Maciej Serowaniec

The Financial Independence of the Supreme Audit Institutions in the Light of Regulations of EU Member States

A very important, but also a particularly sensitive area in the relation between the supreme audit institution (SAI) and the executive is the issue of financing this audit institution. Indeed, effective promotion of the principle of public accountability requires that the supreme audit institution receives sufficient financial resources to perform its duties properly. Therefore, the independence of supreme audit institutions requires the provision of all the personal, material and financial resources necessary for the performance of its tasks. They should also have sole responsibility for the management of the budget and the distribution of the funds allocated to them. The article is an attempt to answer the question of how legal regulations adopted in the Member States guarantee financial independence to the supreme audit institutions.

Maciej Serowaniec

Associate Professor at Nicolaus Copernicus University

ORCID – 0000-0003-4693-7977

Key words:
supreme audit institution, financial independence, INTOSAI, audit, state control

https://doi.org/10.36128/priw.vi34.151

Effective promotion of the principle of public accountability[1] requires that the supreme audit institution receives sufficient funds to enable it to perform its duties properly. Financial independence means, therefore, that the Supreme Audit Institutions has greater independence in determining its revenues and expenditure. The principle of independence of supreme audit institutions does not, however, exclude

1 More on the principle of public accountability in André Loozekoot, Geske Dijkstra, „Public Accountability and the Public Expenditure and Financial Accountability tool: an assessment" *International Review of Administrative Sciences*, No. 4(2017): 806-825.

their cooperation with executive bodies insofar as the cooperation is based at equivalent terms[2]. Depending on the constitutional and statutory provisions, legal measures regarding the financing of the supreme audit institution may be interrelated to the financial situation and general financial policy of the executive power.

The INTOSAI (International Organization of Supreme Audit Institutions) standards highlight that the independence of supreme audit institutions requires the provision of all human, material and financial resources necessary to discharge their mandate[3]. Therefore, the budget of the supreme audit bodies should be established directly by the parliament, and in the event of an interference by the executive, supreme audit institutions should have the right to request the parliament for additional funding if they consider their budget insufficient to fulfill all their tasks. They also have the sole responsibility for managing their budget and spending the funds that are allocated to them[4].

When analyzing the issue of budgetary independence of control institutions, it should be noted that generally the revenues generated by supreme audit institutions are relatively low and are largely short-term. On the other hand, among the expenditure, the main item in the budgets of supreme audit institutions are the funds allocated to their salaries and similar remuneration. An important part of expenditure are also current general administrative costs that are to maintain and perform all the basic activities of state control bodies, that is fees and services. On the other hand, the planned amount of property expenditure includes the expenditure related to the adaptation, modernization and extension of the buildings used by offices and agencies as well as the expenditure related to the purchase of new assets. Due to strengthening of international cooperation, an increasing part of expenditure is being allocated to foreign and domestic business trips[5].

---

2 Jacek Mazur, „Międzynarodowe zasady kontroli finansów publicznych a tworzenie najwyższego organu kontroli” *Kontrola Państwowa*, No. 1 (1998): 105-109.

3 Cezary Kosikowski, „Status prawny Najwyższej Izby Kontroli w świetle Konstytucji Rzeczypospolitej Polskiej i standardów Unii Europejskiej” *Kontrola Państwowa*, No. 2 (2002): 23.

4 Venkatachalam Ramkumar, „Open Budget Survey Findings on SAIs and Independence” *INTOSAI Journal*, No. 7 (2009): 10-11. https://www.intosaijournal.org.

5 See more Maciej Serowaniec, „Instytucjonalne gwarancje niezależności najwyższych organów kontroli państwowej”, [in:] *Potentia non est nisi da bonum: księga jubileuszowa dedykowana Profesorowi Zbigniewowi Witkowskiemu*, red. Maciej Serowaniec, Agnieszka Bień-Kacała, Aleksandra Kustra-Rogatka (Toruń: Towarzystwo Naukowe Organizacji

The Court of Audit of Belgium, the Court of Auditors in Spain and the Portuguese Court of Audits, which are among the highest state control bodies similar in structure to courts, have a legally guaranteed possibility of requesting the parliament directly to get the funds necessary to carry out their tasks.

