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Research Article

External economic and financial control - Comparative constitutional perspective

Dr. Anton Gera

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Abstract

There can be no talk of external economic and financial control in a dictatorial state. Consequently, external control is a significant component of democratic states. As for the definition of external audit, it consists of an assessment carried out by an independent and competent entity. This assessment allows the compilation of an opinion in relation to national or international standards on the financial status, internal control of the institution, procedures and any activity of a given institution. Audit is an independent assessment that aims to obtain evidence in relation to a specific object and its objective assessment to determine to what extent predetermined criteria have been met or not. The concept of audit can be applied both in the public and private sectors, where it was invented. Regarding auditing in the public sector, there should be a distinction between internal and external audit. Internal Audit is an independent activity that provides objective assurance and advice to management designed to add value and improve the operations of a public entity. As for the origins of auditing in general through the use of inventory, it is found in Domesday, created by William I of England. In the late Middle Ages, there are references to auditors and auditing in Italy, France and England as an activity and as a formalization of the institution of control. In this sense main objective of this manuscript is a comparative constitutional perspective of the economic and financial control.

Keywords: Economic, financial control, Comparative constitutional perspective.

1. Introduction

In Albania, it should be noted that the Ottoman occupation prevented the creation of a national state and consequently the laws and regulations imposed for the interests of the empire were applied. We can say that the first constitutional act that implemented external economic and financial control, that is, control of public finances, is the fundamental statute of the Albanian State. This statute in articles

43-44 determines that the Chamber of Deputies[1] has the right and duty to control the government for the protection of the general interests of the country, to create investigative committees. These committees conducted investigations and requested explanations from public authorities and state enterprises. They had the exclusive right of supervision over official acts to prove their compliance with the general public interest. However, with the declaration of Albania's independence by the Vlora Assembly, *Pleqesia*, in addition to the advisory function, also had the function of controlling the government (Gera, 2024). Later, the London Ambassadors' Conference decided that financial control would be carried out by the International Control Commission, following the Congress of Lushnja, which charged the Financial Control Council with financial control, and the Noli government, which decided to form a commission for the control of accounts. With the abrogation of the Statute of the Republic of Albania and the adoption of the Fundamental Statute of the Albanian Kingdom in 1928, external control of the State's finances was entrusted to the Control Council, which was independent in the exercise of the task defined in this Statute (Statuti Themeltar i Mbretërisë Shqiptare, 1928). The provisions of this statute, from articles 155-159, deal with the composition, the object of activity, the relations with the government, the King and the parliament. With the occupation of Albania by Italy, Francesco Jacomoni[2] on July 13, 1939 approved with decree n.44 "On the functioning of the Control Council" which in its first article sanctioned that the Control Council continues to be a special institute and will continue to exercise its current functions until its regulation is determined differently and depends on the Prime Minister's Office.

After the liberation of Albania from Italy and the establishment of the communist dictatorial regime in Albania, the institute of public finance control suffered multiple dependencies in the service of the government in power to realize the goals and the new communist man.[3] With the fall of the totalitarian regime, the law on the State Audit Service was adopted with the assistance of the EU and determined that the State Audit Service was the highest body of economic and financial control for the state budget and the administration of state property. It should be noted that the independence of the State Audit Service from the government was also determined in the Main Constitutional Provisions. The total independence of this institution from the government was finally sanctioned in the 1998 Constitution in its fourteenth part. The institution that carries out external economic and financial control in the Republic of Albania is the Supreme State Audit. The structure of this institution in Albanias's Constitution is conceived as a monocratic body. In some countries of the EU, the structure of this institution has been conceived as a collegial body, such

[1] It should be noted that the parliamentary structure at that time was composed of two chambers, the Chamber of Deputies and the Chamber of Senators, the first and last case in the history of parliamentarism in the Republic of Albania.

[2] He was appointed ambassador to Albania on April 17, 1939, and on April 22, he became Viceroy of King Vittorio Emanuele III of the Kingdom of Albania.

[3] For more on the financial control institute during the communist regime. *Historiku i Kontrollit te Larte te Shtetit*, in f. 12-16, https://panel.klsh.org.al/storage/phpKHIYa6.pdf.

as in Greece, Slovenia, Romania, Spain, the Czech Republic, Portugal, Germany, Belgium. Furthermore, the EU organization has entrusted external financial control to a collegial body, such as the European Court of Auditors. This court is tasked with checking whether EU funds are collected and used correctly from each EU member state (Art. 285 TFEU).

