

BIOGRAPHICAL CHARACTERISTICS OF REGULATORS AND THEIR POLITICAL VULNERABILITY

1. INTRODUCTION

What are the practical implications of legal rules governing the fixed-term mandates of heads of office? Can biographical profiles of office holders influence their political vulnerability? Are regulators with certain professional characteristics more vulnerable to a premature removal from their positions after a new government takes office? This essay reveals that experts with scientific and academic backgrounds, bureaucrats, and persons with political ties are differentially politically vulnerable over political cycles. As a result, biographical profiles of officeholders do affect the security of their tenure when governments change and thus, also have an effect on their independence. This conclusion is supported by empirical evaluation of 10 authorities in the Czech Republic that are monitored from 1993 to 2020. The original data set is used in this essay. It contains 196 individual nominations of office leaders.

Among the authorities surveyed were those traditionally operating as independent regulators, such as the Energy Regulatory Office, the Czech Telecommunications Office, the Office for the Protection of Competition, the Office for the Protection of Personal Data, but also, for example, the Office for Supervision of the Management of Political Parties and Movements.

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The Czech National Bank, as an independent financial market regulator and the Supreme Audit Office, were also included in the research.²

On purpose, we chose authorities with fixed terms of office that are not directly subordinate to any governmental ministry³. Fixed terms are intended to provide heads of office with a higher degree of independence as well as solidity in executions of their tasks and powers. Hence the regulator will be able to plan a long-term strategy and achieve more elaborate goals within a predetermined period rather than within an indefinite period.

The length of tenure is often designed not to coincide with changes of government so that the incoming boss will more likely not be an expression of the new government (Hanretty 2010). The term of office is usually deliberately different from the length of the political cycle of the government to reduce the effort to replace people when a new government takes office. The legislation also often states that government (or another appointing authority) cannot dismiss the heads of regulatory agencies during their term of office. Alternatively, the government may remove the head, but only under certain strict conditions and only for reasons unrelated to regulatory policy. However, all these provisions are not sufficient to ensure the proper completion of the whole mandate. When the chief officer leaves prematurely, there is no way to prove that the resignation was voluntary or submitted under hidden political pressure. Forcing the authority leadership to resign may represent a new constraint connected to the government. Leaving on their own accord may reflect a belief that the government should have a 'clean slate' to influence the forthcoming selection of a chief executive (Hanretty 2010). In many cases, the motivation to leave a position is derived from political circumstances.

² Surveyed authorities are listed in Table 1 in Section 3.

³ Chosen from § 2 act no. 2/1969 Sb. o zřízení ministerstev a jiných ústředních orgánů státní správy České socialistické republiky (kompetenční zákon).

Fernández-i-Marín et al. (2016) show that the professional characteristics of board members can play an important role in how tenure rules are observed in practice. Specifically, they focused on whether certain personnel characteristics or professional biography of regulators affect their persistence in office. Their study yielded unexpected results. Contrary to common expectations, it turned out that regulators with political links are less vulnerable to political cycles. Professionals and experts as regulators, on the other hand, turned out to be more politically vulnerable; their knowledge and expertise do not give them protection in times of political transition. For this essay, we adopt their methodological approach with our unique dataset.

At first, we identified the biographical characteristics of heads of office or board members (when the office is headed by a collegiate body). At the next level, we deployed the Adapted Index of Political Vulnerability (Fernández-i-Marín et al. 2016) and the Turnover Rate (Cukierman and Webb 1995) to measure the risk of early dismissal following the political change in order to assess how the biographical profile of individuals affects their political vulnerability and stability of their function. Surprisingly, however, in line with conclusions from Fernández-i-Marín et al. (2016), our results show that people with political ties are less politically vulnerable than those without such ties. Moreover, it has been shown that persons with professional expertise can provide for greater independence of their office by being less vulnerable to early dismissal attempts by incoming politicians.

The essay is structured as follows. The next section presents three hypotheses, each for one biographical characteristic. Section 3 illustrates the data about surveyed agencies. The analysis is embodied in section 4. Results are described in section 5, followed by conclusions in section 6.

