

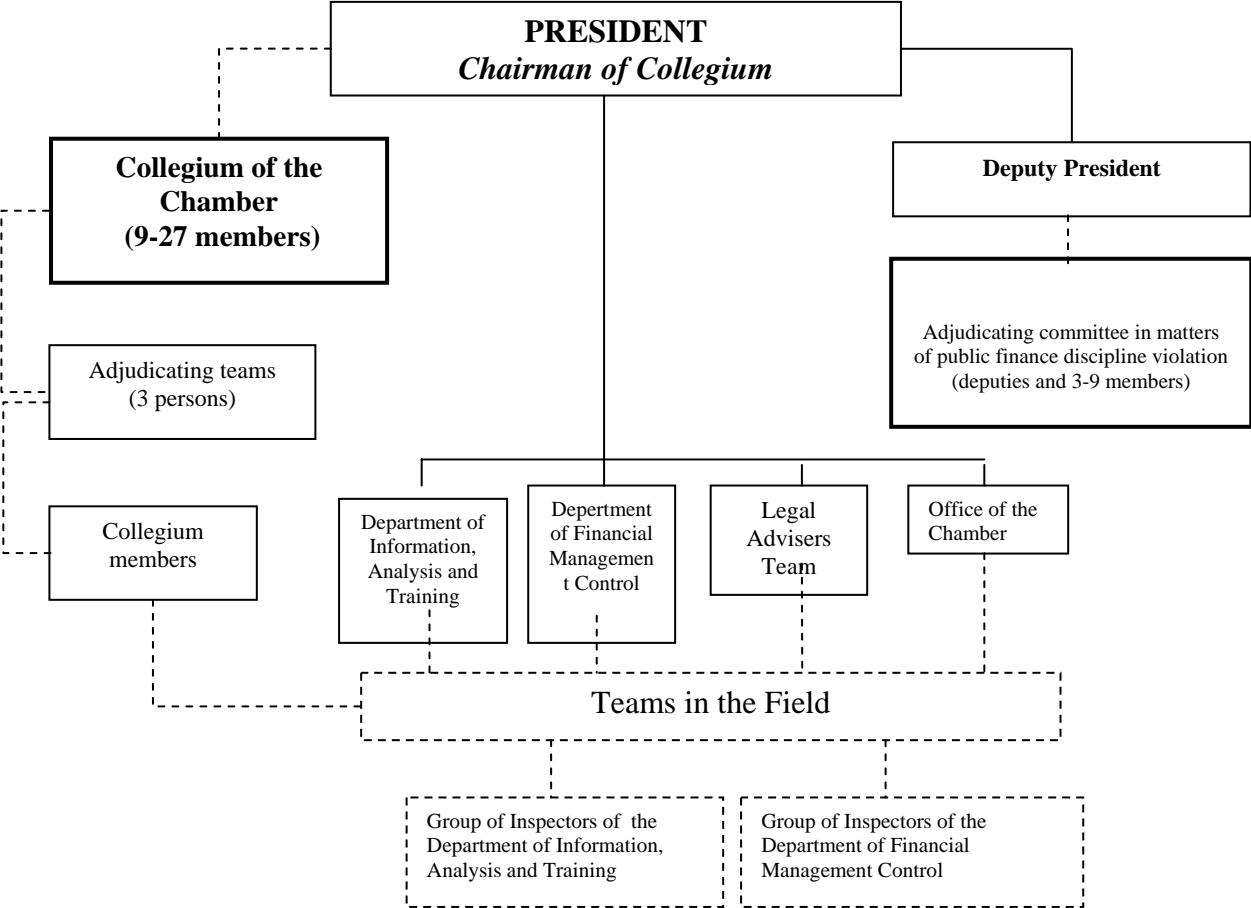
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Status of members of the collegium in regional chambers of audit in Poland

In 1990 communism in Poland collapsed and simultaneously re-establishment of local government took place. Therefore, the need to create an effective system of government supervision over activity of local government appeared. The fact that this system should respect the rule of independence of local government units, which may be limited by laws only, was deemed a priority. In response to the aforementioned needs, regional chambers of audit were established and the rules of functioning thereof were regulated by the Regional Chambers of Audit Act of 7 October 1992.

Regional chambers of audit are institutions of supervision and control of financial management of local government units insofar as financial matters. They control financial economy, including the realization of tax liabilities and public procurements. Apart from local government units they also control other entities to the extent of their application of subsidies granted from the budgets of local government units. The chambers make the evaluations following the criterion of compliance with the law as well as compliance of documentation with the state of affairs. Only to the extent of government administration tasks realized by the units pursuant to acts or agreements entered into, is the evaluation carried out also factoring in the criterion of effectiveness, efficiency and economy .