It should be noted that during the drafting of the Constitution by the Constitutional Commission in 1997-1998, the idea was initially raised that the head of the Supreme State Audit Office be elected from the ranks of the opposition, which did not find consensus for final approval (OSCE, 2006). As we have mentioned above, the Supreme State Audit Office is the highest institution of the Albanian state for external economic and financial control, independent, depoliticized and exercises its functions by submitting to the Constitution and the legislation in force. This institution is headed and represented by the president who is elected and dismissed by the Parliament upon the proposal of the Head of State for a 7-year mandate with the right to re-election (Art. 162 of the Albanian Constitution).

The method of selecting the president of the Supreme Audit Institution varies from country to country in the EU. In Austria, the President of the Court of Auditors[4] is elected by the National Council upon the proposal of the Central Commission of the National Council for a 12-year mandate without the right to re-election. In Cyprus, the Auditor and Deputy Auditor of the Audit Office of the Republic[5] are appointed by the President and Deputy President of the Republic, while in Denmark, the Auditor General of the *"Rigsrevisionen"* is appointed by the Speaker of the Danish Parliament upon proposal of the Public Accounts Committee and prior approval by the Parliamentary Committee on Rules of Procedure for a 6-year term with the right to re-election for only another 4 years.[6] As can be seen, we are dealing with a monocratic institution that depends on the parliamentary oversight structure and not on its own power. In Germany, the supreme institution of public finance control is the Federal Court of Audit, which is a collegial body. Its president is elected by the chambers of Parliament by an absolute majority on the proposal of the federal government and is appointed by the President of the Republic for a 12-year term without the right to re-election.[7] In the Republic of Italy, the President of the Court of Auditors is appointed by the President of the Republic on the proposal of the Prime

[4] According to the Austrian Constitution and applicable Austrian legislation, this court is the highest audit institution at the three levels of government, at the federal, state and municipal levels. The Austrian Audit Office is the independent supervisory institution at the federal, state and municipal levels. This court controls the proper administration of public funds, including state expenditure incurred by public institutions and state funds used by private institutions.

[5] The Audit Office of the Republic of Cyprus audits the revenue and expenditure of the public sector, as well as all monetary and other assets held by the Republic of Cyprus or administered on its behalf.

[6] The Danish National Audit Office "Rigsrevisionen", which is not a constitutional but a statutory institution, has as its main function to audit state accounts and whether public funds are administered in accordance with the laws and the objectives of the Danish Parliament.

[7] other members are appointed by the Federal President on the proposal of the President of the *Bundesrechnungshof* and head the nine divisions and forty-nine units of which the body is composed, as provided for by the aforementioned 1985 law.

Minister, who elects the President from among the judges of the Court selected by the Council of the Presidency of the Court of Auditors.[8] In Slovenia, the President of the Court of Auditors is elected by the National Assembly by absolute majority on the proposal of the President of the Republic.

2. The competences of the State's High Control

The Basic Law of the Republic of Albania and the Law on the Organization and Functioning of the Supreme State Audit Office establish that the Supreme State Audit Office is the highest state institution of external control in Albania. The above-mentioned acts determine that this institution has special powers related to the economic and financial control activity of the State. More specifically, the Supreme State Audit Office, in accordance with its status and function defined in the constitutional act, has the power to control: the economic activity of state institutions in the use and protection of public funds by central and local government bodies, as well as the economic activity of legal entities in which the State has the majority of shares (Albanian Constitution). While the organic law lists in detail these competencies that have to do with: control of budget implementation and revenue collection by general government units; control of the use, administration and protection of public funds and property by local and central government units; control of internal audit systems in the public sector as well as control of users of funds provided by the EU; control of the use, administration of public funds and property, as well as the protection of the economic and financial interests of the state in legal entities where the state has more than half of the shares; control of concession contracts, political parties, public entities or associations for the funds allocated to them from the state budget. In this sense, this institution controls the implementation of the state budget and the management of public property. According to Albanian legislation, external control covers the areas of compliance, legality, regularity, financial management, accounting, as well as the economy, efficiency and effectiveness of the administration of public funds and property. The Constitutional Court has stated that the SAI is conceived as a body whose main objective is to control the effective and beneficial use of public funds, the development of good financial administration, and the control of the implementation of legality in the economic and financial field.[9] The Supreme Audit Office controls the economic activity of state institutions and other state legal entities, not excluding from control even the constitutional institutions that appoint and dismiss the president of this body. As can be seen from the aforementioned constitutional and legal provisions, the Supreme Audit Office has only a control function and not a jurisdictional function, while in some countries of the EU, analogous institutions have, in addition to the control function, a jurisdictional function. In the Republic of Italy,

