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ADMINISTRATION CONTROL BY THE STATE AUDIT INSTITUTION

Abstract

Exercising control by the State Audit Institution in Republic of Serbia over the legality and regularity of budget implementation by the administrative authorities is one of the most vital questions of any government. The Serbian government formed the State Audit Institution in 2005 with the aim of fighting corruption more successfully. However, nowadays, many disadvantages in budget implementation control can be seen. Some of them occur as the result of a lack of well-defined legal solutions. Still, there are many disadvantages that result from the inadequate implementation of laws on the part of state auditors. Until the day when the amendments to the Law on the State Audit Institution will eliminate the most important legal deficiencies outlined in this paper, the main role in ensuring the legality of the budget review process will be played by the state auditors, who need to be more careful regarding the basic legal guidelines of the audit process. Otherwise, even with their best intentions, our earlier expectations of the State Audit Institution in terms of the battle against corruption could be turned into a big disappointment.

Key Words: Administration Control, Budget Control, Budget Implementation, The State Audit Institution

KONTROLA UPRAVE OD STRANE DRŽAVNE REVIZORSKE INSTITUCIJE

Apstrakt

Ostvarivanja kontrole nad zakonitošću izvršenja budžeta od strane nezavisnih revizorskih institucija je za svaku državu jedno od suštinskih pitanja. Uspostavljanje dobrog i efikasnog mehanizma eksterne kontrole trošenja budžetskih sredstava je najbolji način za preventivno delovanje na najodgovornije državne funkcionere i ujedno jedna od bitnih pretpostavki za uspešnu borbu protiv korupcije. Iz tog razloga je od velikog značaja što je posle niza problema ispoljenih u procesu konstituisanja, Državno revizorska institucija u poslednje dve godine konačno otpočela kontrolu trošenja budžetskih sredstava. Međutim, u postupku kontrole izvršenja budžeta koju nad organim uprave sprovodi Državno revizorska institucija danas se mogu uočiti mnogi nedostaci. Neki od njih se javljaju kao posledica nedovoljno dobro osmišljenih zakonskih rešenja, ali postoje i određeni propusti koji su posledica neadekvatne primene zakona od strane ovlašćenih lica Državno revizorske institucije.

Ključne reči: kontrola uprave, kontrola budžeta, izvršenje budžeta, državno revizorska institucija

INTRODUCTION

The primary role of the State Audit Institution (SAI) is the control of the budget implementation by various users of public funds, the most important of which are the state, regional and local authorities. The SAI controls the legitimacy and regularity of budget implementation. SAI control is a form of external budget control and is basically secondary by nature. On special occasions, it might also control the current or planned business of the end users of public funds. Irrespective of the fact that judging by most of its features our SAI belongs to the classic type of supreme audit institutions, similar to those found in most continental legal systems, it still, speaking from a formal-legal point of view, has the same functions as any previous budget implementation control body, such as for example the National Audit Office in Great Britain, or the Corte di Compti in Italy (White & Hollingsworth, 1999; Paović-Jeknić, 1999).

The establishment of the SAI represents a continuation of the long tradition of institutionalized control over budget implementation, which in our case originated from the period of the Kingdom of Serbia, and which suffered a decade-long discontinuity following World War II (Stjepanović, 1937). Once the Law on the State Audit Institution was passed in November 2005, it represented at the same time the final act in

the legal completion of the institutionalized frame for the fight against corruption. For that reason, over the last few years, much has been expected of the SAI, and with good cause. Nevertheless, the formation of the SAI was accompanied by many difficulties. Not only was the Law on the SAI in our country passed much later than in the other countries in the region, but the legal deadlines for the formation of the SAI were not adhered to. Primarily, the election of the SAI Council should have been carried out within six months of law being passed, by May 2006 at the latest, but was only completed in September 2007 (The Decision on the Election of the SAI Council). Furthermore, the newly-appointed Council of the SAI was supposed to ratify the Rules of Procedure no later than three months following its appointment. Nevertheless, the design and ratification of the Rules of Procedure was carried out in February 2009 (SAI Rules of Procedure). Thus, more than three years after the ratification of the Law on the SAI, all the formal-legal conditions for the SAI to take over its primary function, the control of budget implementation, were finally satisfied. In addition, the process of the constitution of the SAI was accompanied by many other problems, such as problems regarding space, finances, staff, etc., which were all under the jurisdiction of the state authorities (the government and the National Assembly). All this has probably motivated some authors to conclude that among other things there is “an insufficient level of independence of the SAI from the other state authorities“, that there are “strong political centers of opposition towards the SAI“, as well as “obvious chaos in our public finances“(Stanković, 2010; Stanković, 2008). Despite all the difficulties, the SAI control of the spending of budget resources began in 2009 with the control over the budget statement of accounts for 2008. For the past two years, the audit work of the SAI on budget implementation offers us the opportunity to point out any observations regarding the current characteristics of this process.

