

PRINCIPLES REGARDING THE JUDICIAL ACTIVITIES OF SUPREME AUDIT INSTITUTIONS'

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The structures of Supreme Audit Institutions (SAIs) are shaped in parallel with the political, managerial, legal and economic structures of their countries. These structures generally occur in office, judicial and collegiate models, and there are generally accepted international standards regarding their activities. There are several international standards regarding the judicial function performed by the jurisdictional SAIs (TCA), which we will discuss in this study. Those standards are included in INTOSAI's basic principles and implemented by INTOSAI as professional pronouncements (IFPP). Moving from the definition of individual responsibility, INTOSAI-P1-Lima Declaration, which is one of the main texts of independent supreme audit, talks about the possibility of compensating losses through the judicial power of SAIs. Similarly, INTOSAI P10 and P12 emphasize that SAIs, which has penalization or judicial powers, can have more powerful structures.

The project for "Forum of Jurisdictional SAIs Network of General Prosecutors" was accepted on 10-11 September 2014 in the 7th meeting of "INTOSAI Working Group of Value and Benefits of SAIs" (WGVBS) in Mexico. Then, the process continued with the 22nd INCOSAI and 2015 Paris Declaration, and entered a new phase in 2019. The 23rd Congress (INCOSAI) of INTOSAI was held

on 23-28 September 2019 in Moscow, and a decision was taken there to accept the INTOSAI P-50 regarding the Principles of Jurisdictional Activities of SAIs.

This study will basically address the matters that are necessary to be able to say that an SAI has a judicial function based on the classification followed by INTOSAI P50.

Principles regarding the Judicial Activities of SAIs

INTOSAI-P 50 defines 12 basic principles regarding the judicial function of SAIs, and seeks the existence of all those principles to be able to say that a SAI has full and complete judicial power. These principles are classified under three titles and can be implemented differently based on the national legislation.

Principles regarding Prerequisites and Legal Framework

Legal Basis of the Responsibilities Regime: To be able to talk about the judicial power of a SAI, the law should define and clarify the liability regime and the persons accountable by law (i.e. those responsible) before the SAI. It seems that this basic legal principle, which is expressed as legality in crime and punishment (*nullum crimen, nulla poena sine lege*), is essentially reflected to the principles

of P50. The legal framework must specify on the one hand, the missions, powers and judicial procedures to be followed, and on the other hand, the liability regimes and obligations of the persons accountable by law.

Independence of the SAI's members involved in the jurisdictional activities: The members of the SAI involved in the jurisdictional activities (their working structure changes based on the organization style of the SAI) should benefit from guarantees legally spelled out, which explicitly ensure their independence toward the public authorities. This definition of independence includes the appointment of the ones who take part in judicial activities, their non-removability within their tenures and the establishment of legal guarantees that will ensure their neutrality. Any failure to ensure the full independence of judges poses the risk of harming the SAI's decisions regarding judicial activities. This principle is also expressed as the legal guarantee for judges, and it is a must for jurisdictional SAIs.

Freedom of Access to information: All hindrances should be removed for jurisdictional SAIs for their access to information and documents. Access to those should be legally guaranteed. With this principle, it should be easily possible for the SAI officials charged with crimes and accountable persons charged with crimes to transfer for and against information, documents and similar other matters to the judicial phase during the judicial procedures of SAIs. Judicial process itself is the important thing in fair trial. This freedom should be ensured for parties.

Statute of limitations: This principle states that an irregular fact may be prosecuted or sanctioned only before the expiry of a reasonable time from the moment it was committed or discovered. It is strictly linked to the protection of the legal guarantees of persons. It aims to remove permanent insecurity particularly for accountable persons. In addition, the presence of statutes of limitations for an SAI encourages it to act quickly, and detect and penalize the problems on time.

Appeal and Annulment of the Judgment: Any judgement of the SAI must be open to be objected and reconsidered and is subject to appeal or annulment in accordance with the national regulation. These legal remedies may concern accountable persons, public authority or a third person/party.