Figure 1.
Organizational diagram of the regional chambers of audit



Mode of choosing members of the collegium

Although the president represents the chamber outside, the most important element of its structure is the collegium of the chamber. The collegium consists of: the president of the chamber as the chairman of the board and other members. A member of the collegium is nominated by the Prime Minister upon a proposal of the president of the chamber, nominated following the opinion of the collegium of the chamber, approved in secret ballot, with at least half of the collegium present.

The structure of the collegium itself reflects the rule of respecting independence of local government. Half of the collegium of the chamber is composed by members nominated out

of candidates nominated to the collegium by local government units – it constitutes one of the guarantees of independence of chamber decisions. The membership in the collegium of the chamber may be either full-time or commissioned. The status of the membership is defined by the Prime Minister, upon a proposal of the president of the chamber. The full-time member of the collegium is nominated for an indefinite period, the commissioned one for a six-year term in office.

The members of the collegium in the scope of supervisory tasks and control functions held are independent and are subject to laws only.

A person may become a member of the collegium provided that he or she:

- 1) enjoys a full legal capacity for legal actions,
- 2) is a Polish national and enjoys all the public rights,
- 3) has completed an MA course in law, administration, economics or is a holder of a higher education degree in one of these fields of study,
- 4) has at least a four-year job seniority in units connected with the operation of local government or public finance,
- 5) has not been sentenced with final and binding sentence for knowingly committing the crime.

A member of the collegium may be recalled in case of:

- 1) filing a resignation from the position,
- 2) loss of at least one of the aforementioned conditions,
- 3) stating a repetitive breach of law while performing duties or avoiding the performance thereof.

Candidates for members of the collegium are selected in an open competition. The competition is announced by the president of the chamber who chairs the work of the competition committee. The competition committee consists of the president of the chamber and two members of the collegium of the chamber, elected by the collegium.

The committee, having considered the documents filed by the candidates and having held an interview therewith, decides whether or not the said persons meet the criteria defined in the competition announcement and examines the knowledge of applicable law as regards the remit of regional chambers of audit. The candidate may appeal against the decision of the committee to the collegium.

Candidates are elected by a simple majority of vote. The chairman of the competition committee presents the collegium of the chamber with a list of candidates for members of the

collegium. The collegium of the chamber gives opinion on a candidate or candidates.

Role of the board is so important owing to the fact that in a competition it elects a candidate for the position of president of the chamber.

The collegium of the chamber announces in a daily distributed throughout the country a competition for the position of president of the chamber within 60 days prior to the lapse of the term-in-office. The competition committee consists of three members of the collegium elected by the collegium by a simple majority of vote, with at least half of the makeup thereof present. The chairman of the competition committee presents the collegium of the chamber with a list of candidates or a candidate for the president of the chamber. The collegium of the chamber elects the candidate for the president of the chamber, in secret ballot, with an absolute majority of votes, with at least half of the makeup thereof present. The chairman of the collegium sends the resolution on giving an opinion on candidate for the president of the chamber to the minister responsible for public administration matters. Within 7 days since the date of passing the resolution, the collegium of the chamber notifies candidates of the resolution passed in writing.

The candidate is entitled to appeal to the minister responsible for public administration matters within 7 days of the receipt of the said notice. The minister responsible for public administration matters shall adjudicate on the appeal within 30 days of the date of receipt thereof.

The president of the chamber is nominated by the Prime Minister upon a proposal of the minister responsible for public administration matters. The term in office of the president of the chamber lasts 6 years, since the date of appointing thereof. After the lapse of the term in office, the last president is in charge until the new president is appointed. Following the lapse of the term in office of the president of the chamber or following the recall thereof due to a resignation being filed, the president shall remain a full-time member of the collegium.

The deputy president of the chamber is nominated and recalled by the Prime Minister upon a proposal of the president of the chamber, out of the members of the collegium.

Restrictions on business activity

Conducting commercial activity is, by the force of law, restricted for some employees of regional chambers of audit, members of the collegium included. These restrictions have been stipulated in the Act on Restricting Business Activity of Persons Performing Public of 21 August 1997. Therefore, members of the collegium may not:

- 1) be members of management boards, supervisory boards or scrutiny committees of commercial companies;
- 2) be employed in commercial companies or perform such other duties there which could raise suspicion as to their impartiality;
- 3) be members of management boards, supervisory boards or scrutiny committees of cooperatives, supervisory boards of housing cooperatives excluded;
- 4) be members of management boards of foundations conducting business activity;
- 5) possess more than 10% shares in any commercial company or shares constituting more than 10% of initial capital – in each company;
- 6) conduct business activity on their own or together with other persons, manage such activity or be either an agent or a proxy in conducting such activity; this excludes production activity in agriculture in the scope of plant and animal production, if it is in the form and in the scope of a family farm.

