

Maciej Serowaniec*

Uniwersytet Mikołaja Kopernika w Toruniu

THE LEGAL STATUS OF THE POLISH SUPREME AUDIT OFFICE'S CORPS OF AUDITORS**

DOI: <http://dx.doi.org/10.12775/TSP-W.2017.003>

Data wpływu: 09.05.2017
Data akceptacji: 14.08.2017

Lo stato giuridico dei controllori della Camera Suprema di Controllo polacca.

Lo stato giuridico dei controllori della Camera Suprema di Controllo polacca è regolato dalla legge del 23 dicembre 1994. La legge stabilisce tra l'altro quali siano i requisiti che debbano avere coloro che aspirano a coprire il posto di controllore (ad esempio, la cittadinanza polacca, piena capacità giuridica, capacità di godere di tutti i diritti civili e politici) e le procedure di assunzione della Camera. L'autore inoltre mette a confronto le disposizioni relative ai divieti e limitazioni concernenti le prestazioni dei controllori e gli standard elaborati dall'International Organisation of Supreme Audit Institutions.

Parola chiave: Camera Suprema di Controllo polacca; International Organisation of Supreme Audit Institutions; Lo stato giuridico dei controllori; controllori.

Status prawny korpusu kontrolerów Najwyższej Izby Kontroli. Ustawa o Najwyższej Izbie Kontroli, wydane na jej podstawie akty wykonawcze oraz wskazane w ustawie przepisy o pracownikach urzędów państwowych szczegółowo regulują pozycję osób zatrudnionych w ramach tzw. korpusu kontrolerskiego w Najwyższej Izbie

* Maciej Serowaniec – dr, adiunkt w Katedrze Prawa Konstytucyjnego, Wydział Prawa i Administracji, Uniwersytet Mikołaja Kopernika w Toruniu.

** The publication was financed by the Nicolaus Copernicus University in Toruń under the grant No. 2791-P „Międzynarodowe standardy organizacji i działania organów kontroli państwowej” (International standards of organization and operation of Supreme Audit Institutions).

Kontroli. Zgodnie z art. 66a ustawy o Najwyższej Izbie Kontroli Kontrolerami są pracownicy zatrudnieni na stanowiskach: dyrektorów kontrolnych jednostek organizacyjnych Najwyższej Izby Kontroli; wicedyrektorów kontrolnych jednostek organizacyjnych Najwyższej Izby Kontroli; radców Prezesa Najwyższej Izby Kontroli; doradców prawnych, ekonomicznych i technicznych; głównych specjalistów kontroli państwowej; specjalistów kontroli państwowej; starszych inspektorów kontroli państwowej; inspektorów kontroli państwowej; młodszych inspektorów kontroli państwowej. Niniejszy artykuł ma na celu przeanalizowanie podstawowych regulacji prawnych wpływających na status prawny korpusu kontrolerów Najwyższej Izby Kontroli.

Słowa kluczowe: Najwyższa Izba Kontroli; NIK; kontroler; korpus kontrolerski, organy kontroli państwowej; kontrola państwowa.

An essential condition for the proper fulfilment of tasks by the Supreme Audit Office (hereinafter referred to as the SAO) is the proper shaping of the legal status of its employees, especially those performing and supervising audit activities. According to Article 66a of the Act of 23 December, 1994 on the Supreme Audit Office (hereinafter referred to as the Act)¹ to the so-called corps of auditors include: directors of the audit units of the Supreme Audit Office; deputy heads of audit units of the Supreme Audit Office; advisors to the President of the Supreme Audit Office; legal, economic and technical advisers; major state audit specialists; state audit specialists; senior state audit inspectors; state audit inspectors and junior state audit inspectors. This article aims to characterize the legal status of the audit corps employed by the Polish Supreme Audit Office.

Employment with the auditor, Article 68 sec. 1 of the Act refers in principle to the appointment, but should be preceded by employment under a contract of employment for no more than 3 years². In addition to the candidate fulfilling the boundary conditions and other qualification requirements specified in the Sejm Marshal's Order of 31 August, 2011 on remuneration of employees of the Supreme Audit Office³, the appointment depends on the auditor apprenticeship and passing the examination (for auditors) before the examination board appointed by the SAO President. The auditor aims to theoretically and practically

¹ Act of 23 December, 1994 on the Supreme Audit Office (i.e. Journal of Laws of 2017 item 524)

² The part-time auditors are employed on the basis of a contract of employment, without a time limit.