2. EVALUATING POLITICAL VULNERABILITY

The main presumption is that when tenure rules are not followed, and there are premature departures from office when a new government arrives, the regulators have no opportunity to behave independently in their practice. For a vast number of authorities that are reviewed

in our study, their independence from politicians is affirmed at the level of legislation. It is desirable that the heads of these authorities are enabled to complete their mandates in a full period of their office. Their premature removal following a change of government would undermine their independent decision-making. However, it should be added, and it also further discussed below that the low political vulnerability is not a clear indicator of high independence.

Identical to Fernández-i-Marín et al. (2016), the main contribution is that we combine proxies of independence with the personal profiles of individual office representatives. In following hypotheses, we evaluate whether the heads of office with acknowledged ties to political parties, with a background as a traditional bureaucrat or with expert status are more likely to complete their mandate than regulators without these characteristics. We also focus on whether the political vulnerability is disproportionate across groups and whether people with particular biographical profiles are more likely to be recalled than people without that profile.

2.1 Hypothesis 1 – Heads of office with political affiliation will be more politically vulnerable than those without it.

We assume that regulators with political ties will align themselves with the objectives of their political establishment and as a result will become less independent. Then, when the ruling political authority leaves (a new government takes office), the political vulnerability of incumbent regulators will be higher. The new political administration will require to staff the agencies with their kindred associates while regulators with no political ties remain in office. Thus, to ensure greater stability and independence and to mitigate the turnover of heads of regulatory offices, it would be preferable for the heads to have no political affiliations.

2.2 Hypothesis 2 – Heads of office with an academic or scientific background will be less politically vulnerable than those without one.

Conversely, the general perception goes in the opposite direction regarding regulators with expert status (persons with a scientific or academic background). Rather than adapting it to political pressures, they are expected to apply regulatory policies based on their expertise in

stable and predictable way. This assumption is also supported by the traditional analysis of the delegation problem. Politicians are aware that they neither have sufficient expertise nor the capacity to adapt the policy to ever-changing conditions and different circumstances and so they delegate some of their powers to specialized bodies led by neutral experts (Majone, 1996). Hence, the new government will make little effort to replace them. Their political vulnerability will therefore be lower and their independence stronger.

2.3 Hypothesis 3 – Heads of office with bureaucratic background will be more politically vulnerable than those without it.

Lastly, the situation will be interesting for persons whose life biography is linked to the position of a bureaucrat. On the one hand, persons with a bureaucratic background may appear as neutral as the experts mentioned above, since they are not tied to any political party and their function is purely professional. On the other hand, they may tend to reduce their political vulnerability (trying to keep their position) and thus may adapt their behavior to the preferences of a new political administration. In the first case, the low political vulnerability of bureaucrats would be a desirable phenomenon. Proper mandate completion, free from political pressures, will ensure that bureaucrats are apolitical and professional in their regulatory policymaking and thus have greater independence. However, in the latter case, a low political vulnerability could be evaluated negatively. To defend their current position, bureaucrats may try to accommodate policy to the new policy makers. After a political change, bureaucrats want to reduce their political vulnerability by conforming to the new government's goals. They seek less political vulnerability and adjust their preferences to newcomer politicians rather than lose their jobs. In such cases, regulators with bureaucratic backgrounds may weaken agency independence (Fernández-i-Marín et al. 2016). Theory gives ambiguous predictions and resolving them is a matter of empirical evaluation. In general, we remain consistent with the idea that low political vulnerability leads to stronger independence. However, it is also necessary to look at whether or not there are significant differences between the group with and without particular characteristics.

3. DATA OVERVIEW

Our dataset contains information about heads of office or board members (when the office is headed by a collegiate body). The 10 agencies analyzed had a total of 196 mandates of chiefs or board members between 1993 and 2020 (Table 1). Persons who were currently in office and therefore did not have an expired mandate were excluded as well as persons with missing data. Finally, the analysis works with 149 nominations.

