

32 Annex - Financial Control

261. LAW ON STATE AUDIT INSTITUTION

Pursuant to the Article 88, item 2 of the Constitution of the Republic of Montenegro, I hereby issue the

Decree

Promulgating the Law on State Audit Institution

(Official Gazette of the Republic of Montenegro 28/04 of 29 April 2004, 27/06 of 27 April 2006, 78/06 of 22 December 2006, Official Gazette of the Republic of Montenegro 17/07 of 31 December 2007)

I hereby promulgate the Law on State Audit Institution, passed by the Parliament of the Republic of Montenegro, at the second sitting of the first ordinary session in 2004, on 21st April 2004.

No: 01/625/2

Podgorica, 26th April 2004

President of the Republic of Montenegro

Filip Vujanovic

LAW ON STATE AUDIT INSTITUTION

I. GENERAL PROVISIONS

Subject Matter of the Law

Article 1

By this Law the State Audit Institution (hereinafter referred to as the "Institution") shall be established and its rights, responsibilities and work method shall be determined.

Status

Article 2

The Institution is an autonomous and supreme state audit body.

No one shall influence a Member of the Senate of the Institution in performing his/her duties as provided for by this Law.

Headquarters

Article 3

The Institution is a legal entity with its headquarters in Podgorica.

The Institution has a seal containing the coat of arms of the Republic of Montenegro and the text: "Republic of Montenegro – State Audit Institution – Podgorica".

II ACTIVITIES AND TASKS OF THE INSTITUTION

Audited Entities

Article 4

Audited entities are the authorities and organizations managing the budget and the property of the State and of the local self-government units, the funds, the Central Bank of Montenegro and other legal entities in which the State has an ownership part (hereinafter referred to as the "audited entity").

The Institution shall also perform the audit of entities that execute a part of the budget, manage state property, receive subsidies or receive grants or guarantees from the State, or do business with an audited entity.

Task of the Institution

Article 5

The Institution shall examine the regularity, effectiveness and efficiency of the business operations of the audited entity.

The audit of regularity includes supervision of compliance of business operations with regulations and general standards on collecting public revenues, financing expenditures, using and managing property, fulfilling commitments, bookkeeping and documenting revenues and expenditures, property and management of economic activities.

The audit of effectiveness shall examine to what extent the planned goals have been achieved.

The audit of efficiency shall examine whether the planned goals have been achieved with minimum investment of funds.

Article 6

The audit shall provide essential information concerning audited entity's management of the budget, property and economic activities, the legality of the audited entity's action, the improvement of its ability for successful performance of tasks and the prevention of improper procedures.

When adopting the Budget of the Republic and the Financial Statement of the Budget, the Institution shall submit to the Parliament of the Republic of Montenegro (hereinafter referred to as the "Parliament") the overview of its findings on the budget and state of property, pointing out the causes and consequences of any major faults and irregularities and proposing measures for their elimination.

Within its authority provided for by this Law and other regulations, the Institution shall provide its expert assistance to the Parliament, the Government of the Republic of Montenegro (hereinafter referred to as the "Government") and other state bodies of the Republic of Montenegro in making decisions.

Subject Matter of the Audit

Article 7

Within the meaning of Article 5 of this Law, the Institution shall audit documents and activities of the audited entity, which have or may have financial effect on:

- 1) revenues and expenditures;
- 2) state property;
- 3) debt level, granting of guarantees and super-guarantees;
- 4) efficient use of funds allocated to the audited entities.

Audit of Entities outside the State Administration

Article 8

When loans from the budget funds have been approved or guarantees or other insurances have been provided by the State, the Institution may examine whether appropriate measures were taken in order to avoid any detrimental consequence to the State.

Business operations of legal entities using funds referred to in paragraph 1 of this Article shall be audited according to the law.

Scope, Time and Method of Auditing

Article 9

The Institution shall decide independently regarding the entities to be audited, subject matter, scope and type of audit, time and method of auditing, unless otherwise provided by this Law.

The Institution shall audit the Financial Statement of the Budget of the Republic once a year as mandatory.

The annual audit plan shall be adopted by 10 January of the current year.

The Institution shall start the audit procedure by informing the audited entity on the object, scope, type and time of the audit. Notwithstanding, the Institution may start the audit without prior announcement.