Moreover, according to the Regional Chambers of Audit Act, the President of the chamber, his/her deputy and other members of the collegium (and employees of the regional chamber of audit) may not be members of institutions of local government units and local government appeal courts nor be employed in local government units. The President of the chamber, his/her deputy and other members of the collegium (and employees of the regional chamber of audit) may not be entrusted with performing any tasks for local government units based on a civil law agreement.

Tasks and mode of work in the collegiums of regional chambers of audit

The collegium is, among other things, solely responsible for:

- 1) defining the budget of a local government unit where this unit has not passed a budget resolution until 31 March of the given budget year,
- 2) declaring null and void resolutions and orders adopted by institutions of local government units with regard to: the procedures of adopting budget and its changes, budget and its

changes, indebtedness influencing the public debt of a local government unit and granting loans, the rules and scope of granting subsidies from the budget of a local government unit, taxes and local charges, granting discharge to the management board of a local government unit,

- 3) approving the reports on the controlling and information- and training-providing of the chamber,
- 4) adopting proposals to a draft budget of the chamber and a framework work schedule,
- 5) approving reports on budget execution and an annual framework work schedule of the chamber, including audit schedule,
- 6) adjudicating on comments to proposals included in post-control papers.

The resolutions of the collegium of the chamber are passed with an absolute majority of votes with at least half of the number of members of the collegium of the chamber present. A representative of the entity whose case is being adjudicated enjoys the right to participate in the session of the collegium of the chamber.

The sessions of the collegium of the chamber are convened by the president of the chamber when needed, however, not less frequently than once a quarter. The president of the chamber convenes the collegium also upon a written proposal of at least half of the members of the collegium within 14 days of the date of filing thereof. The session of the collegium is chaired by the president of the chamber, and in case of absence thereof, deputy president of the chamber or a member of the collegium pointed by the president.

Supervisory adjudications, statements and opinions of the collegium in matters provided for are adopted in the form of resolutions. The resolutions of the collegium shall be signed by the person who chairs the session thereof.

Adjudicating teams of the regional chambers of audit

Adjudicating teams, made up of 3 members of the collegium, operate within the chamber. Adjudicating teams are competent to give opinions in matters defined in acts.

The resolutions by adjudicating teams may be appealed from to the collegium of the chamber within 14 days of the date of serving thereof. The appeal from the opinion given by the adjudicating team in the cases of:

- 1) presented draft budgets of local government units together with information about the property of local government units and with explanations,

- 2) information submitted by management boards of districts and provinces and by commune heads (mayors) concerning the course of execution of the budget for the first half year,
- 3) annual reports on budget execution submitted by management boards of districts and provinces and by commune heads (mayors) on the execution of the budget, shall be adjudicated on by the collegium of the chamber not later than within 14 days of filing thereof.

Giving by the chamber of a negative opinion on the budget draft of the local government unit does not hold budget resolution-taking procedure, however, the executive body of the local government unit shall be obliged to, prior to taking the resolution on the budget, present the opinion to the decision-making body of the local government unit together with the reply to the comments contained therein. The president of the chamber informs the competent provincial governor and the minister responsible for public finance of the negative opinion given in the matter of presented reports on budget execution of management boards of districts and provinces and of commune heads (mayors).

Whereas, the executive body presents the negative opinion of the chamber about the budget execution report of the local government unit to the decision-making institution of the unit together with the reply to the comments contained therein not later than prior to adjudicating on the vote of approval for the executive institution.

The collegiums of the chambers adjudicate also on comments to proposals included in post-control papers. The collegium may dismiss or consider such comments. Before resolving the case, the collegium may request performing additional control activities.

Summary

The position of members of the collegiums of the regional chambers of audit is special. On the one hand, to become a member of the collegium, one has to, apart from demonstrating factual knowledge, meet other requirements, probably with the most important being an at least four-year job seniority in units connected with the operation of the local government or public finance. On the other hand, the status of members of the collegiums may be compared to that of judges, because members of the collegiums are, in the scope of supervisory tasks and control functions held, independent and subject to laws only. The special position of full-time members of the boards is also highlighted by the way of employing them: on the basis of

a nomination. One must also note that, in the scope of performed duties, members of the collegiums exercise the right to legal protection equally to all public officials.