Table 1: Regulatory agencies in the Czech Republic

Agency	Year of creation	Term	Total Appt.
Czech National Bank	1993	Fixed	36
Supreme Audit Office	1993	Fixed	4
Office for Personal Data Protection	2000	Fixed	20
Office for the Protection of Competition	1996	Fixed	6
Office for Supervision of Political Parties	2017	Fixed	5
Transport Infrastructure Access Authority	2017	Fixed	1
National Sport Agency	2019	Fixed	2
Czech Telecommunication Office	2000	Fixed	22
Energy Regulatory Office	2001	Fixed	18
Council for Radio and Television Broadcasting	1992	Fixed	82

Note: the total number of appointments since creation.

The first step in the research was to identify all relevant office holders, both date of the start of their mandate and the date of its end (distinguishing between presumed mandate closure and the factual end). In terms of personal background, we investigated whether or not

regulators are publicly affiliated with a political party. Our evaluation was based on similar criteria as chosen by Ennser-Jedenastik (2016). Political affiliation was assessed according to the following criteria: (1) membership of a political party, (2) holding public office for a political party, (3) membership of a political party auxiliary group, (4) publicly speaking in favor of a political party. In practice, most cases fulfilled the first criterion; the remaining cases were rare.

In terms of other biographical data, it was ascertained whether or not they had a bureaucratic background, i.e., if they had worked as a civil servant for a significant part of their career. Another issue that was a subject of examination was the achievement of post-gradual education - PhD or higher degree.

The sources of this information included media archives, publicly available online sources and databases, ordinances of the government and other bodies, agency documents and statutes, and annual reports. In many cases where information was missing, it was necessary to contact the agency directly to request information.

Of those not currently in office, 30 percent have ended their mandate prematurely, while the remaining 70 percent have completed their full-term mandate to the end. Heads of office most often have a bureaucratic background; 34.4 percent come to the surveyed agency from other offices or ministries. Holders of a PhD or higher academic degree account for 24.1 percent. Finally, 35.8 percent of the representatives were publicly connected with a political party. Ennser-Jedenastik (2014) arrives at similar finding, namely that 34.4 percent of 303 chiefs of 100 West European regulatory agencies had a political party affiliation. Thatcher (2005) states that political affiliation ranged from 3 percent in Britain, 36 percent in Germany, 46 percent in France to 77 percent in Italy. Figures 1 to 4 show the percentage distribution of mandates in relation to the time difference between when the mandate should have ended by law and when it actually ended.

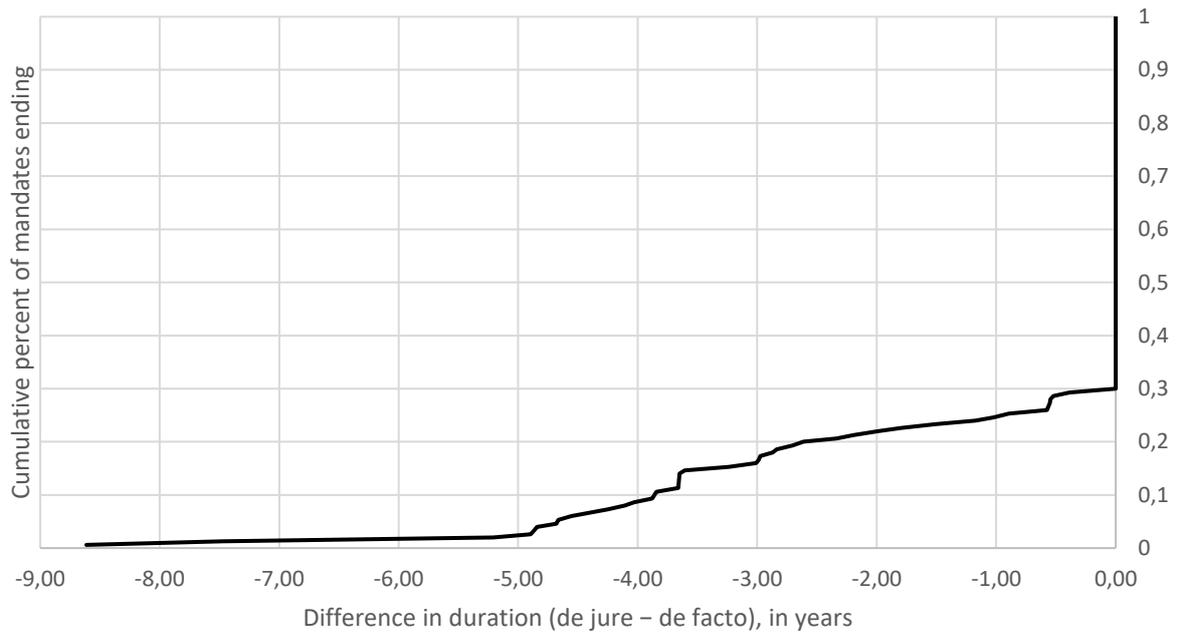


Figure 1: Cumulative plot of the ending of mandates, by all fixed mandates.

