

REGIONAL PUBLIC SECTOR AUDIT IN POLAND

Introduction: local government in Poland

Local government started to be re-established in Poland in 1990 at commune (*gmina*) level, which is the basic unit of local government. Since January 1, 1999 local government in Poland consists of three tiers with the introduction of two additional levels: that of counties (*powiaty*) and provinces (*województwa*). The largest units at the regional level are the 16 provinces (*województwa*). The next level covers some 300 counties (also called districts) (*powiaty*). The responsibilities of local government at the lowest level are performed by some 2500 communes (*gminy*), which are basically small towns and rural communes. The 65 biggest cities in Poland have the status of both a commune and a county/district. Additionally the status of the capital city of Warsaw is regulated by a special legislation. The local government units of various levels are not subordinated to one another and remain equal under law. Both legislative and executive bodies in the local government units are elected for four-year terms. Provincial parliaments and county councils elect their executive bodies. Since 2002 mayors (*burmistrz, wójt*) in small towns and rural communes as well as lord mayors (*prezydent*) in big cities are directly elected by the citizens. Finally, central government and state administration are also represented at provincial level by the provincial governor (*wojewoda*). He is appointed by the Prime Minister. Among other responsibilities, he may interfere in the activity of local government units only in instances of violation of law.

Whereas the counties perform only those public duties mandated by law (for instance, social matters, major roads), the communes have a broad responsibility to provide those services which are not expressly reserved to other authorities. They count among their responsibilities pre-school, primary and middle-school education, general health care, social services, communal infrastructure (water supply, waste disposal, sewerage, electricity and gas supply, etc.), council house building, communal roads, streets, bridges and squares, local public transport, culture and libraries, physical education, tourism and recreation, local public security, landscape planning, municipal development, environmental protection and others. Central government may transfer some of its powers and functions to local authorities by specific legislation or agreements, but must finance any such activities. Finally, the counties and the communes may form intercounty unions, intercommunal unions or county and commune unions to perform their responsibilities jointly.

As provided for in the Constitution, the incomes of local government units of all levels comprise own income as well as revenues from subsidies and grants. All local government units have shares in some central budget revenues (e.g. from personal and business income taxes). Communes are the only units whose own income covers local taxes and charges of which the property tax and road tax are the most important sources.

The 1990 Local Government Act defines three supervisory bodies of the local government action: the Prime Minister, the provincial governors as general supervisors and, for the first time, the Regional Chambers of Audit (*regionalne izby obrachunkowe*), hereinafter called 'RIOs', specialized in financial matters. Whereas the first two

authorities control the legality of the local government action, the remit of the RIOs includes both the supervision of the financial matters of the actions of local government authorities as well as the audit of local government bodies' financial management and public procurements. The supervision and audit covers the authorities of all the three levels of local government.

Legal framework

Passing the Local Government Act on March 8, 1990, the legislator took up the approach of a separate, special body of supervision and audit of the financial management of local governments. In practice it meant the establishment of a new institution – the Regional Chambers of Audit, the RIOs.

The Regional Chambers of Audit Act was passed by the *Sejm* on October 7, 1992 and came into force on January 1, 1993. Defining the powers of the RIOs, the Act authorized them *'to audit the financial management of communes, counties and provinces, as well as intercommunal unions and other local legal entities'*, and *'to supervise the legal acts of local authorities and their unions in financial matters'*.

While working on the Regional Chambers of Audit Act, the legislator made use of European legislature output extensively. Finally, however, no reference was made, not even indirectly, to any specific legal solutions concerning supervision and audit in the countries of Western Europe. The Act is an original idea of Polish law.

Establishing a new body of supervision and audit, the legislator referred to them as the Regional Chambers of Audit and the adjective 'regional' points to their exclusively local character. At the first stage 17 RIOs were established in 1993, but as a result of the administrative reform approved in 1999 the number was reduced to 16, one in each province, where they are responsible for the supervision and the audit of an average of about 200 local authorities and several thousand of their organisational subsidiary units. An amendment of the Regional Chambers of Audit Act in 1997 led to the establishment of the National Council of Regional Chambers of Audit (the KRRIO), which is a body meant to coordinate the work of all the chambers and to represent the RIOs before other state bodies and entities.

Upon Article 171 of the Constitution of the Republic of Poland of April 2, 1997, RIOs have become a constitutional supervisory body in financial matters.