[8] The Council of the Presidency of the Court of Accounts is the self-governing body of the Court of Accounts and consists of the President of the Court of Accounts, the Prosecutor General of the Court of Accounts, the Deputy President of the Court, four members elected by absolute majority from both chambers of parliament, four members elected by and from among the magistrates of the Court of Accounts.

[9] Decision n. 9/2021 of the Albanian Constitutional Court.

the Courts of Accounts have an audit and jurisdictional function in matters of public accounting and in other matters defined by law (art. 103 of the Italian Constitution). It should be noted that unlike the Supreme Audit Office, which is not part of the traditional powers, the Court of Accounts is part of the judicial power. This court judges accounting agents, administrators and public officials for all matters related to the management of public resources and has jurisdiction in matters of civil, military and war pensions.

Meanwhile, the Portuguese constitution establishes that the Court of Accounts, in addition to its control function, also has a jurisdictional function. More specifically, this court is the supreme body for controlling the legitimacy of public spending and for judging the accounts that the law imposes (Art. 114 of the Portuguese Constitution). External economic and financial control has a jurisdictional function, in addition to the above-mentioned countries, also in France, Greece, Spain and Belgium. Generally, the supreme external control institution, in addition to other competences, can carry out ex santé and ex post controls to verify the legality and regularity of income and expenditure. In the Republic of Albania, unlike some EU countries, the SAI verifies the legality and regularity of revenues only ex post. It verifies whether the bodies responsible for the administration of public funds have achieved or not achieved the objectives they had set, and assesses the efficiency, effectiveness and economy of administration by public or state institutions. Albania's Constitution and the organic law of the SAI do not provide for an ex santé verification as provided for in Italy, Greece, Portugal and Spain. The Italian Constitution stipulates that the Court of Auditors exercises prior control over the legitimacy of government acts (Art. 10 of the Italian Constitution). This Court reviews the compliance of the acts of the executive branch with legal provisions, especially those on the budget. Some of the acts subject to ex ante control are: acts of the Prime Minister and ministers on the provision of organic crops, the assignment of management functions, general instructions for the management and performance of administrative actions, normative acts of external importance, planning acts involving expenditures and general acts implementing community rules, decisions on the disposal of state property, decrees amending the state budget, decisions of inter-ministerial committees on the distribution or allocation of funds and other resolutions issued on such matters, decrees on the approval of contracts of state administrations, etc. Meanwhile, in Greece, the Court of Auditors conducts preliminary control regarding draft laws in the field of pensions, public prosecution, in matters of great importance related to the financial management carried out by public administration bodies, etc.[10]

3. External economic and financial control report to Parliament and the government

The Law on the Supreme State Audit in the third paragraph of Article 6 determines that the external audit body of public finances in its activity must reflect the highest

[10] Art. 98, third paragraph, Το Σύνταγμα της Ελληνικής Δημοκρατίας; Ο Οργανικός Νόμος του Ελεγκτικού Συνεδρίου, n. 4820/202 (A13).

level of international standards of INTOSAI[11] and IFAC. The first paragraph, Article 16 of the Limassol Declaration *determines that the Supreme Audit Institution must be empowered and mandated by the constitution to independently report annually its findings to the parliament….* These reports will be published to ensure wide dissemination and discussion, as well as to increase the opportunities for the implementation of the findings in the Supreme Audit Institutions. Despite the differences between the external economic and financial control institutions in the countries we have discussed above, they have a common characteristic that consists of a close relationship with their respective parliaments.