The Court of Audit of the Kingdom of Belgium, in accordance with the provisions of 20bis of the Act, submits a draft of its budget for the opinion of the relevant parliamentary committee of the House of Representatives. A detailed statement of the Court's planned revenue and expenditure, based on the task-based system, after obtaining a positive opinion of the committee, is approved by the House of Representatives which also controls the implementation of the budget. A similar procedure is also applied in the case of the Spanish Court of Auditors. After receiving a positive opinion of the public finance committee of the Congress of Deputies, the draft budget of the Supreme Audit Institutions is included by the parliament in a separate part of the state budget. Similarly, the Portuguese Court of Audits develops its draft budget independently. After obtaining a positive opinion of the relevant parliamentary committee, the budget is included by the Parliament in the general draft of the state budget. It should be noted that, although the costs of the Court's functioning are mainly covered by the state budget, the costs of audits are imposed on auditees as well. This kind of revenue may be used to finance the Court's current and personal expenses[6]. The financing of the supreme audit institution is therefore provided both from the state budget and by the Court itself using its own funds. For that reason, the adoption of such legal measures ensures greater financial independence for the Court.

The Czech Republic is within the group of countries where the supreme audit bodies, organized in the form of supreme audit courts, fully implement the principle of financial independence. The draft budget of the Supreme Audit Office, after the approval by the Office Board (Collegium), is submitted by the president directly to the Chamber of Deputies. The draft budget of the supreme audit institution is simultaneously submitted to the Minister of Finance who incorporates it into the draft state budget. Similarly, the National Audit Office of the Republic of Lithuania is financed from the state budget in which a separate part is allocated to cover the costs of functioning of the supreme audit institution. Based on the draft budget of the National Audit Office, the Seimas (the legislative of the Lithuanian government)

---

i Kierownictwa. Stowarzyszenie Wyższej Użyteczności „Dom Organizatora", 2018), 663-665.

6 Magdalena Sieklucka, „Status najwyższych organów kontroli krajów Unii Europejskiej w świetle postanowień Deklaracji z Limy w sprawie zasad kontroli finansów publicznych" *Kontrola Państwowa*, No. 2 (2008): 30-31.

establishes the final amount of funds constituting the budget of the National Audit Office. The Law on State Control also allows for the creation of a special fund for the State Controller in the amount of three times the average monthly salary in the business sector. The fund can be used only to cover representation expenses. However, the detailed procedure for spending these funds is determined by the Council of Ministers. The principle of financial independence of the supreme audit institutions is also fully implemented in Luxembourg in which the state budget takes into account the budget plan of the European Court of Auditors, thus ensuring its independence from the executive[7].

In accordance with the legal measures adopted in Latvia, the draft budget prepared by the State Audit Office, is included by the parliament in the general draft state budget and cannot be changed without the Parliament's consent before submitting the draft budget bill to the government. Similar solutions were also adopted in Germany where the draft budget prepared by the Federal Audit Office is adopted directly by the Parliament after obtaining a favorable opinion of the Bundestag's budget committee.

In light of the provisions of the Act on the Supreme Audit Office and the Act of 27 August 2009 on Public Finances[8], the financial independence is guaranteed for the Polish Supreme Audit Office (NIK) as well. The draft budget adopted by the Council of NIK is submitted to the Sejm (the legislative of the Polish government) and then considered by the State Audit Committee and the Public Finance Committee. After any amendments introduced by these committees, the draft budget is included by the Minister of Finance in the overall draft of the state budget (Article 139(2) of the Public Finance Act). The adoption of the Budget Act by the Sejm of the Republic of Poland constitutes the approval of the budget of the Supreme Audit Office. In the field of budget implementation of the Supreme Audit Office, the President of the Supreme Audit Office has the powers of the Minister responsible for the budget. The Sejm receives a report on the implementation of the budget of the Supreme Audit Office (Article 26 of the Act on the Supreme Audit Office). Then it is reviewed by the State Audit Committee and the Public Finance Committee.