³ Order of the Marshal of the Sejm of the Republic of Poland of 31 August, 2011 on remuneration of the employees of the Supreme Audit Office (Monitor Polski 2011 no. 79 item 803 with amendments).

prepare the auditor to perform and supervise audit activities⁴. In Article 67, the Act also defines the boundary conditions that a person employed as an auditor must fulfil (both on the basis of an employment contract and on the basis of an appointment). These are: 1) Polish citizenship; 2) full capacity for legal actions and full enjoyment of public rights; 3) impunity for a crime committed by wilful misconduct; 4) higher education; 5) health condition that allows you to work at a specific position.

The duties of the auditor include in particular: sound, impartial and timely performance of tasks; objective determination and thorough documentation of the audit results; observance of the statutorily protected secret; good behaviour in the service and out of service and continuous improvement of professional qualifications. In addition, pursuant to § 21 of Order No. 9/2012 of the President of the Supreme Audit Office dated 29 March, 2012 on detailed rules for the preparation of audits, the tasks of auditors and the rules for reporting information on audit results⁵, auditors carry out audit activities in accordance with the rules and the mode of the audit procedure, the audit program or the subject matter of the ad-hoc audit and the instructions of the persons supervising the audit; evaluate the situation in the scope of the audited activity and document the findings; draw up the required documents, in particular irregularity cards, post-audit statements and draft notifications referred to in Article 62a and the notifications referred to in Article 63 of the Act, as well as the required audit reports, including the financial results of the audit; sign post-audit statements with the reservation of Article 53 sec. 4 and 5 of the Act; undertake an analysis or elaborate a draft position on objections submitted to the post-audit statement; also analyse the responses to the post-audit statement. In accordance with § 5 and 6 of the Order No 12/2011 of the President of the Supreme Audit Office dated 29 August, 2011 on the detailed internal organisation and the organisational units of the Supreme Audit Office⁶, employees of the audit organisation units, within their jurisdiction,

⁴ T. Liszcz, *Nawiązanie stosunku pracy na stanowisku kontrolera – znowelizowana ustawa o Najwyższej Izbie Kontroli*, „Kontrola Państwowa” 2014, nr 2, pp. 88–91.

⁵ Regulation no. 9/2012 of the President of the Supreme Audit Office of 29 March, 2012 on detailed rules for the preparation of audits, the tasks of auditors and the principles of reporting the results of audits (text unified with amendments introduced by the President of the Supreme Audit Office no. 10/2014 of 6 February, 2014, no. 74/2014 dated October 13, 2014 and no. 15/2016 dated March 31, 2016). <http://www.nik.gov.pl/podstawy-prawne-dzialania-nik/akty-prawne/> (12.05.2017)

⁶ Order no. 12/2011 of the President of the Supreme Audit Office dated 29 August 2011 on the detailed internal organization and characteristics of organizational units of the Supreme Audit Office (Text aligned with the changes introduced by the President of the Supreme Audit Office: no. 33/2013 of September 9, 2013.. No. 1/2014 of January 3, 2014, no. 15/2014 of February 14, 2014,

prepare and carry out audits and produce information on audit results and other documents related to performed audits. The audit organisational units also carry out control procedures under ad-hoc audits with the approval of the President or the authorized Vice-President of SAO and take part in audits carried out on the territory of the Republic of Poland by the European Court of Auditors. In addition, they are obliged to co-operate with governmental and local government audit and inspection bodies within the area of their competence.

By law, the auditors also have special powers of a public and legal nature. According to Article 88 of the Act, the auditors cannot be held criminally responsible for their official duties without the prior approval of the SAO College (the so-called auditor immunity). This provision shall apply accordingly after termination of employment. The auditors, as public officials within the meaning of Article 115 §13 of the Penal Code, are also subject to special criminal law protection, regulated in Chapter XIX of the Code⁷.