The work of the SAI has so far only been of interest to economists, which is supported by the relatively abundant literature on the subject (Stojković, 2007; Andrić, 2005; Malešević & Andrić, 2005; Dragojević, 2006; Milinković, 2007; Stanković, 2009a; Stanković, 2009b; Stanković, 2010; Milojević & Božić, 2010). Nevertheless, for the proper functioning of the SAI, individual legal questions, related to the state budget audit can also be of significance. For this reason, we will attempt to discuss some of the most important legal issues which, in our opinion, are disputed in the SAI budget audit. Our aim is to offer a solution for these disputes by means of implementing a different audit process, or maybe suggesting changes in certain of the provisions of the current regulations of the SAI.

IMPLEMENTING THE BUDGET AUDIT PROCESS

The state budget audit is activated solely ex officio by the SAI. The basis for activating this process is the yearly *audit program* which is determined by the Council of the SAI for each upcoming calendar year. The audit program determines future audit entities, the subject matter, extent and type of the audit to be carried out, as well as the duration. The audit program can, if necessary, be supplemented during the current year. Unlike most of the other legal procedures, which are activated ex officio and always in an informal manner, that is, by the very first act of the official allocated to run the process, the state budget audit always begins with a *conclusion on audit implementation*, which must be based on the audit program (The Law on the SAI - Article 38). This conclusion is made by the Auditor General and must contain data on the audit entity, the goals and duration of the audit, as well as the period of time which will be covered by the audit (The SAI Rules of Procedure - Article 12, section 3 and 5).

The aim of drawing a conclusion on audit implementation is to determine the legal framework within which the state auditor can work, but also to inform the audit entity about the audit process. Considering the fact that one can always object to the findings of the audit process to the SAI Council, the basic legal issue in this case is to whom the conclusion should ultimately be delivered. Article 38 section 2 of the Law on the SAI and Article 13 of the SAI Rules of Procedure state that the recipient of the conclusion has the right to object within eight days of receiving the conclusion. On the basis of such a legal formulation we can conclude that only that entity, or the responsible person, who has received the conclusion can object to it. On occasion, there can be more than one legal entity involved in the same audit process, or there can be several responsible persons in the same audit entity. In this case the conclusion on an audit implementation, as the official notification of the audit process, must be delivered to each entity named in the audit process, or any of the responsible persons of the audited entity in the case when there is more than one. Since the Law on the SAI has limited the number of entities that can be audited, or in other words the number of responsible persons in the audited entity, each entity whose finances are being audited has the right to object, or any of the authorized officials of the audited entity. For example, this can refer to every legal entity that has done business with the entity whose business dealings are being audited, even if it does not include the business it had with the audited entity. In the case when the audited entity had more than one responsible person, it is essential that the conclusion on an audit implementation be delivered to all of the individuals responsible for the financial management during the audited period (the current and former official, or the individual to whom the authorized official delegated any responsibility for the financial management of the audited entity, pursuant to Article 71, section 3 of the Budget System Law).

Otherwise, it could happen that certain individuals will be denied not only the right to object, but will also not be informed that the entity they are responsible for is being audited. Thereby, certain individuals are denied the possibility of taking any form of action during the fact-finding phase, or during the audit process itself, to protect their rights and legal interests.

