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State control in the Second Polish Republic

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Abstract

The outbreak of World War I also brought hopes that the oppressed Polish state would finally regain its independence. These hopes came to life in 1918, but with the regaining of independence the arduous process of reconstruction of the organisational fabric of the state had to be initiated. The Supreme Office of State Audit (NIKP) was created by the Decree of the Provisional Head of State issued on 7 February 1919. After two years on 17 March 1921 the Constitution of the Republic of Poland was enacted, where in Art. 9 it was envisaged to establish the Supreme Audit Office [hereinafter NIK] established as a body responsible for auditing the entire state administration in terms of finance, examining the closing of state accounts, submitting to the Sejm a motion to grant or refuse to grant discharge to the Government on an annual basis.. Normative acts stipulating audit authorities in the Second Polish Republic constituted a considerable step forward in the development of mechanisms for the control over public funds carried out by qualified bureaucratic apparatus.

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Streszczenie**Kontrola Państwowa w II Rzeczypospolitej**

Wybuch I wojny światowej niósł ze sobą nadzieje na odzyskanie przez zniewolone państwo polskie niepodległości. Nadzieje te ziściły się w 1918 roku, ale wraz z odzyskaniem niepodległości rozpoczął się żmudny proces odbudowy tkanki organizacyjnej państwa. Dekretem Tymczasowego Naczelnika Państwa z 7 lutego 1919 r. została utworzona Najwyższa Izba Kontroli Państwa. Po dwóch latach działalności doszło do uchwalenia 17 marca 1921 r. Konstytucji Rzeczypospolitej Polskiej, która w art. 9 przewidywała utworzenie Najwyższej Izby Kontroli, powołanej do kontroli całej administracji państwowej pod względem finansowym, badania zamknięć rachunków Państwa, przedstawiania corocznie Sejmowi wniosku o udzielenia lub odmowę udzielenia Rządowi absolutorium. Akty normatywne statuujące organy kontroli w II Rzeczypospolitej stanowiły znaczący krok w rozwoju mechanizmów kontrolowania środków publicznych przez wykwalifikowany aparat urzędniczy.

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Aside from the menace of suffering and destruction, the outbreak of World War I also brought hopes that the oppressed Polish state would finally regain its independence. These hopes came to life in 1918, but with the regaining of independence the arduous process of reconstruction of the organisational fabric of the state, in all its areas, had to be initiated. The resurgent Polish state was entering the sphere of activity that included controlling the way public funds were spent, with a wealth of experience. This was caused by, among other things, the long history of inspection authorities operating on Polish territory (Chief Office of Accounts of the Duchy of Warsaw and Office of Accounts of the Kingdom of Poland), however, the experience gained in working for similar bodies operating in the partitioning states was also of great significance².

Before the creation of the Supreme Office of State Audit, the establishment of the Kingdom of Poland was proclaimed in November 1916, whose basic

² J. Żarnowski, creator of solutions and the first President of the Supreme Audit Office, was a member of the College of the Accounts Chamber of Russia, A. Sylwestrzak, *Historia Najwyższej Izby Kontroli i jej miejsce w Konstytucji*, "Kontrola Państwowa" 2010, Special edition, p. 8.

authority was the Provisional Council of State. It was the decision of the said Council that, on 10 August 1917, the Accounts Office of the Enforcement Department was established to audit entities disbursing public funds³. In addition, its competence was to carry out a follow-up audit of revenue and expenditure provided for in the budget, and moreover, the Accounts Office was to present reports on budget execution together with an opinion and to submit via the Treasury Department a request to the Provisional Council of State to grant discharge to the inspected departments⁴.

In place of the Accounts Office, the Supreme Office of State Audit (NIK-P)⁵ was created by the Decree of the Provisional Head of State issued on 7 February 1919. Pursuant to Art. 1, it was to constitute an independent authority, directly subordinate to the Head of State, appointed to perform permanent and comprehensive monitoring of state revenues and expenditures, the correctness of managing state assets and the economy of institutions, foundations and funds, local government units and cities, as well as a comprehensive monitoring of budget execution. The provisional regulations of the Supreme Office of State Audit and its bodies⁶, which, alongside the Decree, provided the basis for the operation of the Office, indicated that it is mainly its responsibility to prepare instructions, models and regulations for control bodies, to decide on new accounting regulations, to give opinions to central authorities, to resolve appeals submitted to the NIKP and complaints against decisions of control bodies, but also to grant discharge concerning the closure of State accounts and to provide the Head of State and the Sejm with reports on the state economy. The audit conducted by the Supreme Office of State Audit⁷ could have the character of preliminary, follow-up and factual control, while the criteria according to which

³ For more information see J. Juchniewicz, *Absolutorium jako realizacji funkcji kontrolnej Sejmu*, Olsztyn 2010, p. 37, R. Szawłowski, *Najwyższe państwowe organy kontroli II Rzeczypospolitej*, Warsaw 2004, pp. 46–47.

⁴ R. Szawłowski, *Najwyższe państwowe...*, pp. 46–47.

⁵ Dz.P.P.P.P. No. 14, item 183.

⁶ M.P. 1920, No. 41.