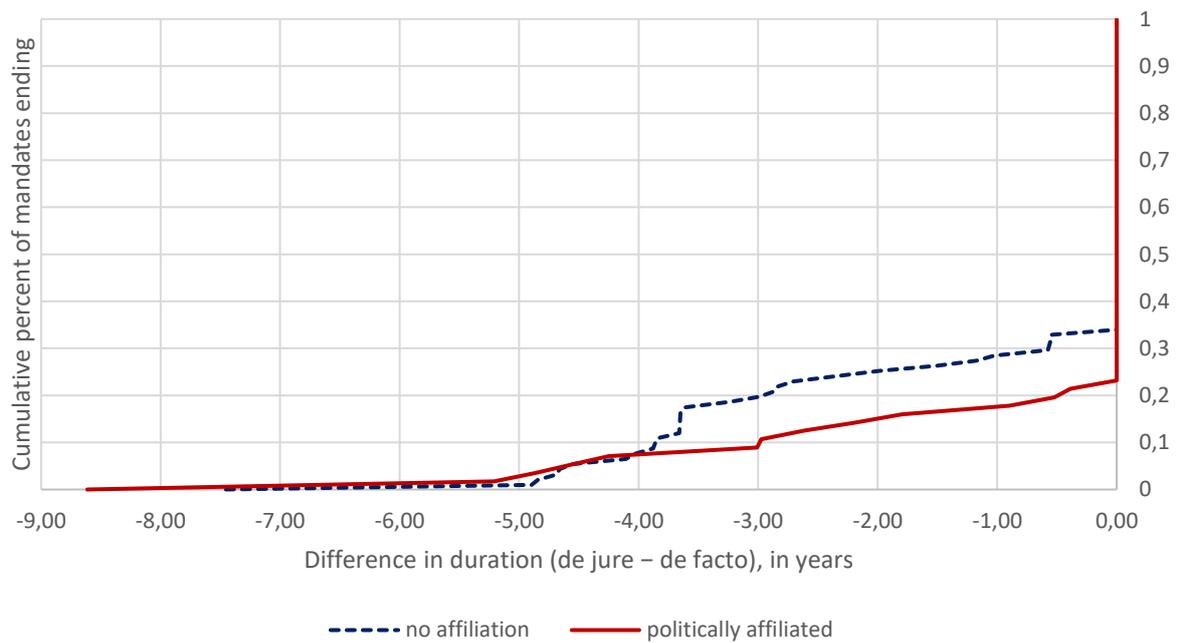


Figure 2: Cumulative plot of the ending of mandates, by political affiliation.