In relation to the legal provision regarding the right to object to the conclusion on an audit implementation, what could be considered problematic is the question of the legal regime which applies to the delivery of these notifications. The legal term that is used is 'to serve'. It refers to the act of serving the conclusion on an audit implementation, and indicates the moment from which we determine the deadline for any objections. Nevertheless, in legal terms it is not precise enough. Namely, the term 'served' is primarily associated with the personal delivery of written notices, to which, according to the Law on the General Administrative Procedure, special rules apply, unlike those for personal delivery. It is important to properly serve the conclusion on an audit implementation in order to protect the audited entity's rights, and the rights of the responsible, authorized individual. It is also important because of the fact that making an error in terms of the rules regulating the act of serving notices represents a gross error in procedure, as a result of which appropriate legal measures can be taken. The question of which individual should be 'served' with the conclusion on an audit implementation is of no small importance for the protection of the rights of the responsible person in the audited entity. As a rule either the responsible person himself or the individual authorized to receive written notices should be served with the necessary paperwork. Proper delivery of the conclusion on an audit implementation to the responsible person is important for making a timely decision on whether there is any room for objections, considering the fact that only an authorized official can raise objections on behalf of the audited entity. Otherwise, it is the duty of this official to ensure that the state auditors can carry the audit out in the best and most efficient manner.

The practice of the SAI during the first audit of the statement of accounts for the 2010 budget has unfortunately proven that the conclusion on an audit implementation had not been 'served' prior to the beginning of the audit process. In addition, the state auditors began the audit process by approaching the authorities in charge of the audited entity and directly addressing certain officials of their own choice, without previously submitting, in written form, even a request to review the relevant documents, as prescribed by Article 16, sections 4 and 5 of the SAI Rules of Procedure.

FACT-FINDING DURING THE AUDIT PROCESS

A series of legal obligations have been designed with the aim of enabling proper and complete fact-finding during the audit process, both on the part of the audited entity and the state auditors of the SAI.

The Auditor General's primary obligation is to issue the authorization for the audit process, which determines which state auditors in particular will be responsible for the audit process in each of the audited entities (The SAI Rules of Procedure - Article 16). In those cases where the state auditor needs, for the purpose of realizing the audit goal, to gain insight into certain accounting documents or to gain access to other data regarding the audited entity, he is obliged to submit a request in written form to the audited entity (The SAI Rules of Procedure - Article 16 - section 4 and 5). Irrespective of the legal obligation of the audited entity to enable the state auditor to carry out the audit process without restrictions, the obligation to submit such a request must solely be made in written form. This regulation was prescribed prior to the possibility for any possible additional control of which documents the state auditor can review during the audit process for the purpose of determining all of the facts. As a result, without any previously submitted request in written form, the authorized official should not allow the state auditor to review any of the documents or other sources related to the financial management of the audited entity. The disregard of these legal provisions, which regularly occurs in practice, is a consequence of a lack of familiarity with the audit process, not only on the part of the officials of the audited entity, but also the state auditors of the SAI.

The Law is very precise regarding the obligations of each audited entity to provide the state auditors with the necessary conditions to review the required material so that they could meet the goals of the audit. "The audited entity shall provide the auditors with all the requested data and documents, including classified data and documents that are necessary for the audit planning and audit activity" (The Law on SAI - Article 36 - section 1). On the basis of how the Law was worded and rephrased in the SAI Rules of Procedure (with the addition of the condition that the audited entity should be served with the conclusion on an audit implementation: "The audited entity to whom the conclusion to implement an audit has been served shall make it possible for the authorized persons to have insight into documentation and data to achieve the audit objectives" (SAI Rules of Procedure - Article 16 - section 3), we could conclude that the obligation to enable unrestricted review of any documents applies only to those cases when the documents or other sources of financial management reviewed during the audit process are in possession of the audited entity. It does not apply to those cases where the documents in question are in possession of the entities which had business dealings with the audited entity. This would not be a valid interpretation of the law. Namely, based on this carelessly worded legal provision, every legal entity could refuse the state auditor's request to review any documents which refer to its business with the audited entity, citing the fact that it is not the entity being audited, as prescribed by Article 10 of the Law on the SAI. The

Article in question refers solely to this legal obligation, and that the fact that an entity was never served with the conclusion on an audit implementation, which Article 16, section 3 of the SAI Rules of Procedure refers to.

For the determination of the precise and complete facts during the audit process, each audited subject has a legal obligation to enable the state auditor unrestricted access to all of its files, that is, to allow the auditor access to the required data and documents, including classified documents which are needed for the audit. In these cases the Law on Classified Information is applied to the audit process.