This close relationship is concretized in a reporting activity by these institutions in the Parliament. In the Albanian case, the SAI, as we have outlined above, reports to the Parliament and is an independent body, subject only to the Constitution and laws, its director is elected and dismissed by the Parliament. The reporting activity of this institution in the Parliament is determined by the Constitution and the organic law. According to the Constitution, the SAI reports to the Parliament on the implementation of the state budget, presents an opinion to the latter on the report of the Council of Ministers on the expenditures of the previous financial year before it is approved by the Parliament, and provides information on the results of the controls whenever requested (Art. 164 of the Albanian Constitution). In addition to these reports stipulated in the Constitution, the head of the SAI may request the Assembly, the Committee on Economy and Finance or any other committee to be heard and report on issues that he considers important in the function of his activity. The Supreme Audit Office usually presents audit reports to the audited entity, but its head, if he deems it necessary, can present them to the President of the Republic, the Speaker of the Assembly and the Chairman of the parliamentary groups. As for the report of the Supreme Audit Office to the Government, the main subject of the audit activity since it manages the largest part of the State budget, the Basic Law determines that the head of this institution may be invited to participate and speak at the meeting of the Council of Ministers when issues related to its functions are being reviewed (Art. 165 of the Albanian Constitution). Meanwhile, the organic law stipulates that the Supreme State Audit Office has the duty to present to the Council of Ministers, other state authorities, non-profit organizations with which the SAI has cooperation agreements, the public and other interested parties, when it deems it necessary and in the interest of the state and the public, reports, studies and other materials related to the Council of Ministers, ministries and other central institutions. The European Court of Auditors also reports three times, to the European Parliament and the Council, as well as to the committees of the member states, on the legality and regularity of the use of EU funds.

It also reports on any irregularities identified. In Germany, the Federal Court of Auditors, whose members enjoy the independence of judges, examines the financial statements and the economy and correctness of economic and budgetary management.

[11] It is an international organization that brings together supreme audit institutions, i.e. courts of accounts and similar bodies of different countries.

It reports directly to the Bundestag and *Bundesrat* every year, in addition to the Federal Government. Also in France, the Court of Auditors is independent of the Government and Parliament. It sends them audit reports accompanied by recommendations. More specifically, it transmits to Parliament: - each year, a report on the results of the previous financial year and the management of the budget; a report to Parliament on any movement of credits operated by the Government which must be ratified by the subsequent financial law; an annual report on the public financial situation. In the case of Italy, the Court of Auditors has a control, jurisdictional and consultative function. As regards its control role, it reports to Parliament the results of its activities. The Spanish Constitution and the Organic Law of the Court of Auditors stipulate that it sends to Parliament the annual report on the General Account of the state budget. The recommendations in the reports are submitted to the bicameral Commission for relations with the Court of Auditors, composed of 48 members, half senators and half deputies (Art. 136 of the Spanish Constitution).

4. Conclusion

It can be said without any doubt that external economic and financial control of the activity of administration and management of public revenues, of state property assets is a constituent part of democratic states and not dictatorial states. After the liberation of Albania from Italy and the establishment of the communist regime, the institution of public finance control was at the service of the government and the party-state to realize the utopian ideology of communism. With the fall of the totalitarian regime in the early nineties, the institution for economic and financial control gained a fragile independence and invisibility, since the head of the Supreme Audit Office is elected by an absolute majority by Parliament. The structure of this institution, so important for the external financial audit of the management of public money and property, as we analyzed in this paper, has been conceived differently in several countries of the EU. The structure of this body appears as a *monocratic* and collegial body, independent of other powers, which verifies the efficient, effective and economic use of public resources in accordance with the regulations in force. From the above comparative analysis, we come to the conclusion that this institution makes an exceptional contribution to the parliament through audit reports to control public administration and improve policies, programs and financial management of the country to which they belong. In conclusion, based on the competencies and duties of the Supreme Audit Office, defined in Albania's legislation, it has only controlling functions, ex post, and not jurisdictional functions as in some countries of the EU. While the Supreme Audit Office reports every year the mismanagement of public funds on a very large scale in a country with a low economy, while the vast majority of cases it refers to the prosecutor's office fail to hold the perpetrators of this mismanagement accountable, while the head of this institution is elected by the parliamentary majority who should control its performance management, I think that the Supreme Audit Office needs a deep reform. More specifically, I think that this institution, very important in a democratic republic, should have jurisdictional competences in addition to control competences. Of course, jurisdictional competences require that this institution be composed of judges profiled in the field of auditing and independent of political power. In addition to ex post control over the regularity and legality of income, this institution should carry out ex santé control over acts or decisions that dispose of state property, over acts that continuously change the state budget, public-private partnership contracts.

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