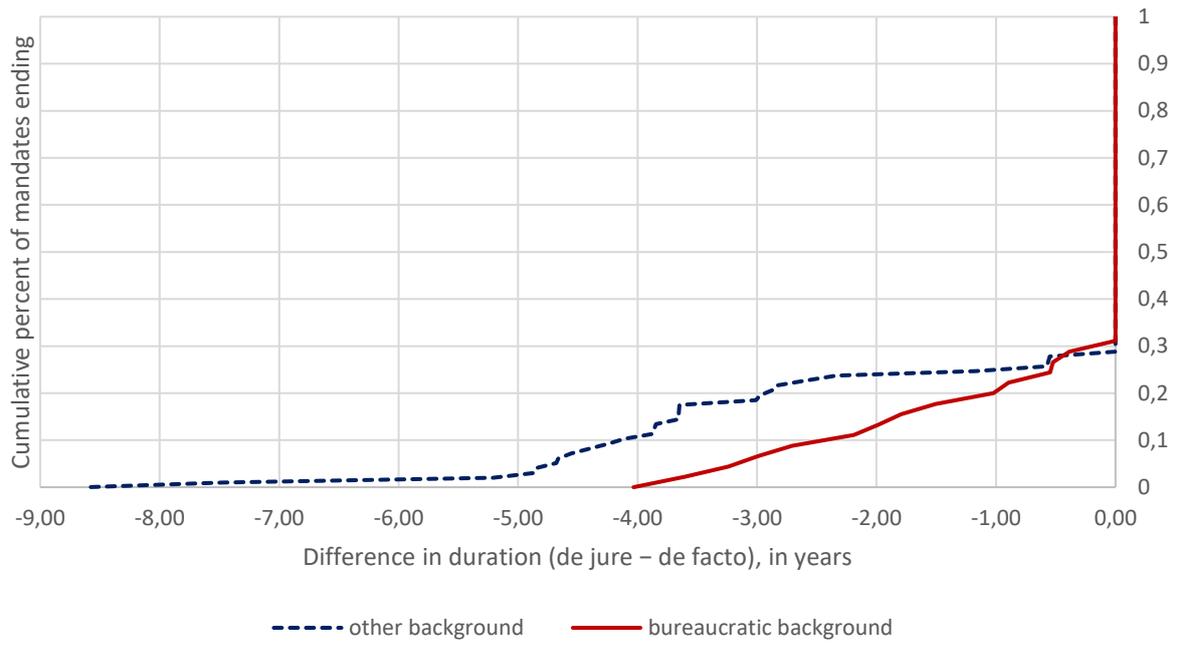


Figure 3: Cumulative plot of the ending of mandates, by bureaucratic background.

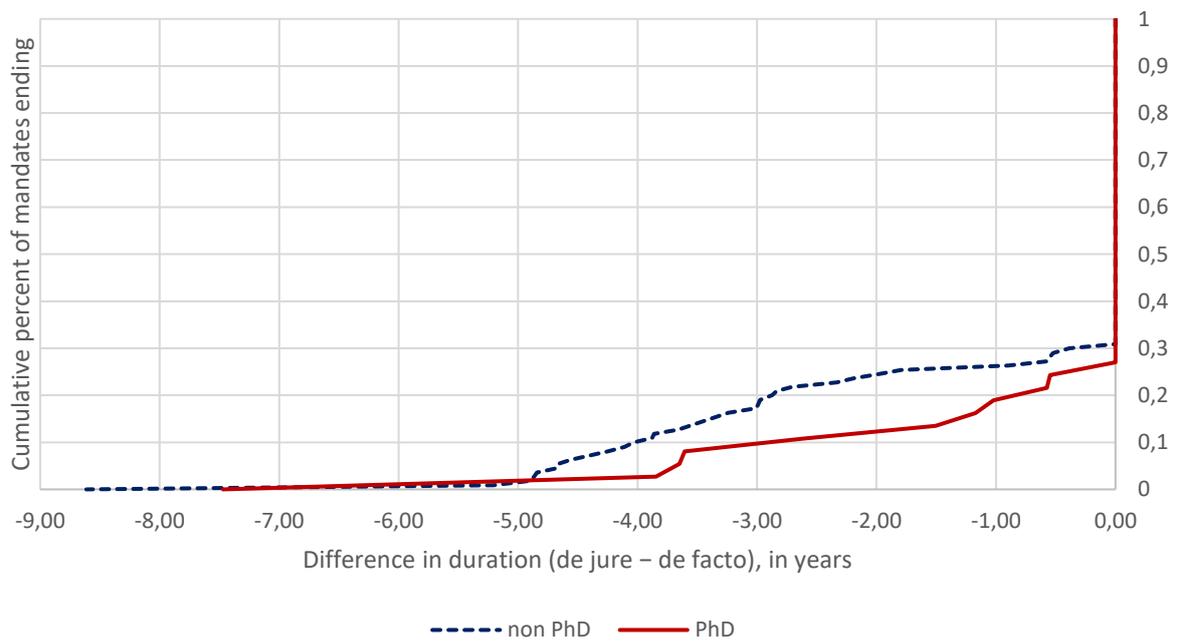


Figure 4: Cumulative plot of the ending of mandates, by PhD.