The entire fact-finding process which the authorized auditor carries out during the audit must be a part of the audit record, as is the case with other legal procedures in which the facts are determined by reviewing documents. This type of record must at the end properly be signed by the state auditor and responsible person of the audited entity who was present during the audit process. Still, the practice of the budget implementation audit by the SAI indicates that after the completion of the audit, no final record of the audit is made on the premises of the audited entity. This sets the precedent for other legal proceedings in which the facts are determined by a direct review by state officials. It questions the validity of the content of the official audit report which is compiled based on the results determined during the audit process. Various tables containing information obtained from documents reviewed during the audit, often bearing no signature and no stamp, at the same time full of technical and other mistakes, can by no means represent sufficiently valid grounds for the compilation of an accurate and correct audit report. An incorrectly compiled audit report could lead to very serious legal repercussions could for the responsible person of the audited entity, such as removal from office or even establishing misdemeanor or criminal liability. Unlike the remaining legal proceedings regarding administrative control, in which case the final legal act is always subject to judicial review and where each possible mistake made during the review could be remedied in the judicial proceedings, in the case of a budget audit carried out by the SAI the problem is much greater, since there is no possibility for checking the legality of the audit report.

Any possible claim that no record is kept during the budget implementation audit which would outline the implemented audit solely on account of the fact that the Law on the SAI does not make provisions for that would have no legal standing. The audit process proscribed by the Law on the SAI is a *lex specialis* in relation to the Law on the General Administrative Procedure. The postulates of the Law on the General Administrative Procedure are thus applied to all the questions of the budget audit process which are not specifically regulated by the very Law on the SAI. "If in exercising auditing competencies of the institution any matter arises not regulated by this Law, relevant provisions of the law governing

the administrative procedure shall be applied.” (The Law on the SAI - Article 7, 2005). The Law on the General Administrative Procedure (Articles 64-68) gives a precise and detailed account of how to keep and what to include in the record. Many other issues, which were not included in the Law on the SAI, are accounted for, and which the SAI auditors use almost on a daily basis. These include for instance, the delivery of the relevant papers, summons and the calculation of deadlines, etc.

Thus the official record is the only proper way of documenting all of the facts which were properly determined during the audit. At the same time, this act is of essential importance for the next phase of the budget audit process. The audit report is compiled during this phase, which, once completed, can be objected to by the responsible people from the audited entity.

AUDIT REPORT DRAFT

Compiling a draft of the audit report represents the first phase in the process of compiling a report on the budget audit. The audit report draft is always compiled immediately following the audit process and contains the opinion of the SAI regarding the business dealings of the audited entity. The Law on the SAI and the SAI Rules of Procedure do not determine the deadline within which the report draft of the conducted audit needs to be made. Once made, the report draft is delivered to the audited entity and the individuals who were the authorized officials during the audited period, who have the right to object within 15 days.

In order to protect the rights of the responsible persons, it is of the utmost importance that they receive a draft of the audit report. Thus, they are given the opportunity to, while making their objections, discuss the determined facts on which the audit report is based, if they deem it necessary. Namely, the Law on the SAI (Article 39) makes explicit provisions that based on the objections to the report draft, at least one or more debates must be held to discuss the conducted audit, on the premises of the audited entity. At the same time, it is necessary to point out that no such possibility exists in the case of objections made to the suggested report, since in that case the responsible person does not gain the right to directly participate in that phase of the audit process. Thus, adhering to the legal obligation of delivering the report draft to the responsible person is especially significant in the case when the audited individual also had a former responsible person. For such an individual the report draft actually represents the first notification that an audit process was implemented on the audited entity. For the person who had previously been responsible for the audited entity, the objection in that case is the only formal way to, through the discussion that has to be carried out on the premises of the audited entity, personally determine whether the facts were properly determined. This would also determine whether the audit report that was

based on them is also valid. Not submitting a report draft to the individual who had previously been responsible for the audited entity automatically renders it impossible for them to find themselves in a similar legal position as the current responsible person. This can have great repercussions for the protection of their rights and interests during the audit process. Serving the previous authorized individual with only the suggested report (the following phase of the audit process), even if it is identical to the draft of the report in terms of content, does not mean that the previous responsible will find himself in the same legal situation. This is a consequence of the fact that making an objection to a suggested version of the report does not enable him to take part in the audit process or allow him access to all the information on the audit, which he could have been able to acquire if he had made an objection to the draft of the report. It is interesting to note that even though the Law on the SAI undoubtedly prescribes an obligatory discussion regarding the objection made to the audit report draft (“The institution shall consider the justifiability of comments contained in complaints and it shall, within 15 days after the receipt of the complaint, invite the responsible person from the audited entity to debate the draft audit report, during which these persons may provide additional evidence.” Article 39, section 3), the SAI during the compilation of its Rules of Procedure, or lower-level acts, relativized this legal provision prescribing a facultative discussion (“the competent supreme state auditor may summon the responsible person of the audited entity to the hearing on the Draft Audit Report where new evidence may be submitted”, Article 20, section 5).