Pursuant to the provisions of Art 1 paragraph 2 of the Regional Chambers of Audit Act, the chambers supervise the financial matters of the actions of local authorities and audit the financial management and public procurement of a wide range of local bodies: 1) local government units i.e. communes, counties and provinces 2) intercommunal unions 3) associations of communes and associations of communes and counties 4) intercounty unions 5) associations of counties 6) local government organisational subsidiary units, including legal entities 7) other bodies in what concerns the use of subsidies received from the budgets of local government units.

Apart from the Regional Chambers of Audit Act of October 7, 1992, the responsibilities and authority of the RIOs have been defined in numerous other legal acts; the most

important ones include the Public Finance Act of August 27, 2009 (being legal grounds for the Polish public finance system) and Acts defining the political system of the local government in Poland.

Scope and role of the regional chambers of audit

According to the Regional Chambers of Audit Act of October 7, 1992, the RIOs are state bodies of supervision and financial audit of those authorities defined in the said Act. Several other Acts provide the RIOs with other responsibilities.

Supervision

As a supervisory body, the regional chambers of audit may step in the activity of local government only in cases clearly specified by the law. The supervision of regional chambers of audit is carried out by reviewing the legality of resolutions and directives passed by local government bodies concerning the:

- procedure of passing the budget and changes therein,
- implementation of the budget including budget modifications,
- contraction of debts,
- allocation of subsidies,
- local taxes, fees and charges,
- vote of approval for the local executive for its budget execution,
- long-term financial forecast and changes therein.

In the case of a serious breach of law, the regional chamber of audit declares the invalidity of a resolution or directive as a whole or partially. The execution of the reviewed act may be suspended by instituting proceedings. In case of a minor breach of law, the RIO only points out that the reviewed act has been issued with breach of law.

In a procedure investigating the budget resolution of a decision-making body, the regional chamber of audit points out the detected irregularities, indicates how to eliminate them and establishes the deadline to redress the situation. If the decision-making body fails to eliminate the detected irregularities before the deadline is reached, the chamber declares the invalidity of the resolution or part of it. Appeals against the decisions on the invalidity of budget resolutions (and any other resolution or directive considered by the supervisory body to be invalid) may be filed in the administrative courts. Moreover, in indispensable situations, the supervisory body is entitled to establish the budget part that it has considered invalid.

If the decision-making body of a local authority has not adopted its yearly budget before 31st January, the body is no longer competent to pass the budget resolution. In such a case the budget of the local authority will be established by the regional chamber of audit. The chamber defines the budget only to address the mandatory duties to be performed by the local government unit.

The supervisory function of the regional chambers of audit influences the local legislation, as it not only enhances the quality of the legal acts adopted by the different

decision-making bodies, but also standardizes the interpretation of legal provisions throughout the country.

Audit

Besides the supervision, the audit of local government finances is an important task of regional chambers of audit.

The audit responsibility of the regional chambers of audit involves the financial management and public procurement of local government units of all levels, their unions and associations, local government organisational subsidiary units including legal entities, and other bodies handling and administering public monies which they receive from the budgets of local government units. Comprehensive audits of the entire financial management of local authorities are performed by the chambers at least every four years. Similarly, unscheduled audits are conducted if there is a need or upon proposal of those authorities and bodies specified by law. Problem-focussed audits which address specific financial matters of the abovementioned entities may also be carried out.

The RIOs' remit allows them to carry out regularity audits where they examine compliance with laws and regulations and the conformity of the documentation with the state of affairs. However, in those cases where local authorities carry out central government tasks which have been transferred to them by acts or agreements, the audits performed by the RIOs focus on their compliance with the criteria of purposefulness, reliance and economic prudence.

An important aspect of the RIOs' audit work is the review of local government reports on budget implementation and other more detailed information (for example, state of indebtedness, situation of receivables, etc).

Opinion-giving

Regional chambers of audit also perform opinion-giving functions through their adjudicating teams, which are made up of three members of the board (*Kolegium*) of the chamber. They give opinions on the following matters:

- ways of paying back credits or loans or redemption of securities by a given local authority,
- ways of financing the budget deficit and the public debt forecast for a given local authority,
- draft budgets submitted by the local authorities (which contain information on their state of property together with the corresponding explanations),
- information on the budget execution for the first half of the budget year submitted by the boards of provinces and counties as well as by the mayors of rural communes (*wójt*), mayors of towns (*burmistrz*) and Lord Mayors of cities (*prezydent*),
- annual reports on the budget execution submitted by the boards of provinces and counties as well as by the abovementioned heads of communes,
- proposals of the review committees of the decision-making bodies of local government units concerning the vote of approval for the local executive for its

- budget execution as well as the resolutions adopted by the commune councils to deny the vote of approval to the head of the commune,
- draft long-term financial forecasts submitted by local authorities,
 - other matters defined by applicable laws.

