activists’ have colonized the public discourse and thus the popular perception of agencies in recent years. These narratives of the worthlessness, uselessness and corruption of agencies are a continuation of a somewhat older *general anti-expert narrative* that was typical of the early 2000s. Instead of being seen as knowledgeable, creative, efficient, intelligent, motivated, industrious or simply competent in a given area of expertise, an ‘expert’ has become a public figure that is mocked and denounced, serving as a punching bag for public disillusionment with democratic reforms.

This fertile ground, well prepared by anti-expert narratives, has been further cultivated by public narratives stating that agencies are superfluous. Creators of anti-agency narratives manipulated public opinion by offering a ‘commonsense’ and (intuitively) ‘evident’ solution, which postures that if the agencies do not serve to apply expert knowledge in order to improve state administration, they must serve some other purpose—which must be to provide posts for party-based personnel. In this formula of rhetoric manipulation (or logical fallacy?), *the anti-expert narrative is paired with the anti-democratic narrative* (political parties do not serve to articulate the interests of citizens, their associations or groups in democratic systems, but rather simply provide employment through the state, as the biggest employer, in the context of an economic crisis). In the context of a general lack of trust in yet unbuilt institutions of a classical democratic system, the introduction of new types of administrative bodies simply did not stand a chance.

We come to the conclusion that it is a matter of confusing cause with coincidence (which is dangerous for the fragile Serbian democracy, at least as much as confusing causality with conditionality, which we have already written about.<sup>37</sup> In this confusion, agencification, which is coincidental with the ‘crisis’, has been publicly held to be its (partial) cause. In the public, crisis is not taken to mean concern about the relatively high level of corruption, an unsatisfying level of respect for human rights, the regression of the educational system, health care and social

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<sup>37</sup> M. Milenković, M. Milenković, *Serbia and the European Union: is ‘culturalization’ of accession criteria on the way? EU Enlargement Current Challenges and Strategic Choices*, (ed. F. Laursen), Brussels, 2013, P.I.E. Lang (forthcoming).

security, and other processes that could be assumed to be of concern for responsible politicians. The ‘crisis’ is actually taken to mean the economic crisis (in the context of the long-lasting trend to reduce politics to economy), while the causes of the economic crisis are sought in the ‘oversized’ public administration. So, in the context in which Serbia is in need of a *larger* government in order to consolidate democracy, improve respect for human rights and develop economically, the agencies have become collateral public damage of the mantric ‘requirement to save’, according to the interpretation that economic crisis will be resolved through the ‘reduction of administration’ (and not, for instance, through an appropriate conceptualization and proper implementation of reforms, or by opening the market, maximizing comparative advantages and increasing productivity).

There is an intriguing trend in Serbia in which agencies are predominantly perceived as an instrument of *reduction* and not as an increase of expertise in administration. Although they are formally expert institutions that should provide continuity of scientific authority in the administrative system (interrupted by democratic decision-making and the permanent change of political actors in democracy), agencies are perceived in a negative way. Why? How is it possible that the agency model—which was conceived to *strengthen* the role of expert knowledge in democratic systems vulnerable to the constant change of actors in charge of issues that require expertise—is perceived in Serbia as a *weakening* of the state and a *decline* in the quality of public services? We searched for the answer to this question in the dominant public perceptions of the state, political parties, democracy, as well as the ‘expertise’ itself. When the analysis characteristic of administrative law and socio-legal studies is complemented with the analysis characteristic of the anthropology of the state and the anthropology of policy, along with the existing knowledge in the anthropology of science, we discover that the agency model is *simultaneously perceived in accordance with and grafted onto* the traditional model of employment ‘through connections’.<sup>38</sup> Accordingly, the very status of ‘expert’ has been called into question. From contesting the results of ‘expert teams’ that controlled privatization after 2000 (which caused additional economic harm in Serbia after the atrocities in the 1990s and led to the pauperization of a huge percentage of the population) to contesting the requirement for expertise in order to perform presidential functions, the status of knowledge itself is disputable. Knowledge and expertise have been discredited, lost their authority in the society, and we interpret this loss as a stable indicator of re-traditionalization.