Even though the Law on the SAI includes provisions for the obligatory discussion on the stated objection to the report draft, it also makes provisions for the possibility of the cited discussion not taking place, if the audited entity notifies the SAI that he does not object to any of the findings contained within the report within 15 days of being served with the report draft (Article 39, section 4 of the Law). Irrespective of the fact that this provision may be the result of the lawmaker’s aim to achieve an effective and efficient audit process, it still endangers the legal rights of the responsible persons, since the existence of the differences between the audited entity and the responsible individual has been overlooked. Namely, pursuant to Article 39 section 2 of the Law on the SAI, the audited entity and the responsible person both have the right to object. Nevertheless, if the audited entity were to waive the right to object, this would immediately carry with it the inability to hold any kind of discussion regarding the objection made by the responsible person. The legal interest of the audited entity and responsible person do not always have to coincide. This is especially evident in the case where there are several responsible persons in the same audited entity (for example, the current and prior authorized official). Thus, the current responsible person, by adding himself to the name of the audited entity can stultify the right of the for-

mer responsible person to object. Taking part in the discussion which must occur as a result of the objection to the report draft is of vital importance for the protection of the rights and legal interests of the previous responsible person, since he, by the very nature of his legal position, did not have the opportunity to take part in the audit process involving the audited entity. The realization of this right is especially important due to the relatively frequent possibility of a direct clash of interest between the current and prior responsible person. This is especially the case when certain irregularities were determined during the audit process, which refer only to the period during which the prior official was responsible. Naturally, a similar problem can occur in cases where the current official representing the board of directors, pursuant to Article 71, section 3 of the Law on the Budget System, has delegated responsibility for financial management to another individual in the administrative authority, who then during the audit process becomes the responsible person. It is interesting that the SAI in its Rules of Procedure (Article 20, section 2) successfully makes a conceptual distinction between the audited entity and the responsible person, so the legal position of the current responsible person is bound to the concept of the audited entity. It places special emphasis on the rights of the former responsible person, prescribing that: "the audited entity, that is, the previous responsible person, has 15 days after the draft report has been served to notify that he does not contest any of the findings contained in the draft." For this reason it is baffling why the SAI in the very same article of the Rules of Procedure (Article 20, section 8) neglects this distinction and literally takes over the legal provision that: "the audited entity has notified the institution that he does not contest any of the findings contained in the draft not later than 15 days after the draft report has been served."

The practices of the SAI up to now have nevertheless rendered any theoretical distinction between the concept of an audited entity and the authorized official pointless. Namely, during the first audit for the statement of accounts for 2010, when even though almost all of the audited entities had both current and former responsible persons, none of the latter had been served with a draft of the audit report, and thus any objection was rendered impossible. Unlike the current responsible persons, they did not have an opportunity to actively participate during the entire audit process and protect their rights and legal interests, as they were notified of the audit only during the second phase, when they received the suggested report.

In regards to the draft of the audit report, Article 25 of the SAI Rules of Procedure is quite significant. In it the SAI made provisions for keeping minutes of meetings during which the objections to the report draft were discussed, despite the fact that in practice no such record is kept during a much more important phase of the procedure for proper fact-finding, the audit itself.

MEANS OF LEGAL PROTECTION IN THE AUDIT PROCESS

During the budget audit process, the legal protection offered to the responsible person is limited only to the possibility of internal control which is conducted by the SAI itself. As a means of legal protection, there is only the *objection*, which can be used either during the audit process phase and then only against the conclusion on the audit implementation, or during the audit report compilation phase, against the report draft and suggested report. The possibility of checking the legality of the final report is rendered impossible by the Law on the SAI.