The provided opinions, although not binding, considerably enhance the financial conduct of local authorities, as audits of the level of public debt of local authorities have revealed.

Public Finance Discipline

In each chamber of audit there are regional adjudicating committees in matters of public finance discipline violation which may act as organ of first instance in matters of non-compliance with principles of public finance management and public procurement defined by law. Actions qualified as public finance discipline violation are enumerated in the Public Finance Discipline Violation Liability Act of December 17, 2004. The second instance body is the central adjudicating committee at the Ministry of Finance. The adjudicating committees operating within each regional chamber of audit are not part of their structure but act as independent bodies. The RIOs, however, are obliged to provide them with organisational and legal as well as office support.

Information and Training

Finally, in each regional chamber of audit, information analysis and training departments provide information and training on all issues in relation with the RIOs' supervision and audit tasks.

They inform the public not only on their audit work, but also on all kinds of legislation, analytical and practical work which affects the budget implementation and the financial management of local authorities. The RIOs and their National Council (the KRRIO) also maintain websites which provide information on their ongoing work and include communications, audit results and other published material. The information activity of the regional chambers of audit is of special importance because of frequent changes in legislation which are in part due to the necessary adaptation to EU standards and requirements.

Training is provided not only to employees of the chambers but also to local government officials in matters of budget and financial management, public procurement and issues resultant from the supervisory and auditing activities of the chambers.

The relationship with other institutions

Since 1994, with the adoption of a new Act on the Supreme Chamber of Control, the *Najwyższa Izba Kontroli* (NIK) may also audit the activities of local authorities. The NIK has regional offices all over the country which are not linked with the Regional Chambers of Audit. At the local government level the NIK performs its audits from the viewpoint of legality, economic prudence and reliance.

In order to coordinate the audits in local government units, the NIK and the RIOs (through the National Council, the KRRIO) signed a cooperation and coordination agreement in February 2002. The agreement, one of the purposes of which is to avoid audits of the same bodies being performed at the same time and with similar audit agendas by both the NIK and the RIOs, includes exchange of information on audit results, coordinated problem-oriented audits as well as training matters.

The remit of the RIOs has been continuously increasing since 1993, especially with the creation, in 1998, of the National Council of the Regional Chambers of Audit (the KRRIO). As a consequence, the RIOs cooperate with a large number of central state bodies (*Sejm*, Senate, Ministry of Finance, Ministry of Interior and Administration, Office of Public Procurement, Central Statistical Office, National Bank of Poland, etc.).

RIOs have a close relationship with both the lower (*Sejm*) and the upper (Senate) chamber of the National Assembly as well as with the Ministry of Finance where they have, among others, a role in commenting on both draft legislation and the functioning of legislation already in force which refers to local government operation. In the case of the Ministry of Finance, the cooperation involves notifications on irregularities detected in matters falling into its competence. Members of the KRRIO participate regularly in the meetings of special *Sejm* committees, especially the State Control Committee.

Since the amendment of the Regional Chambers of Audit Act of 2001, the regional chambers of audit are supervised by the Minister of Interior and Administration (formerly directly by the Prime Minister) in what concerns the compliance of their operation with law. In cases of repeated breach of law the Prime Minister can dissolve the board of the chamber, the only body of the RIO, which also means removing the president of the chamber from office.

Last but not least, there is a close and continuous cooperation with the provincial governors, who constitute a body of general supervision over the resolutions adopted by local government units in each province. Among others, the RIOs provide the governors with information on public finance irregularities in local government units. In special cases the RIOs may also, additionally to this information, propose that a given unit be placed under the control of an administrator.

Finally, if the regional chambers of audit have – during the performance of their audits – any reasonable suspicion of crime, they refer the matter immediately to the Office of Public Prosecutions and provide evidence. Likewise, they make available their documentation for investigations being carried out by the Office of Public Prosecutions or the criminal police. Both bodies can also apply to the RIOs for audits to be carried out.

Auditing process, recipients and publication of audit reports

Audit procedures are regulated in the Regional Chambers of Audit Act and in the Prime Minister's Decree of July 16, 2004 which defines RIOs' seats and territorial scope, the detailed organisation of each chamber which includes the number of members of each board, its procedures and applicable audit standards as specified in a KRRIO resolution.