In accordance with the adopted legal measures, financial independence is guaranteed for the Slovenian Court of Auditors which submits to the National Assembly a financial plan covering all the costs of its activities, and which receives funds from a separate part of the state budget. Similarly, the budget of the State Audit Office of Hungary is approved by the Hungarian

7 *State Audit in the European Union* (London: National Audit Office, 2005), 177.

8 The Act of 27 August 2009 on Public Finances (The Journal of Laws of 2017, Item. 2077 as amended).

Parliament. Therefore, the State Audit Office prepares its own budget and draws up a report on its implementation, which is submitted to the National Assembly as a part of the budget and final accounts.

Denmark, Finland, Malta and Sweden are among the countries whose highest state control bodies operating on the basis of the so-called Westminster model, have a possibility (guaranteed in the constitutional provisions) of applying directly to the Parliament for funds necessary to carry out tasks. In Malta, the Auditor General prepares the draft budget of the National Audit Office, which is analyzed by the Public Accounts Committee of the National Audit Office before being examined and approved by the House of Representatives. The National Audit Office of Finland submits the proposal of its budget to the Finance Committee which decides on the structure of the budget within the state budget. Similarly, the budget of the National Audit Office of Denmark is approved by the Parliament after being passed by the Public Accounts Commission of the Danish Parliament. In Sweden, the draft budget of the Swedish National Audit Office is adopted by its Council and then submitted to the Parliament.

Therefore, in the case of the legal measures analyzed above, the executive bodies have no influence on the structure of the budget and the way it is spent. The draft budget of the Supreme Audit Institutions adopted by its management is directly included in the draft state budget. Therefore, it is only during parliamentary work that changes can be made to the budget plan, for instance the reduction of expenditure planned. However, the limitation of the planned expenditure most often occurs where there is an above-average increase in expenditure.

In a number of countries, there is also a possibility of auditing the accounts of the Supreme Audit Institutions. For example, the accounts of the Czech Supreme Audit Office are subject to control by the Chamber of Deputies or another body established by the Office for this purpose. The possibility for the Parliament to control the financial accounts of the supreme audit institution is also provided for in the statutory regulations adopted in Denmark, Luxembourg and Germany. In the case of the National Audit Office of the Republic of Lithuania, the auditing company selected on the basis of a special resolution of the Sejm (the unicameral parliament of Lithuania), is responsible for controlling the Office's accounts. Similar legal measures have also been adopted in Latvia where control checks are performed by a certified auditor selected by the Saeima (the unicameral parliament of Latvia). On the other hand, in Malta, the Office's accounts are audited by an auditor elected by the Accounts Commission of the National Audit Office[9]. Each year,

9 Maciej Serowaniec, „Guarantees of independence of the Supreme Audit Institutions of the EU Member States: a comparative legal analysis" *Prawo Budżetowe Państwa i Samorządu*, No. 3 (2019): 16-18.

detailed information on the implementation of the budget of the Polish Supreme Audit Office along with the auditor's opinion are published in the activity report of the Office. The President of the Polish Supreme Audit Office publishes the information after submitting the document to the Sejm of the Republic of Poland which controls the implementation of the Office's budget. In addition, at least once in every 3 years, the Marshal of the Sejm orders an entity selected in accordance with public procurement regulations to conduct an external audit regarding the implementation of the budget and the financial management of the Supreme Audit Office (Articles 7a-7d of the Act on the Supreme Audit Office)[10]. The accounts of the Supreme Court of Slovenia are checked by an auditing company selected by the National Assembly and then presented to the Parliament. The accounts of the State Audit Office of Hungary are subject to control of an independent auditor elected by the Chairman of the Parliament.