4. ANALYSIS

To put our hypotheses against the test, we use two different indicators of agency independence: the Adapted Index of Political Vulnerability (AIPV) (Fernández-i-Marín et al. 2016) and the Turnover Rate (TOR) (Cukierman and Webb 1995). Fernández-i-Marín et al. 2016 adapted the Index of Political Vulnerability (Cukierman and Webb 1995) to observe the number of changes in agency board members after the political transition. AIPV is defined as the proportion of appointments that end within 6 months following a political change against the total number of active mandates by then. Fernández-i-Marín et al. (2016) expected "higher values of the AIPV to be associated with increased political vulnerability, indicating how political transitions affect regulators' stability" (p. 233). We calculated AIPV for each group with a specific biographical profile, regardless of the agency they come from. Thus, we get 6 AIPV values (chiefs with/without political affiliation, with/without PhD degree, with/without bureaucratic background).

$$\text{AIPV} = \frac{\text{Number of mandates ending in one year after the political change}}{\text{Number of active mandates at the time of a political change}}$$

Unlike the original AIPV, we have defined the period of political transition as the period from the date of the new government's appointment (i.e., the day the new government takes power), not the period from the date of the election. In addition, we have tested different lengths of this period. It turns out that the usually used period of 6 months is not adequate for the circumstances prevailing in the Czech Republic. In fact, most mandate terminations occur between 6 and 12 months after a political transition. In our context, the removal of a head of office is often linked to the simultaneous appointment of a successor, so that the post is not left vacant. It makes sense that it would take more than 6 months to prepare for the removal of the incumbent and the selection and appointment of a new candidate. Based on this, we chose an AIPV with a period of political transition of one year (n+12) for our analysis. For clarity, AIPV values for 6 months period of political transition (n+6) are also shown in the results.

Finally, we used the TOR indicator in its original form without modifications. It is defined as the inverse of the length of the mandate in years. The longer the mandate, the smaller the TOR value and vice versa. Unlike AIPV, TOR is calculated at the level of individual agency chiefs, one for each mandate.

$$TOR = \frac{1}{\text{Length of mandate (in years)}}$$

The logic behind the use of TOR is based on the belief that chiefs are in office for a short period of time, they lack the necessary knowledge and consequently lack the capacity to defend regulatory goals (Hanretty 2010). Thus, small values of TOR may indicate higher stability of the agency, but do not take into account the effects of political changes. Since TOR is always linked to a single appointment (length of one mandate), it was necessary to determine arithmetic means of TOR values for the different observed groups (political affiliates, experts and bureaucrats).

5. RESULTS

5.1 H1 political affiliation

In this hypothesis, we assumed the general idea that persons with a political affiliation would be more politically vulnerable and thus provide the office with less independence. In line with common expectations, persons with political connections should be more prone to premature termination of office because the incoming government would install its own affiliates in office. However, our results show the opposite. Persons with no political affiliations are more politically vulnerable than politically affiliated persons.

Table 2 shows that the AIPV of persons with political ties was lower than that of persons without such ties (0.070 vs. 0.196). We then reach the same conclusion as Fernández-i-Marín et al. (2016), namely that "political links are actually a protection against removal after a political change occurs, while not having such ties increases the risks of being removed" (p. 241). Moreover, regulators with political ties have a lower TOR than regulators without such

ties (0.263 vs. 0.460), which in practice implies a longer tenure. This again confirms that the position of politically affiliated individuals is more stable.

On this basis, however, it cannot be concluded that authorities will be more independent if they are run by regulators with political connections. On the contrary, if the AIPV indicator is biased in favor of politically affiliated individuals, the government may influence agency policy through political negotiations and agreements, regardless of the political party to which the current regulators belong. Although politically affiliated people are not dismissed prematurely, they may be under the influence of the government and subordinate their policy to its demands.