The Act imposes certain limitations on the conduct of work, trade union activity and public participation. In order to ensure the implementation of the principle of objectivity in audit proceedings and to eliminate any possibility of non-substantive influence on audit processes, the legislator introduced the principle of apoliticality (article 74). The auditor cannot, therefore, be a member of a political party or publicly display political views. The auditor is obliged to keep the secret of audit, also after termination of employment with the Chamber. Additional jobs can only be taken after obtaining the approval of the SAO President. The auditor, however, cannot exercise any activity that would impair the interests of the Supreme Audit Office or be incompatible with its duties and would be in contradiction with the employee's obligations or could give rise to suspicion of partiality or pursuit of self-interest (the so-called conflict of interest, Article 75). It should be emphasised that this is not only about remunerated activities, but also about any kind of unpaid activity, if it is in conflict with the tasks of the Supreme Audit Office⁸. Based on Article 31 sec. 1 and 2 of the Act should apply to exclude him from the audit proceedings conducted at the unit in which he or she was employed, carried out work assigned to him or her, or represented its interests. Therefore, a conflict of interest must be defined as the actual or

no. 55/2015 of November 26, 2015, and no. 50/2015 of November 9, 2015). <http://www.nik.gov.pl/podstawy-prawne-dzialania-nik/akty-prawne/> (12.05.2017).

⁷ T. Liszcz, *Status prawny pracowników Najwyższej Izby Kontroli – zmiany na przestrzeni lat*, „Kontrola Państwowa – 95. rocznica powołania Najwyższej Izby Kontroli”, Warsaw 2014, pp. 127–128.

⁸ E. Jarzęcka-Siwik, B. Skwarka, *Najwyższa Izba Kontroli. Commentary to the Supreme Audit Office Act*, Warsaw 2015, p. 273.

potential contradiction between private or personal interests and official duties. This contradiction arises when the auditor is faced with the choice of whether to pursue his or her own particular interests or to care for the good of his or her service. Therefore, ethical norms play an important role in demonstrating good practices and setting standards of conduct, including decent work in and outside the service. All actions of these individuals should be particularly careful in order to protect the public and individual interests⁹.

Additional restrictions on the conduct and management of economic activity stem from the Act of 21 August, 1997 on limiting the conduct of business activities by persons holding public office (the so-called anti-corruption law)¹⁰. According to Article 4 in conjunction with the Article 2 of the Anti-Corruption Act, the employees of the Supreme Audit Office supervising or performing audit activities during the period of occupation of posts or the performance of functions referred to in these provisions, may not:

- 1) be members of boards of directors, supervisory boards or committees of commercial law companies;
- 2) be employed or engaged in other commercial law companies that could raise suspicion of partiality or pursuit of self-interest;
- 3) be members of the boards of directors, supervisory boards or inspection committees of cooperatives, with the exception of supervisory boards of housing cooperatives;
- 4) be members of the boards of foundations running a business activity;
- 5) hold more than 10% of shares in commercial law companies representing more than 10% of share capital in each of these companies;
- 6) run business activities on their own behalf or jointly with other persons and manage such activities or be a representative or a proxy in carrying out such activities; this does not apply to agricultural production in the field of plant and animal production, in the form and scope of a farm, and to be member of the management board under the management service contract referred to in Article 5 sec. 1 item 1 of the Act of 9 June, 2016 on the principles of remuneration of managers of some companies (Journal of Laws, item 1202).

The bans listed in Article 4 of the Anti-Corruption Act is closed, which means that a person performing public functions may run any activity not men-

⁹ *Ibidem*, p. 270.

¹⁰ Act of 21.08.1997 on the limitation of conducting business activity by persons performing public functions (i.e. Journal of Laws 2006 No. 216, item 1584).

tioned in that provision¹¹. In adhering to these basic principles of ethics, an additional occupation by a SAO auditor should not cause a direct collision with existing duties. Prior to taking additional occupation, the Councillor will have to obtain the approval of the SAO President (Article 75 sec. 2 of the Act).