Objections to conclusion on an audit implementation

The objection to the conclusion on an audit implementation can be submitted to the SAI Council within 8 days after being notified of the decision. It always has a suspensive effect, that is, it delays the planned audit. In addition to the issues related only to serving the conclusion and the group of individuals who have a legal right to object, which we have already previously discussed, this means of legal protection raises a few more contentious legal issues. The first point of contention is the extent of the jurisdiction of the SAI Council to act upon this legal remedy. Namely, the jurisdiction of the SAI Council does not offer the best possible legal remedy, since the objection is made to the legal act passed by the Auditor General, who at the same time is the president of the SAI Council. This does not only bring into question the possibility of taking this issue before a higher court, but also the objectivity of the members of the SAI Council, since their legal position to a great extent depends precisely on the very President of the SAI Council. The president of the SAI Council as the Auditor General is at the same time the only ordering party in the SAI and the individual who presides over the work and/or legal issues of all the employees, including the members of the SAI Council.

It is interesting that during the prescription of the unlawful relations of SAI officials, care was taken that the members of the SAI Council do not find themselves dependent on the audited entity ("A member of the Council cannot participate and make decisions in the audit process, if he/she was professionally engaged with the audited entity, or performed certain tasks for the audited entity, if the period of five years since the termination of such employment, or termination of tasks, has not expired." Law on the SAI, Article 18, section 2), while at the same time the fact that one member of the Council should also decide on the legitimacy of his own decision does not pose a problem. Thus, for any impartial decision making on the part of the members of the SAI Council, only objectivity towards the audited entity is necessary, and not towards oneself. In this case it would not be amiss to remind ourselves that the Law on

General Administrative Procedure as one of the absolute reasons for an official to excuse himself is the case when “the official involved in the first instance proceedings takes part in the conduct of the proceedings or decision making” (The Law on Administrative Procedure, Article 32, section 1, point 4), as well as the clear stand of our judicial practice according to which “an official who took part in the first instance proceedings needs to excuse himself from the appeals process of the same decision, even though this individual is a member of the collegial appellate body“ (Supreme Court of Serbia decision no U. 2195/78, July 12, 1963).

The decision made on the objection to the conclusion on an audit implementation is made within 3 days by the SAI Council and is given in the form of a conclusion, which will nullify the objection, dismiss it or support it. In this kind of conclusion, the basic legal issue is the fact that the Law on the SAI (Article 38, section 5) unnecessarily states that no objections can be made against the conclusion to dismiss the objection. Based on the explicit prescription for the inadmissibility of objections only in the case of the conclusion to dismiss an objection, we could argumentum a contrario conclude that one could object to the conclusion to dismiss the objection, which of course would not be valid. In order to remove this omission on the part of the lawmakers, which has duly been noted by the SAI, the SAI Rules of Procedure (Article 14, Section 2) explicitly states that no objections can be made to the conclusion based on the objection to the conclusion on an audit implementation. This type of behavior on the part of the SAI would be quite proper if it were not a case of an expansion, and not an extension of the legal provision of a bylaw article. For this reason, this provision of the SAI Rules of Procedure is threatened by the possibility of an evaluation of its constitutionality and legality before the Constitutional Court of the Republic of Serbia.

Submitting an objection to the audit report

The objection to the audit report draft is submitted to the SAI within 15 days of the audit report being served. Once it receives this objection, the SAI is obliged to organize a discussion to consider the validity of the stated objections within 15 days of receiving it at the latest, except in cases when the audited entity submits an explicit written statement that he is not objecting to any of the findings contained within the report draft (Article 39 section 1 - 4 of the Law). In addition to all the questions regarding the obligation of holding such a discussion that we have mentioned so far, in the case of objections to the report draft, the issue of who has the legal right to make decisions could be considered disputable. Namely, the Law on the SAI contains provisions for the jurisdiction of the *Council members* and the *state Auditor General*, but at the same time, the way in which the decision process takes place was not determined,