⁷ The scope and manner of the audit was defined in the Provisional Instruction on the application and scope of the audit issued by the President of the Supreme Office of State Audit pursuant to Art. 12 sec. 2 of the Decree of 7 February 1919. (Dz.U. of Ministry of Internal Affairs No. 46, item 675).

inspection activities were to be conducted included legality, cost-effectiveness, economic efficiency and honesty.

The organizational structure of the Office was based on the appointment of the president, vice-president and the council, which consisted of the president and vice-president and counsels to the Supreme Office of State Audit⁸. The president and vice-president of NIKP were appointed by the Provisional Head of State. The first at the request of the President of Ministers, the second at the request of the president of the Office. Counsellors forming the NIKP Council, as well as other Office clerks were appointed by the president. What is important, the Decree assumed the non-removability of the members of the Council and their disciplinary responsibility⁹.

The powers of the President of the Supreme Office of State Audit were set out in Art. 8 and 10 of the Decree, and their elaboration was included in the Provisional Regulations. The President could participate in the sessions of the Sejm, parliamentary committees, while providing information and explanations on the activities of the Office and the conducted audits, and at the request of the Sejm, this right was transformed into an obligation. Furthermore, it was his duty to present the conclusions of the Supreme Office of State Audit in person or through his delegates. On the other hand, pursuant to § 9 of the Provisional Regulations, the President was responsible for representing the Office, entrusting the members of the Council with the management over sections and departments, and chairing the plenary sessions of the Office. During the President's absence, he was to be replaced by a vice-president, whose tasks included cooperation with the head of the office in activities related to the management of the NIKP.

The activities of the Supreme Office of State Audit were based on the principle of collegiality, which was reflected in the separation of the Council. Its responsibilities included matters such as discharge, closure of state accounts and associations of self-government, workplace and institution funds subject to control by the Supreme Office of State Audit, establishment or change of

⁸ The category of counsels included persons managing the section and managing the department.

⁹ The body before which the members of the Council were to bear disciplinary responsibility according to the provisions of the Decree was a Complete consisting of 3 judges of the Supreme Court and 2 members of the Council.

general principles of control, issuance or change of general accounting and cash instructions, opinions for central authorities, cases brought by the President of the Supreme Office of State Audit and matters arising from the terms and conditions.

The activity of NIKP did not provide extensive experience. After two years of activity, on 17 March 1921 the Constitution of the Republic of Poland was enacted, where in Art. 9 it was envisaged to establish the Supreme Audit Office [hereinafter NIK], established as a body responsible for auditing the entire state administration in terms of finance, examining the closing of state accounts, submitting to the Sejm a motion to grant or refuse to grant discharge to the Government on an annual basis. The Supreme Audit Office was to operate on the principle of collegiality and judicial independence of the members of the Council. The organisation of the Office was determined by the Act of 3 June 1921 on State Audit¹⁰.

The Constitution did not directly determine the political position of the Office. Pursuant to Art. 1 of the Act, the State Audit, which the Supreme Audit Office was a part of, was to be an authority independent of the government and subordinated to the President¹¹, acting on the principle of collegiality. As a consequence of the above, as well as in view of the inclusion of a provision devoted to the Supreme Audit Office in the chapter entitled Legislative power and the numerous connections with the Sejm, specific relations between the Office and the Sejm were emphasised, even referring to its subordinate role in relation to the Sejm¹², and even more so, in the opinion of the first President of the Office, NIK should be treated as one of the Sejm's bodies¹³.

Under Art. 19 of the Act, the Supreme Audit Office was headed by the Prime Minister, appointed by the President of the Republic of Poland at the request of the Council of Ministers. What is important, neither the Constitution nor the Act on State Audit stipulated the term of office of the president,

¹⁰ Dz.U. No. 51, item 314.

¹¹ In the opinion of W. Komarnicki, when speaking about the subordination of state control to the President, the legislator used the inaccurate expression "in order to indicate the general subordination of state control, as a separate area of administration, to the head of the executive, excluding government interference" W. Komarnicki, *Polskie prawo polityczne*, Warsaw 2008, p. 323.

¹² W. Komarnicki, *Polskie prawo...*, p. 321.

¹³ R. Szawłowski, *Najwyższe państwowe...*, p. 106.

nor did they indicate the entity that could dismiss him, nor the circumstances that could result in his removal from the post held. Following the 1919 Decree, the act introduced the non-combination of the position of the President of the Supreme Audit Office (NIK) with the mandate of a deputy and senator, any other office, and participation in the management board, supervisory board or notifying board of profit-oriented enterprises (Art. 31). However, the legislator allowed educational, literary and other activities provided that they would not adversely affect the State Audit Service¹⁴.

According to the Basic Law, the President of the Supreme Audit Office held a position equivalent to the minister, but he was not a member of the Council of Ministers, and was to be held directly accountable for his activities before the Sejm. The development of constitutional norms took place in the act on state audit. The President of the Supreme Audit Office could have been held accountable by the Sejm or the Senate for official actions by which he deliberately or negligently violated laws on the principles provided for ministers.