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<sup>38</sup> Once following kinship and ancestry, and nowadays party based, ‘connections’ are perceived as and often indeed are the primary model of gaining access to employment in an economy in which the state is the biggest and, in many parts of devastated country, the only reliable employer.

Alternatively, it is possible to interpret anti-agency narratives as an *epiphenomenon of democratic surplus*. In the past few decades, successful resolution of the problem of expertise deficit in democracy has led to the creation of a new problem—that of democratic deficit of independent agencies. At the moment, however, a new process is taking place: resolving the problem of democratic deficit has resulted in the problem of *democratic surplus* (political parties that won the elections and thus gained control over administration ‘stroked back’ and once again placed expert decision-making on issues that require expert knowledge under their control). This process has so far remained unnoticed due to the fact that expertise deficit, democratic deficit and democratic surplus appeared practically at the same time (after 2000 in Serbia). This interpretation differs from the usual interpretation of democratic surplus, which points to the fact that, relatively speaking, in comparison to other systems, the legal and political system of the EU can be seen as an entity characterized not by democratic deficit but by “democratic surplus”.<sup>39</sup> We use the term ‘surplus’ of democracy to negatively connote the fact that political parties see public administration as an inseparable element of the electoral system, and not as a stable system relatively independent of party changes, even though it was proclaimed as such in Serbia’s strategic and legal documents.<sup>40</sup> In such a constellation, public agencies and the tasks they implement become captured by yes/no electoral dynamics similar to the one in which a referendum boils down an issue into a single question that is amenable to a yes or no answer. This reduces preferences to dichotomous choices, and in doing so, divorces the issue from its context. Referendums conceive choice—for example, to join the EU, or not; to have a Constitutional Treaty, or not—as isolated from other choices that governments must make. This places a serious burden on the information that citizens have on the particular issue.<sup>41</sup>

In Serbia, this process is even more complicated because dominant actors tend to attribute a referendum-like character to any regular elections, so the very process of the consolidation of democracy is threatened by the development of democracy itself (understood in electoralist terms and in the atmosphere of a referendum).

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<sup>39</sup> A. Moravcsik, “In Defence of the ‘Democratic Deficit’: Reassessing Legitimacy in the European Union”, *Journal of Common Market Studies*, 4/2002, 603–624.

<sup>40</sup> Including the Government Strategy of Reform of Public Administration (Government of Serbia, 2004) and Law on Civil Servants (*Official Gazette of the Republic of Serbia*, no. 79/2005, 81/2005 cor., 83/2005 cor., 64/2007, 67/2007 cor., 116/2008, 104/2009).

<sup>41</sup> G. Marks, “The EU’s Direct Democratic Surplus”, *EUSA Review*, 4/2008, 11.

## 5. POLICY SUGGESTIONS

It would be prudent to thoroughly reconsider the position and role of agencies in the Serbian administration system, since popular perceptions entrenched in democratic surplus result in a referendum-like atmosphere and participacy, and these two factors discredit both the aims of public service and the role of expertise in it. In that sense, we suggest a reconsideration of some of the existing agencies that can be either unified with others depending on their competencies or have their powers conferred to respective ministries. With regard to new or emerging tasks, these should be either conferred to ministries, or to existing agencies, with establishment of new agencies as a last resort.

In a context in which Europeanization and modernization are inseparably connected with the democratization of society, as in the case of Serbia, leaving the agencies open to frequent changes of governments eager for the 'partization' of institutions would have unpredictable consequences. On a global scale, this problem, both on a theoretical level and in practice, will arise not only in those societies where administration is spared from trends related to changes of the ruling political parties (where there are professionally appointed civil servants independent of political parties, and the general development of society is not seen as a matter of choice or even referendum, but rather as a stable structure not subject to party-based interpretations). Wherever it is not so, as in the case of Serbia, agencification done in a temporary fashion endangers, or even discredits, the very notion of agencification, so this highly advanced model of management can very quickly appear to be a historical relic, even before it could catch on, thus leaving the idea of the incorporation of expert knowledge into public administration without an institutional foundation.