Greece, France and Italy are the countries which have the highest control bodies of the state organized in the form of supreme courts with the government participating in the construction of the budget of the court of auditors. In the case of Greece, the Court of Auditors prepares its draft budget in accordance with the directives of the Minister of Finance who through the Minister of Justice submits the final version of the Court's draft budget for approval to the Parliament. The budget of the French Court of Auditors is prepared jointly with the Ministry of Finance, and it constitutes a part of the budget of the Ministry. In Italy, however, the draft budget of the Court of Audit is directly determined by arrangements between the Court and the Minister of Finance. Nevertheless, the volume of the funds allocated is ultimately decided by the Parliament. As a side note, it is worth mentioning that the Italian Court of Audit has only had a separate budget at their disposal since 1995.

In Austria, Bulgaria, Estonia and the Netherlands, the executive power affects the acquisition of the funds necessary for the functioning of supreme audit institutions. As for Austria, the President of the Austrian Court of Audit submits the draft budget to the Minister of Finance. In most cases, the government's draft general budget implies limiting the Court's budget with regard to the Court's proposals. In the event of disagreement, the President of the Court presents their arguments at a meeting of the parliamentary Budget Committee, requesting the adoption of the budget in accordance with the preliminary budget draft. In Bulgaria, the President of the National Audit Office submits the draft budget to the Minister of Finance for its inclusion in the state budget account. The Council of Ministers must not amend

10 Maciej Serowaniec, „The Polish Supreme Audit Office in the Light of International Standards of Organization and Operation of State Audit Institutions" *Przegląd konstytucyjny*, No. 1 (2019): 78-79.

the draft budget of the Office. It may only express an opinion before the National Assembly. In accordance with the provisions of Article 11 of the Act on the National Audit Office, the budget of the supreme audit institution is a separate and independent part of the state budget. The Estonian National Audit Office submits its draft budget to the government through the Minister of Finance, but then still the budget is subject to the approval of the Parliament. The Minister of Finance is also responsible for the implementation of the Office's budget. The government's influence on the budget of the Netherlands Court of Audit is significant. The budget is determined due to agreement of the Minister of Internal Affairs and the Minister of Finance. In the event of conflicting opinions, any disputes arising are dealt with by the Court and the Public Accounts Committee, but ultimately it is the members of the House of Representatives who propose amendments to the draft budget.

In Cyprus and Ireland, due to the influence of the Westminster model of state control, the executive power affects the acquisition of funds necessary for the functioning of the highest control bodies. In the Audit Office of the Republic of Cyprus, the draft budget is submitted to the Ministry of Finance as a part of the state budget, and it is approved by the Council of Ministers and the House of Representatives. Similarly, in Ireland, the preliminary draft budget of the Office of the Comptroller and Auditor General is presented to the Minister of Finance, who is responsible for developing the draft state budget[11].

In the analyzed group of Supreme Audit Institutions, the way to guarantee financial independence is to oblige the Minister competent for public finances to include the plan of revenue and expenditure forwarded by the audit institutions directly to the state budget. Only in the case of statutory regulations adopted in Bulgaria it is possible to control the accounts of the audit institution by an independent committee elected by the Parliament, consisting of at least two statutory auditors.

The comparative analysis of the legal framework that specifies the way of financing all the activities of the supreme audit institutions indicates that the majority of European Union Member States fully implement international recommendations. However, despite the adoption of legal measures, in the last few years in the Member States of the European Union there have been numerous situations constituting an unacceptable threat to the financial independence of the highest audit authorities. As examples of the most serious threats to financial independence of supreme audit bodies, one should mention, among others, the practice of carrying out unrestricted

---

11 Jacek Mazur, „Stosowanie międzynarodowych standardów dotyczących statusu prawnego najwyższego organu kontroli w krajach Unii Europejskiej i w Polsce (próba porównania)" *Kontrola Państwowa*, No. 2 (2002): 59-60.

external audits of all the activities of the supreme audit institution, including the right to assess the cost of the audit. Undoubtedly, cases of reducing the budget of the Supreme Audit Institution are also disturbing, with the indication that the audit institutions were deprived of funds for specific tasks previously planned in its budget. There were also cases of imposing new tasks on the audit institution without additional funds being allocated to carry out these tasks. To better present the tendencies described above, it is worth referring to situations that have occurred in the Czech Republic and Bulgaria over the past decade.