The Institution shall inform the audited entity upon completion of the audit.

Enabling Insight to Documentation and Providing Information

Article 10

Upon request of the Institution, the audited entity shall furnish all documents, financial statements, reports, financial records, findings of the internal control and other records (hereinafter referred to as the “documentation”) to the Institution or shall provide the insight to the authorized person performing the audit, without delay.

The audited entity shall provide the insight to the Institution or its authorized person to the documents or information of confidential nature or documents classified as business or other secrecy, according to law.

Confidentiality of Information

Article 11

Information and findings gathered during the audit procedure shall be confidential, unless otherwise provided for by law.

Data presenting business or other secrecy shall be treated according to law.

Audit Report

Article 12

The Institution shall present the results of audit in an audit report.

The audit report shall include determined factual situation, evaluation, conclusions and recommendations for the elimination of irregularities, which may be possibly found.

Recipients of the Audit Report

Article 13

The audit report shall be submitted to the audited entity and, if appropriate, to other authorities when the Institution deems it necessary.

Should the audit report referred to in paragraph 1 of this Article include findings that are of particular importance or have significant financial effect, it shall also be submitted to the ministry in charge of finance.

Article 14

The audit report shall represent the documentation basis for drawing up annual and special audit reports and for giving expert opinions and suggestions according to this Law.

Stating of the Audited Entity

Article 15

The audited entity has the right to express its opinion about the audit report, within the time limit set by the Institution.

The Institution shall report to the Parliament and the Government, as a rule, after the audited entity has expressed its opinion on the findings of the audit.

The Institution may report to the Parliament or the Government, prior to the audited entity having expressed its opinion, in cases where a delayed submission of the report would cause damage, or the findings are prematurely disclosed to the public, or if the audited entity has not expressed its opinion within due time.

Within the meaning of the paragraph 3 of this Article, damage is deemed reduction of state property or prevention of its increase.

Political Decisions

Article 16

Should the audit affect a political decision, the Institution shall refrain from assessment of such decision and limit itself to informing and advising the recipient of the report on important facts and possible adverse consequences.

Third Parties Rights

Article 17

The Institution shall determine the method of audit in a way that the rights of third parties, to which the activities in the procedure of audit relate, are protected.

Parties referred to in the paragraph 1 of this Article are physical persons or legal entities, which are not audited entities within the meaning of this Law, but do business with an audited entity.

The Institution shall make it possible for the persons or entities referred to in the paragraph 2 of this Article to state their opinion on the audit findings, if the audit report contains or may give cause to negative evaluation and may be used in the procedure of public reporting.

Reporting to the Parliament and Government

Article 18

The Institution shall report to the Parliament and the Government:

- 1) by submitting the Annual Report;
- 2) by submitting special reports;
- 3) by giving advice based on the findings gained through the audit.

Annual Report

Article 19

The annual report shall contain in particular:

- 1) An appraisal on whether the amounts in the financial statements of the budget correspond to the amounts quoted in the records, and whether the controlled revenues, expenditures and property are correctly documented according to the regulations and general standards;

- 2) An appraisal regarding important cases where the rules and regulations on the budget and economic activities of the State are not complied with;
- 3) Important comments regarding the found shortcomings of the audited entity;
- 4) Recommended measures.

The Annual Report may include conclusions on previous findings and recommendations for the upcoming fiscal years.

The Annual Report shall be submitted to the Parliament and the Government by the end of October.

The President of the Republic, the President of the Parliament and the Prime Minister shall be informed about circumstances of confidential nature, which have caused or may cause financial or other damage of larger extent.

Special Reports

Article 20

The Institution shall inform the Parliament and the Government on particularly significant and important issues through special reports.

Advising

Article 21

Based on the findings gained through the audit, the Institution may advise the Parliament and the Government on financially significant measures and important projects.

The Institution, in case it has learnt that the existing laws produce or may produce adverse consequences, or that they do not lead to expected results, may give recommendations for their amendments.

Claiming Damage

Article 22

The Institution shall, without delay, inform the audited entity if deems that there are reasons for submitting a request for initiating claiming damage procedure.

If any activity of the audited entity has caused damage to state property, the Institution shall, without delay, inform the public prosecutor.

Should the claim for damages be withdrawn, the public prosecutor shall inform the Institution.