The Act granted the President of the NIK a number of competencies, among which organisational and managerial competencies prevailed, both in relation to the Supreme Audit Office and in relation to state audit¹⁵. The President of the NIK was responsible for the proper course of matters in State Audit and was able to issue administrative and organisational orders within the scope of State Audit. In cooperation with the Prime Minister, the President could open District Audit Offices, determining their scope of activity. He also could, in agreement with the Prime Minister, refer matters of control to State Audit bodies located outside the territorially competent office, as well as open special State Audit offices.

The powers exercised within the budgetary sphere meant the annual presentation of the budget estimate to the Minister of Justice in order to decide on it and include it in the state budget. The organisational competencies were also reflected in the issue of the Rules of Procedure of the Supreme Audit Office and Accounts Offices. While managing State audit,

¹⁴ Consent to conduct such activity was to be granted by the President of the NIK, Head of the Department, Presidents of District Offices. The legislator has not specified who would give such consent if such activity was to be undertaken.

¹⁵ J. Jagielski, *Kompetencje Prezesa i Kolegium NIK*, "Kontrola Państwowa" 2014, jubilee edition, p. 68.

the President of the Office was to cooperate with two deputies, appointed by the President upon his motion. The tasks of the President of the NIK included representing the Office before other state authorities. The President had the right to participate in meetings of the Sejm and Senate and to address, and at the request of the Sejm or Senate was obliged to provide information and explanations.

The overriding principle of state audit activity, expressed in the Constitution of 17 March 1921, was the principle of collegiality. This was also highlighted by the Act on State Audit, stating that the Council of the Supreme Audit Office is the highest collegial institution within State Audit. The Council was formed by the President of the NIK, the two Vice-Presidents, the Heads of Departments and their deputies. The Act formulated the conditions that had to be met by the members of this body, i.e. completion of university scientific studies, with the reservation of a transitional period of 5 years, during which it was not necessary to fulfil this condition in order to have a seat at the Council. Corresponding principles of non-combination of the position and prohibition of undertaking additional activities, with the exception of scientific or creative activities, which the President of the NIK was subject to, were also applicable to the other members of the Council.

The competences of the Council of the Supreme Audit Office were included in Art. 21 of the Act. The Council was empowered to decide on the general closure of accounts for the previous financial year, the layout and content of the State Audit report for the previous financial year and the comments on the implementation of the budget. The Supreme Audit Office was obliged to submit comments together with a motion to grant or refuse to grant discharge to the Government within 6 months of receiving the closure of accounts from the Minister of Treasury. Moreover, it was up to the Council to decide on appeals against decisions of the Councils, Departments, District Offices, to make decisions on general principles of inspection, general accounting and cash regulations and in any other matter which was brought before the Council for deliberation by the President of the Supreme Audit Office.

The collegiality of activities required participation in meetings of the council of a specific group of persons. However, the quorum was not determined by an indication of the minimum number of members of the Council who had to attend a meeting, but by a definition of the categories of members. The

Council could have adopted resolutions if the President of the Supreme Audit Office or, as his or her substitute, one of the Vice-Presidents, at least two Heads of Departments and at least two Deputy Heads of Departments had been present. The Council adopted its decisions by way of resolutions, by a majority of votes and, in the event of a tie, the President had the casting vote. In addition to its members, meetings of the Council could be attended by other invited persons, the Council could also summon officials and officers of state institutions and other entities subject to State Audit.

The scope of State Audit was defined broadly, including the review of State revenue and expenditure and the economic position of the Polish state. Despite the explicit emphasis laid down in the Constitution and Art. 1 of the Act on the independence of audit activities from the government, it was at the request of the government that the State Audit could review the financial management of self-government bodies and institutions, establishments, foundations, associations and companies operating with the financial participation of the Treasury or with its guarantee, carrying out actual/contemporary audit and the follow-up inspection.

The Act introduced four audit criteria – legality, cost-effectiveness, purposefulness and economy. The indicated criteria were applicable regardless of the nature of the performed audit, however, it should be noted that when examining revenue and expenditure, the cost-effectiveness criterion was to be applied only in relation to expenditure, without referring it to the process of inspecting revenue¹⁶.

When evaluating solutions dedicated to state audit bodies, it is important to highlight their modern, but also original character. Normative acts stipulating audit authorities in the Second Polish Republic constituted a considerable step forward in the development of mechanisms for the control over public funds carried out by qualified bureaucratic apparatus. It is worth stressing that the first experiences coming from the functioning of both Offices were complicated, which resulted mainly from differences in regulations and accounting methods that existed between the former partitions of Poland. There was a huge chaos in the sent accounts, and they were sent in late¹⁷, which led

¹⁶ R. Szawłowski, *Najwyższe państwowe...*, p. 206.

¹⁷ See e.g. R. Szawłowski, *Najwyższe państwowe...*, p. 39.

to taking up audit activities even several years later¹⁸. This should not, however, invalidate the enormous merits of creating audit instruments and developing state audit institutions.

Literature

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¹⁸ E.g. in 1928, closures of state accounts from 1923–1925 were audited. J. Juchniewicz, *Absolutorium...*, p. 45.