Pursuant to the provisions of Article 33(3) of the Czech Act, the annual report on the implementation of the budget of the Supreme Audit Office is subject to a mandatory audit which is carried out by an audit company selected by the Office under the provisions of the Public Procurement Act. In March 2008, the Office's Board approved the report on the implementation of the 2008 budget. However, the Board assessed some aspects of the Office's assets management negatively. The comments in particular concerned the way company flats and cars had been used. Despite the positive opinion of the audit company, the State Audit Committee of the Chamber of Deputies rejected the report submitted for approval and asked for an additional audit pursuant to Article 33(2) of the Act, according to which "the implementation of the budget of the Supreme Audit Office is controlled by the Chamber of Deputies or its body appointed for this purpose". According to the procedure indicated, the Chamber of Deputies authorized the State Audit Committee which, under the resolution, decided to carry out an audit on the management of the assets of the Supreme Audit Office in the period of 2005–2009 by an audit company selected by tender. It was only later that it was noticed that in such a case the audit company could serve only as an expert and not as an independent auditor. Accordingly, the Committee amended the earlier resolution and appointed six deputies to carry out an audit. After their arrival at the seat of the Office on 8 December 2009, the President of the Supreme Audit Office declared that the audit of an independent state body may only take place under a statutory procedure, and therefore it would be carried out after the relevant act was adopted and entered into force. The Chamber of Deputies, at the plenary meeting held on 11 December, did not accept the arguments presented by the President of the Office, and expressed their concerns at the situation in the Supreme Audit Office. As a result, the Chamber called on the President of the Office to „allow for an audit immediately". The Chamber of Deputies also authorized its Chairman to request the President to be held criminally responsible for suspected acts prejudicial to the Office's good reputation, independence and impartiality[12]. The Court of First

12 More on this subject in Jacek Mazur, „Zagrożenia niezależności najwyższych organów kontroli" *Kontrola Państwowa*, No. 1 (2010): 120-121.

Instance ruled that the President of the Office was guilty of misuse of power and exceeding his official powers. In 2012, the appeal court upheld the judgment of the first-instance court and, in the event of violation of the Office's dignity and undermining confidence in the independence and impartiality of the supreme audit office, the President was dismissed.

A slightly different situation took place in Bulgaria. In April 2008, the National Assembly adopted an amendment to the Forestry Act. According to its provisions, the Council of Ministers was obliged, among others, to hand over to the State Forestry Agency one building that previously housed the offices of the National Audit Office. This provision had been introduced during the final stage of work on the Act at the request of one of the deputies and without consulting the Office or other state authorities[13]. The Prosecutor General requested the Constitutional Court to repeal that provision, pleading infringement of, among others, Article 8 establishing the principle of the division of powers, and Article 106 determining the functions of the Council of Ministers. The Constitutional Court stated that the National Assembly could not take over the management functions entrusted to the Council of Ministers, regarding the management of state property in the allocation, revocation and transfer of property. Taking over powers, which were delegated to the executive pursuant to the provisions of the constitution, erodes the balance of powers. It is in turn contrary to the principle of the division of powers adopted in Article 8 of the constitution. The Constitutional Court also emphasized that the National Audit Office was an institution established under the constitution. The status of this type of bodies cannot be threatened and their functioning disturbed by any decisions on the occupation of the buildings they use and without which they are unable to perform their tasks. In the Court's opinion, unilateral issuing of administrative law on the state property management leads to violation of the constitutional status of other state bodies and to undermining their authority. The immediate consequence of such a process may be difficulties in or even a practical inability of state institutions to function. By a reference to the aforementioned arguments, the Constitutional Court, by its decision of 8 July 2008, repealed the contested provision of the Act[14].