The Institution shall inform the Parliament and the Government on the reasons for withdrawing the claim for damages.

Bringing Criminal Charges

Article 23

The Institution shall, without delay, bring criminal charges, if during the audit procedure it determines that there is a reasonable doubt that criminal offence has been committed.

Proceeding upon Request

Article 24

The Institution shall decide independently on requests for providing information or making documents available, according to the law.

Informing the Institution

Article 25

The audited entity shall, without delay, inform the Institution concerning:

- 1) proposals of laws, other acts, general acts, regulations, orders and instructions, - adopted on the basis of laws - which relate to the management and use of budget funds or which may have consequences for the revenues and expenditures of the budget of the Republic or of budget of municipalities .
- 2) establishment or termination of operation of an audited entity, or any major change in the organizational form of an audited entity;
- 3) conclusion of a contract which involves the use of budget funds or state property between the audited entities and a legal or physical person for amount exceeding 15,000 Euros.

Consideration of the Annual Report

Article 26

During the procedure of adoption of the Financial Statement of the Budget of the Republic , the Institution shall report to the Parliament on the audit of the Financial Statement.

On the basis of essential facts and circumstances pointed out in the Annual Report of the Institution, the Parliament shall decide on proposed measures and time limit for their implementation.

The Parliament may request from the Institution additional clarification of specific facts and circumstances.

Article 27

Information from existing reports of the Institution is an integral part of the documentation in the procedure of adoption of laws, other regulations and general acts that relate to the management and use of budget funds and state property.

Financial Statement of the Institution

Article 28

The Parliament, through a special act, may entrust an appropriate professional organization with the audit of the financial statement of the Institution.

III ORGANIZATION AND BODIES OF THE INSTITUTION

Organization

Article 29

The Institution shall be organized in sectors.

Departments shall be organized as parts of a sector.

A separate service shall be organized for carrying out administrative tasks and providing support.

Bodies of the Institution

Article 30

The Institution shall have Senate and Auditing Boards.

Senate

Article 31

The Senate shall have five members.

A Member of the Senate shall be the Head of one sector.

Requirements for Appointment of a Member of the Senate

Article 32

Only a lawyer or economist of Montenegrin citizenship may be appointed as a Member of the Senate, who, in addition to the general requirements determined by the law of the Republic, meets one of the following requirements:

- 1) has passed the bar exam and has at least 10 years of work experience in the legal profession or at least 10 years of work experience in conducting responsible legal works in civil service;
- 2) has passed the professional exam for auditors or accountants and has at least 10 years of work experience or at least 10 years of work experience in conducting responsible works in public finance.

At least two Members of the Senate shall be lawyers.

Appointment of the Members of Senate and the President

Article 33

Members of the Senate shall be appointed and relieved from duty by the Parliament on recommendations of the Parliament's competent working body.

The Parliament shall appoint the President of the Senate from among the Members of the Senate for a period of nine years. The same person cannot be reappointed as President.

Permanency of Office

Article 34

The office of Member of the Senate shall be permanent.

The office of Member of the Senate shall be terminated upon his/her request or when he/she meets the legal requirements for retirement or if he/she is sentenced to imprisonment.

The Member of the Senate shall be relieved from office if he/she is sentenced for an offence which makes him/her unworthy of holding office, or if he/she exercises the office in an unprofessional or unscrupulous manner or if he/she permanently loses the ability to exercise office.

The Senate shall inform the Parliament on circumstances described in paragraph 2 and 3 of this Article.

Incompatibility of Office

Article 35

A Member of the Senate may not be a Member of the Parliament or hold any other public office, or be engaged in any other professional activity.

Article 36

A Member of the Senate may not be a member of any body of a political party.

Decision-Making in the Senate

Article 37

The Senate shall decide by majority of votes of the total number of all Members of the Senate.

The Competencies of the Senate

Article 38

The Senate shall:

- 1) adopt the Annual Report and special reports;
- 2) adopt the annual audit plan;
- 3) make decisions in cases where no decision can be made in accordance with Article 44, paragraph 3 of this Law;
- 4) adopt instructions on the method of work (audit standards);
- 5) review, upon request of an Auditing Board, the decisions previously adopted by the Senate and decisions adopted by the Auditing Board;
- 6) adopt the Rules of Procedure of the Institution;
- 7) adopt the Act on Internal Organization and Systematisation;
- 8) adopt the financial statement of the Institution;
- 9) carry out other activities determined by this Law and by general acts of the Institution.