Based on the audit findings, the inspectors draw up a post-audit report which includes the sources and reasons of detected irregularities, the extent thereof, persons responsible and recommendations to remedy the situation. The post-audit report is forwarded to the audited body, which is obliged to reply within 30 days informing the chamber on the measures adopted as a consequence of the report or the failure to do so explaining the reasons. Objections expressed by the auditee against the conclusions of the report have to be considered by the board of the RIO. The board decision is final and binding.

In particular cases, on the basis of the results of its audit and supervision work and the opinions issued, the regional chamber of audit draws up a report on the financial management of the audited body whose financial standing threatens the fulfilment of functions defined by law. This report is submitted to the audited body, which within the following 30 days is entitled to comment on its content and the board of the chamber, in a separate resolution, decides whether to accept these comments or not. Subsequently the RIO's report is presented to the provincial governor and published on the chamber's website.

In what refers to another important aspect of their audit work, which is the review of all the local government reports on budget implementation, the RIOs submit their findings to the Minister of Finance.

By 30th June, the KRRIO as the representative body of the regional chambers of audit submits to both chambers of the National Assembly an annual report on the RIOs' responsibilities and budget execution as well as the budget execution of all local government units. The report summarises the results of audits carried out and some performance aspects with regard to the supervision of the use of public funds by local bodies. Each such report also includes the RIOs' evaluation of the implementation of state legislation in local government units.

Structure and organisation of the Regional Chambers of Audit

The organisation and operation rules of the chambers are defined by the Regional Chambers of Audit Act as well as by several decrees issued on the basis of the Act. The decrees establish e.g. the area of operation of the regional chambers of audit, their respective seat and internal organisation, the number of members in the board and the nomination procedure for these members.

Each chamber is headed by a president who is appointed by the Prime Minister for a fixed tenure of six years. Presidents are appointed after a nationwide open competition out of a list of candidates who need to fulfil a series of requirements in order to be able to apply for the post (university diploma in law, economics or administration with a sound knowledge of local government and public finance). Presidents manage the chambers' everyday work and make most executive decisions. In each chamber a deputy president is appointed out of the members of the board by the Prime Minister upon a proposal of the president of the chamber.

The board of a chamber is chaired by the president and its size ranges from nine 9 to 27 members depending on the geographical area of the respective chamber's activity (i.e. the number of communes and counties in the respective province). With the exception

of the president, the board consists of members who are appointed by the Prime Minister from candidates selected in an open competition; half of them are listed by the presidents of the chambers and the other half by the decision-making bodies of the local government units. Members of the board are full-time employees appointed for an indefinite period of time or commissioned members who are appointed for a period of six years. They are independent in the exercise of their duties and, in that respect, only subject to law. Apart from the supervisory function over resolutions and directives passed by local government bodies, the main functions of the board include adopting the chamber's annual work plan and activities report as well as giving opinions in the scope defined by law and considering appeals against post-audit recommendations notified by the heads of the audited bodies.

The RIOs perform their responsibilities through two operational departments, the Financial Audit Department and the Information Analysis and Training Department. Other bodies within each chamber provide administrative and legal services.

Finally, the regional chambers of audit have their own structure in the field. These are teams working on the spot whose seats are defined by the Prime Minister in a decree. Their work is coordinated and supervised by a coordinator who is designated by the president of the chamber.

National Council of the Regional Chambers of Audit (the KRRIO)

In 1997 a common representation of the regional chambers of audit was established by law. Its overall task is to coordinate the performance of all RIOs. The National Council of the Regional Chambers of Audit (*Krajowa Rada Regionalnych Izb Obrachunkowych*, in brief the KRRIO) consists of the presidents of all regional chambers of audit and one additional representative of each chamber selected by the chamber's board among its members. The first meeting of the National Council took place in Warsaw on January 15, 1998.

As a result of an amendment to the Regional Chambers of Audit Act, the KRRIO has been entrusted with the responsibilities to:

- represent the chambers before the central state bodies
- suggest amendments of existing legislation concerning the financial management of local authorities to the minister responsible for public administration
- submit an annual report on the activities of the RIOs and local government budget execution to the *Sejm* and the Senate by June 30
- provide the competent bodies with proposals for the chambers' budget estimates
- disseminate information on the output and experience of the chambers
- coordinate the training schedules and agendas for the chambers' employees.

The KRRIO has set up five permanent committees to meet the objectives set out by the Act (e.g. Committee for Legislation and Adjudication, Committee for Budget Analysis, Committee for Audit Coordination, Committee for RIOs' budgets and Committee for Information, Training and Promotion). The chairman of the KRRIO is appointed by the members for a period of two years.