Table 2: Adapted Index of Political Vulnerability and Turnover Rate, politically affiliated regulators

	AIPV (n+6)	AIPV (n+12)	average TOR
politically affiliated	0.035	0.070	0.263
no affiliation	0.043	0.196	0.460

5.2 H2 expert status (PhD degree)

We anticipate that the specialized and expert knowledge of professionals with a scientific or academic background (those with a PhD or higher) will help them withstand the political changes. Their expertise and apolitical neutrality will make them better able to defend their regulatory positions to politicians. Indeed, as we expected, the results in Table 3 show people with PhD degrees are less exposed to political vulnerability. Their AIPV was lower (0.132) than that of non-PhD holders (0.153). The TOR indicator values also confirm the more stable position of people with PhD. PhD holders stay in their positions longer (TOR = 0.202) than non-PhD holders (TOR = 0.447). To conclude, professionals at the head of regulatory agencies represent greater independence because they are given an opportunity to manage regulatory policies in a long-term perspective, void of political pressures.

Table 3: Adapted Index of Political Vulnerability and Turnover Rate, regulators with expert status

	AIPV (n+6)	AIPV (n+12)	average TOR
PhD	0.026	0.132	0.202
non PhD	0.045	0.153	0.447

5.3 H3 bureaucratic background

The results shown in Table 4 for the last hypothesis are ambiguous. It turns out that bureaucrats are as politically vulnerable as people without a bureaucratic background. The AIPV is almost identical for both these groups when there is a one-year period of political transition (0.152 and 0.153). Also, both groups show similar TOR, although bureaucrats stay in office slightly shorter than the others (0.342 vs. 0.317). When the period of political transition is defined as 6 months, the situation is quite different. The AIPV of bureaucrats is much higher (0.087) than that of non-bureaucrats (0.02). This suggests that bureaucrats are more exposed to early departures from the office than non-bureaucrats, thus exhibiting greater political vulnerability. Contrary to common expectations, bureaucrats cannot defend their positions once a new government takes office. This could also mean that bureaucrats do not avoid conflicts with politicians by accommodating the preferences of newly arrived political masters. For this group, the biographical profile will not affect their political vulnerability. Therefore, it can be concluded that an agency chief with a bureaucratic background will not represent weaker independence.

Table 4: Adapted Index of Political Vulnerability and Turnover Rate, regulators with bureaucratic background

	AIPV (n+6)	AIPV (n+12)	average TOR
bureaucratic background	0.087	0.152	0.342
Other	0.020	0.153	0.317

6. CONCLUSION

The legal rules governing the length of the mandate work differently for heads of office with different biographical backgrounds. This is supported by the conclusions of our analysis concerning the effect of biographical profiles on political vulnerability of regulators. Surprisingly, the analysis showed that politically affiliated regulators are less vulnerable, ending their mandates prematurely in fewer cases than regulators without political affiliation. This suggests that certain arrangements may persist between political parties that keep politically affiliated individuals in their seats and thus influence the personnel leadership of offices. Otherwise, if politically non-affiliated people were more frequently removed before the end of the mandate, this could again indicate interference by politicians. Once a new government is in place, this would indicate a tendency to remove those without political affiliations and replace them with politically affiliated individuals. It would be desirable if the value of the political vulnerability indicator were not biased in either direction. If there is no difference between the values of this indicator, it will not matter whether a person is politically affiliated or not. If the size of the indicator is distorted in favor of a particular group, this undermines the independence of the agency. In this research, however, the results show that the difference between the values of people with and without political affiliation is significant. In the context of the functioning of Czech regulatory bodies, political affiliation serves as a protection against premature dismissal from office.

Further, it turns out that bureaucrats and those without a bureaucratic background are equally sensitive to changes of government, and the probability of being prematurely dismissed is almost identical for them. Thus, bureaucrats do not adapt their behavior to incoming politicians to reduce their political vulnerability. A bureaucrat as head of an agency does not diminish the independence of that agency. On the contrary, the group of experts is less politically vulnerable than those without expert status. Forepersons with PhD degree are more likely to see their mandate through to the end in full. They can thus pursue regulatory policy neutrally and over a long period, leading to stronger independence of the agency.

All our findings can serve as a useful tool for the creation of legal rules concerning independent agencies and, for example, for the selection of the heads of independent regulatory agencies. The results of this study provide a unique picture of the effectiveness of legal tenure rules and their functioning in real life of regulators.

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