whether it is done collectively or individually. “Following the debate, the authorized person from the institution shall submit to a Council member or responsible Supreme State Auditor the draft audit report with possible comments of the audited entity. The Council member or responsible Supreme State Auditor shall examine the audit reports and establish the justifiability of complaints and whether the conclusions are based on the evidence from the documentation i.e. whether the procedure was conducted in accordance with the audit standards. After assessing the comments and conclusions, the Council member or responsible Supreme State Auditor shall establish the proposal audit report which is submitted to the audited entity and responsible persons, within 30 days after the date of debate finalization.” (The Law on the SAI - Article 39 - section 15). Despite this type of dilemma, which in this case could be remedied by the SAI Rules of Procedure in the form of a bylaw, the essential objection to this type of legal solution refers to the fact that provisions were made for the special (individual) jurisdiction of a member of the SAI Council. This is a body which Law on the SAI explicitly stated must be a collegial body which makes all its decisions based on a majority vote. “The Council is a collegial body. (...) Council passes decisions by a majority vote of all the members.” (The Law on SAI - Article 13 - section 2 and 6). Thus, every individual who is a member of the SAI Council can only make decisions in conjunction with the other selected members (collegially) and not individually. The fact that an individual who has been selected for the function of the President of the SAI Council can at the same time be the President of the SAI and the Auditor General, which by their very nature are individual and separate functions, is a different matter. Nevertheless, such an individual, as well as any other selected member of the SAI Council in the capacity of the Council President can make decisions only in conjunction with the other members (the majority vote). With the intention of overcoming the problem of establishing individual responsibilities of any member of a collegial body which was initiated by such a legal provision, the SAI, while compiling its Rules of Procedure which regulate the decision making process regarding the objection to the audit report draft, made provisions only for the jurisdiction of the Auditor General. “The competent supreme state auditor shall evaluate the justifiability of the comments in the objection not later than 15 days after the receipt thereof.” (The SAI Rules of Procedure, Article 20, section 1, point 4.) In regard to the remaining jurisdictions of the supreme state auditor which refer to the discussion of the objections to the audit report draft (SAI Rules of Procedure - Article 20, section 1 point 5 - 8, Article 21, 23, 24, 26 and 27). Even though such a solution could at first seem logical, it is still against the Law on the SAI, which represents the limitation of the legal provision.

Objections to the proposed audit report

An objection to the proposed audit report can be submitted to the SAI Council within 15 days of the report being submitted, and can be submitted by the audited entity and the former responsible person. The SAI Council makes a decision on the objection, without any specially organized discussion, within 30 days of the submission date. Making this type of objection at the same time represents the last possibility for checking the validity of the facts determined during the audit process and the audit findings based on them, since the Law on the SAI has made explicit provisions that the final text of the audit report cannot be objected to (Article 39, section 19).

Since the basic problem in the case of the objection to the report in practice is the fact that the SAI Council, while deliberating on the objection, does not become involved in the evaluation of any type of legal claims regarding the legality of the implemented audit. Instead it only takes into consideration the fact whether the objection offered new proof, as if this were a case of some unusual remedy process. This new proof must be related only to the existence of new evidence, on the basis of which different facts could be determined, such as a request to repeat the procedure from the Law on Administrative Procedure (Article 239 section 1, point 1). Unlike the objection to the report draft, in which case providing new evidence is mentioned only as a possibility (“The institution shall consider the justifiability of comments contained in complaints and it shall, within 15 days after the receipt of complaint, invite the responsible person from the audited entity to debate on the draft audit report, during which these persons may provide additional evidence.” The Law on the SAI, Article 39, section 3), in the case of an objection to the suggested report, the Law on the SAI does not even mention new evidence (Article 39 section 13 - 16). Nevertheless, for the SAI Council this fact is of no significance, and during the decision making process regarding the objection made to the suggested report, it only takes into consideration the fact whether new evidence has been introduced.

Judicial control of the legality of the audit process

From the aspect of the protection of the legal rights of the responsible persons in the audit process, the possibility of judicial evaluation of the legality of the audit report is essential. Nevertheless, the very Law on the SAI explicitly excluded the possibility of any judicial control of all the SAI acts made during the audit process. “Enactments by which the Institution performs its auditing competence cannot be a subject of dispute before courts and other state bodies.” (The Law on the SAI - Article 3 - section 4). Even though this legal provision was legally possible when the Law on the SAI was being passed in November 2005, following the adoption of the new Constitution of the Republic of Serbia in November

2006, it has in its unaltered form become directly contrary to Article 198 section 2 of the Constitution. This article explicitly makes provisions for the judicial review of the legality of any individual act of each state authority which makes decisions regarding one's rights, obligations or legally founded interest. If it were the case that the Law on the SAI had been timely adjusted to the Constitution within the deadline prescribed by Article 15 of the Constitutional Law for enforcing the Constitution (by December 31, 2008 at the latest), today it would be possible to start administrative proceedings against every individual act of the SAI made during the audit procedure, as is the case with every act of any other state organ against which no other type of judicial protection is made possible. In this way, the only possible means of judicial overview of the legality of the procedures of the SAI for now is only a constitutional complaint.