Principles regarding Internal Regulations and Organisation of SAIs

Right to a Fair Trial: This right refers to the legal guarantee that all “triable” persons within the jurisdiction of the SAIs or accountable persons, in a narrower sense, are entitled to an equal and fair trial. It is obligatory that all those responsible pass through an independent and objective trial process. Other legal principles that can be considered within the scope of the right to a fair trial and the right of defence such as the provision of the right of defence in an unrestricted manner with an adequate time, access to information and documents and using them in defence, defending oneself via a representative and access to justified decision should be assessed in this respect, as well.

Impartial Judgment and Decision-Making: The impartiality of the judgment process itself is as essential as the impartiality of those making judicial decisions. Therefore, there must be a legal framework setting down the principles and procedures related to the trial processes of SAIs in an open and clear manner. In particular, the decision-makers should avoid of comments reflecting bias and the disclosure of information to the public in a manner prohibited by laws should be strictly prevented.

Effectiveness of Jurisdictional Activities: It is essential that the attitude adopted by the SAI in fulfilling its jurisdictional activities and the decisions taken are legally competent. As a branch of the judiciary, the SAI staff working both in jurisdictional and other activities should display their jurisdictional competences and capabilities in an indisputable manner. The effectiveness of jurisdictional activity means that the decision has been taken within a reasonable time by adhering to the maximum legal requirements and this is shown to the persons to be affected by the decision. Strict adherence to this principle will support the implementation of the decisions taken by the SAIs.

Accumulation of Sanctions for the Same Irregularity: This general legal principle, which is also known as “non bis in idem”, means that nobody could be judged twice for the same offence. Pursuant to this principle, a file that has been closed with final judgment cannot be reopened. Accordingly, for the SAIs as a branch of the judiciary, the jurisdictional activities conducted and

concluded by them are meaningful for them. This is because of the fact that the unique judicial decisions of SAIs can, by nature, fall into the jurisdiction of another branch of the judiciary, as well. These decisions can sometimes turn into a penal sanction and sometimes into an administrative sanction.

Principles regarding Jurisdictional Procedures

Quality Control: SAIs must guarantee the quality of jurisdictional procedures through an efficient and systematic quality control. When all stages of the trial process are subject to quality control, jurisdictional activities are rendered effective for all parties. Although quality control is applicable to audits, as well, the quality control procedures regarding the trial process should be separately determined and conducted.

Judgment in a Reasonable Period: Excessively long jurisdictional procedures hinder legal security and fair trials of the accountable persons or others. Therefore, the durations of trials should be proportional to the complexity of the actions subject to the case. In particular, the jurisdictional principles and procedures supported by quality control processes contribute to the completion of trials in reasonable periods. This principle also requires that the appropriate instruments and procedures are used during the trials.

Communication to the Public: Like all other judicial decisions, the judgments of SAIs should be made public in line with the necessary confidentiality requirement and applicable limitations. Judicial institutions



take decisions in order to protect the rights of citizens. Thus, their decisions concern not only parties to the decision but also all citizens. As a result, SAIs should ensure that citizens have easy and unrestricted access to judicial decisions.

CONCLUSION

Thanks to their activities going back many years, SAIs have become specialised in financial audit and reasoning. While conducting audit on a public account, SAIs also benefit from the criteria specific to financial control and compliance and performance audits. In this respect, they conduct an integrated and comprehensive financial control in all aspects. Based on the results of this comprehensive financial control, the trial of a public official by the SAI or another branch of the judiciary due to public loss makes a significant difference in terms of specialisation, in particular. In other words, an SAI with jurisdictional function allows for the trial of public loss in a more accurate and swift manner.

In case of irregular expense, loss of income or any decrease in public funds, the judicial function has direct impact on the accountability of public officials who are directly responsible for these. Citizens expect public officials or those held accountable by law to spend public money in a proper manner. Thus, SAI decisions urge public officials to work more carefully and in an accountable manner.

On the other hand, one of the purposes of the activities conducted by SAIs is to try public officials in cases of public losses and compensate these losses. Contrary to the compliance and regularity audits, judicial function is a totally separate and complementary power. Using this power in case of any incompliance with financial legislation must be the duty of the SAI. For the public officials using public funds, knowing that they will be tried by the SAI all the time will always be a deterrent factor. The “raison d’être” of SAIs is to protect the interests of citizens. Fulfilment of this mission in a direct and rapid manner will be ensured through the jurisdictional activities of SAIs.