In line with the Code of Ethics adopted by the International Organisation of Supreme Audit Institutions (INTOSAI), which is based on the Lima Declaration on audit principles, auditors should act in a way that promotes cooperation and good relationships between auditors, thereby working for the benefit of their professional environment. The trust and public respect enjoyed by the auditors is largely the result of the combined achievements of all the professionals in the past and present. It is therefore in their interest and in the interest of society to produce and maintain fair and balanced relationships in this professional environment. Auditors also have a duty to adhere to high standards of conduct (such as honesty and sincerity), both in their work and in their relations with the employees of the audited entities. Maintaining the trust of the public requires the auditors to remain impeccable and beyond any suspicion. It is important to maintain the actual and perceived political neutrality of the Supreme Audit Institutions. It is therefore important for the auditors to be independent from political influence, enabling them to perform their duties with integrity. The importance of this issue is raised by the fact that the Supreme Audit Institutions cooperate with the legislative, executive and other public bodies authorized to use their reports. In addition, the auditors should know and apply appropriate standards, policies, procedures and practices related to auditing, accounting and financial management. They should also understand well the legal and institutional principles and standards governing the activities of audited entities.

In conclusion, the persons employed in the position of the SAO auditor should be honest, professional, aware of the public dimension of their activity and observe the principles of professional ethics¹². The command to behave decently in and out of the service is unique, and together with professionalism, shapes the ethos of the profession of an auditor. The notion of decent behaviour is not explicitly defined. One of the interpretative directives defining the basic principles in this area is the Code of Ethics of the SAO auditor¹³. In light of the provisions of the Code, the basic principles that auditors of the Supreme Audit Office should

¹¹ A. Wierzbica, *Commentary on Article 4*, [in:] Act on restriction of conducting business activity by persons performing public functions. Commentary 2017, Ed. 1, Legalis.

¹² E. Jarzęcka-Siwik, *Etyka zawodowa kontrolerów NIK*, „Kontrola Państwowa” 2006, no 4, pp. 29–31.

¹³ *Code of Ethics of the Auditor of the Supreme Audit Office*, <http://www.nik.gov.pl/kontrola/standard-control>. (10.05.2017).

be guided are: honesty and integrity; independence, objectivity and impartiality; adherence to auditor secrecy; competence and diligence, and professional behaviour. Preservation of objectivity is favoured by, also referred to in Article 75 sec. 1 of the Act, a ban on pursuit of activities incompatible with the tasks of SAO or that may cause suspicion of partiality or pursuit of self-interest of the auditor. All duties should also be performed fairly, in a timely manner, and in a substantively correct and adequate manner for the purposes to be achieved.

BIBLIOGRAFIA:

Code of Ethics of the Auditor of the Supreme Audit Office.

Jarzęcka-Siwik E., *Etyka zawodowa kontrolerów NIK*, „Kontrola Państwowa” 2006, no 4.

Jarzęcka-Siwik E., Skwarka B., *Najwyższa Izba Kontroli. Commentary to the Supreme Audit Office Act*, Warsaw 2015.

Liszczyński T., *Status prawny pracowników Najwyższej Izby Kontroli – zmiany na przestrzeni lat*, „Kontrola Państwowa – 95. rocznica powołania Najwyższej Izby Kontroli”, Warsaw 2014.

Liszczyński T., *Nawiązanie stosunku pracy na stanowisku kontrolera – znowelizowana ustawa o Najwyższej Izbie Kontroli*, „Kontrola Państwowa” 2014, no. 2.

Order no. 12/2011 of the President of the Supreme Audit Office dated 29 August 2011 on the detailed internal organization and characteristics of organizational units of the Supreme Audit Office (*Text aligned with the changes introduced by the President of the Supreme Audit Office: no. 33/2013 of September 9, 2013, no. 1/2014 of January 3, 2014, no. 15/2014 of February 14, 2014, no. 55/2015 of November 26, 2015, and No. 50/2015 of November 9, 2015*). <<http://www.nik.gov.pl/podstawy-prawne-dzialania-nik/akty-prawne/>>

Regulation no. 9/2012 of the President of the Supreme Audit Office of 29 March, 2012 on detailed rules for the preparation of audits, the tasks of auditors and the principles of reporting the results of audits (text unified with amendments introduced by the President of the Supreme Audit Office no. 10/2014 of 6 February, 2014, no. 74/2014 dated October 13, 2014 and no. 15/2016 dated March 31, 2016). <<http://www.nik.gov.pl/podstawy-prawne-dzialania-nik/akty-prawne/>>

Wierzbicka A., *Commentary on Article 4*, [in:] Act on restriction of conducting business activity by persons performing public functions. Commentary 2017, Ed. 1, Legalis.