CONCLUDING REMARKS

The possibility of gaining control over the legality of the statement of accounts by independent audit institutions is a vital question for each country. Establishing a proper and effective mechanism of external additional control of budget implementation is the best preventive measure for the most responsible state officials and at the same time an important assumption for the for the successful battle against corruption. For that reason it is of vital importance that after an entire sequence of problems manifested in the process of its constitution, the SAI has finally begun controlling budget implementation during the past two years.

In order to successfully control budget implementation on the part of the authorities, it is important that the institution carrying out the control be provided with enough authority and that the rules of procedure enable it to act effectively. In addition, certain legal safeguards need to exist which would protect all the individuals who may be exposed to legal consequences of any possible irregularities. After a careful legal analysis of the procedures of the SAI, we can conclude that in our current regulations there are numerous deficiencies regarding the control procedure of budget implementation. Some of them are the consequence of inappropriately thought-out legal provisions. Still, there are certain deficiencies on the part of state auditors. It is for this reason that we consider any changes to the Law on the SAI the best to remedy most of the irregularities outlined in this paper. Considering the fact that the significance of the proper functioning of the SAI will be manifested the moment when Serbia is in the position to be awarded candidate status for membership in the EU, it is also important for when it starts to use access funds to the EU and when it will have take part in the required cooperation with the European Auditory Court, pursuant to Article 248-3 of the Treaty of Amsterdam regarding the protection of the financial interests of the EU from 1997. We should not wait that long for such legal changes.

Until then, the basic responsibility for the proper conduct of the budget implementation audit by the authorities will rest solely on the SAI and will in the most part depend on its legal interpretations. Strengthened with new jurisdictions, both during the audit process (the possibility of the control of all direct and indirect users of public funds, the right to review all business documents), and after its implementation (the request to remove the responsible person from office, the initiation of criminal and misdemeanor proceedings), the SAI should not allow its activities to infringe on any laws in the near future. State auditors should take special care to follow the basic legal guidelines during the audit process. Otherwise, even with their best intentions, the great expectations which we harbored for the SAI in terms of the battle against corruption might just turn into another disappointment.

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ADMINISTRATION CONTROL BY THE STATE AUDIT INSTITUTION

Summary

Administrative control of the State Audit Institution is one of the most important forms of control that over administrative authority is conducted by independent state authorities. The State Audit Institution controls the legitimacy and regularity of budget implementation. SAI control is a form of external budget control and is basically secondary by nature. On special occasions, it might also control the current or planned business of the end users of public funds.

The Serbian government formed the State Audit Institution in 2005 with the aim of fighting corruption more successfully. The establishment of the SAI represents a continuation of the long tradition of institutionalized control over budget implementation, which in our case originated from the period of the Kingdom of Serbia, and which suffered a decade-long discontinuity following World War II. The primary role of the State Audit Institution (SAI) in Serbia nowadays, is the control of the budget implementation by various users of public funds, the most important of which are the state, regional and local authorities.

The formation of the SAI was accompanied by many difficulties. Thus, more than three years after the ratification of the Law on the SAI, all the formal-legal, organizational, material and personal conditions for the SAI to take over its primary function, the control of budget implementation, were finally satisfied. For the past two years, since the SAI start to work, many disadvantages in budget implementation control can be seen. They are related to almost all phases of revision procedure in budget implementation, conducted by SAI. Disadvantages can be seen primarily, since formally initiation of revision proceeding, towards determination of facts during revision procedure and drawing up of draft audit report, to the means of legal

protection that audited subjects may use in the revision procedure. Some of them occur as the result of a lack of well-defined legal solutions. Still, there are many disadvantages that result from the inadequate implementation of laws on the part of state auditors. It is for this reason that we consider any changes to the Law on the SAI the best to remedy most of the irregularities outlined in this paper. Considering the fact that the significance of the proper functioning of the SAI will be manifested the moment when Serbia is in the position to be awarded candidate status for membership in the EU, it is also important for when it starts to use access funds to the EU and when it will have take part in the required cooperation with the European Auditory Court.

Until then, the basic responsibility for the proper conduct of the budget implementation audit by the authorities will rest solely on the SAI and will in the most part depend on its legal interpretations. State auditors should take special care to follow the basic legal guidelines during the audit process. Otherwise, even with their best intentions, the great expectations which we harbored for the SAI in terms of the battle against corruption might just turn into another disappointment.