These legal measures also strive to provide the supreme audit bodies with all human, material and financial resources necessary to fulfill all their tasks. In most of the cases discussed in this paper, the budget of such bodies is decided directly by the parliament, and in the event of interference by the executive, the supreme audit institutions have the right to request the parliament for additional funds if they consider their budget insufficient to fulfill their tasks. In the light of applicable legal measures, the draft budget of the

13 Mazur, „Zagrożenie", 115-116.

14 Ibidem, 115-116.

Supreme Audit Institution adopted by the management board of this audit institution is directly included in the draft state budget. Therefore, it is only during parliamentary work that changes such as the reduction of planned appropriations can be made to the budget plan. What is more, these institutions also have the sole responsibility for managing the budget and spending the funds that were allocated to them.

Unfortunately, even excessive constitutional and statutory provisions do not ensure full protection of the independence of the Supreme Audit Institutions. There are cases known of interpretation of the provisions of existing regulations other than that those intended by their authors.

Bibliography

Kosikowski Cezary, „Status prawny Najwyższej Izby Kontroli w świetle Konstytucji Rzeczypospolitej Polskiej i standardów Unii Europejskiej" *Kontrola Państwowa*, No. 2 (2002): 7-23.

Loozekoot André, Geske Dijkstra, „Public Accountability and the Public Expenditure and Financial Accountability tool: an assessment" *International Review of Administrative Sciences*, No. 4 (2017): 806-825. https://doi.org/10.1177/0020852315597773.

Mazur Jacek, „Międzynarodowe zasady kontroli finansów publicznych a tworzenie najwyższego organu kontroli" *Kontrola Państwowa*, No. 1 (1998): 98-109.

Mazur Jacek, „Stosowanie międzynarodowych standardów dotyczących statusu prawnego najwyższego organu kontroli w krajach Unii Europejskiej i w Polsce (próba porównania)" *Kontrola Państwowa*, No. 2 (2002): 45-62.

Mazur Jacek, „Zagrożenia niezależności najwyższych organów kontroli" *Kontrola Państwowa*, No. 1 (2010): 115-125.

Ramkumar Venkatachalam, „Open Budget Survey Findings on SAIs and Independence" *INTOSAI Journal*, No. 7 (2009): 9-12. https://www.intosaijournal.org.

Serowaniec Maciej, „Guarantees of independence of the Supreme Audit Institutions of the EU Member States: a comparative legal analysis" *Prawo Budżetowe Państwa i Samorządu*, No. 3 (2019): 9-20. http://dx.doi.org/10.12775/PBPS.2019.017.

Serowaniec Maciej, „Instytucjonalne gwarancje niezależności najwyższych organów kontroli państwowej", [in:] *Potentia non est nisi da bonum: księga jubileuszowa dedykowana Profesorowi Zbigniewowi Witkowskiemu*, red. Maciej Serowaniec, Agnieszka Bień-Kacała, Aleksandra Kustra-Rogatka. 663-678. Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa. Stowarzyszenie Wyższej Użyteczności „Dom Organizatora", 2018.

Serowaniec Maciej, „The Polish Supreme Audit Office in the Light of International Standards of Organization and Operation of State Audit Institutions" *Przegląd konstytucyjny*, No. 1(2019): 68-82.

Sieklucka Magdalena, „Status najwyższych organów kontroli krajów Unii Europejskiej w świetle postanowień Deklaracji z Limy w sprawie zasad kontroli finansów publicznych" *Kontrola Państwowa*, No. 2 (2008): 25-42.

State Audit in the European Union. London: National Audit Office, 2005.