The Rules of Procedure referred to in the paragraph 1, item 6 of this Article shall regulate in detail the work method, carrying out of activities and decision-making.

Acts from paragraph 1 item 4 and 6 of this Article shall be published in the "Official Gazette of the Republic of Montenegro".

President of the Senate

Article 39

The President of the Senate shall chair the Senate and represent and act for the Institution.

In the event of his/her absence or impediment, the eldest member of the Senate shall take his/her place.

Schedule of Duties

Article 40

The schedule of duties within the Institution shall be determined by the President in agreement with the Members of the Senate.

Prohibition of Membership in Management Boards and Other Exclusionary Matters

Article 41

A Member of the Senate may not be a member of the management board of any company or other legal entity.

A Member of the Senate may not participate in decision making or activities provided in this Law in cases where he/she has any family member directly involved in this matter.

Should there be reasons that lead or may lead to questioning the objectivity or impartiality of a Member of the Senate, the Member's exclusion from the decision-making shall be determined by the Senate.

A Member of the Senate shall inform the President of the Senate on circumstances described in paragraph 2 and 3 of this Article.

Obligation to Keep Secrets

Article 42

Members of the Senate and employees of the Institution shall keep business and other secrets regardless of the manner in which they learnt about them.

Secretary of the Institution

Article 43

The Institution shall have a Secretary who is in charge of providing services for administration and support.

The Secretary shall be appointed and dismissed by the Senate. The Secretary shall be appointed for an indefinite period by the Senate, based on a public announcement.

The Secretary shall be a lawyer or an economist, who has passed the official exam for public administration and has at least five years of work experience.

The Secretary shall be accountable for his/her work to the Senate.

Auditing Board

Article 44

The Auditing Board shall be in charge of and supervises the auditing procedure, and is responsible for the results of the audit.

The Auditing Board shall consist of two Members of the Senate, one of which is the Head of the sector conducting the audit.

In the event that the Auditing Board cannot reach a decision, the decision shall be made by the Senate.

State Auditors

Article 45

The audit shall be performed by State Auditors (hereinafter referred to as the "Auditors").

The Auditor shall be employed on the basis of public announcement.

An Auditor may be a person, who in addition to the general conditions provided by the law, meets the following requirements: university degree, minimum of five years of expert work experience and passing of the State Auditors Exam.

The exam for state auditors shall be passed on the basis of a program which shall be adopted by the ministry in charge of public administration, following the proposition of the Senate.

The provisions of Article 41 of this Law relating to Members of the Senate shall be applied accordingly to the Auditors. The decision on exemption from the audit procedure shall be made by the Auditing Board.

Article 45a

The state auditor is assigned to a salary grade number 4 and is entitled to a salary according to the stipulated coefficient for this salary grade by the law on salaries of civil servants and state employees.

According to law, the Senate determines the conditions, assignment and amount of the audit salary supplements for the employees of the Institution.

Engagement of External Expert

Article 46

The Institution may involve external experts during an audit procedure if the audit requires specific expertise.

External experts as described in paragraph 1 of this Article have the obligation to keep business and other secrets.

Servants and Employees

Article 47

Administrative and expert work as well as other tasks of the Institution shall be carried out by civil servants and state employees.

Article 48

More detailed requirements for employment shall be provided in the Act on Internal Organization and Systematisation.

Rights, Duties and Disciplinary Responsibilities of Employees

Article 49

The provisions of the law regulating the position of civil servants and state employees shall be accordingly applied to the rights, duties and disciplinary responsibilities of the employees.

IV INFORMING THE PUBLIC

Article 50

The Institution shall make the Annual Report available to the public.

The Rules of Procedure of the Institution shall regulate in more detail the manner of informing the public.

V FINANCING

Article 51

The funds for the activities of the Institution shall be provided in the budget of the Republic.

The request for allocation of budget funds to the Institution shall be submitted by the working body of the Parliament in charge of financial activities, upon request of the Institution.

VI PENALTY PROVISIONS

Article 52

The audited entity that fails to make the documentation available to the Institution or its authorized person or fails to provide required information and clarification, or provides incorrect data shall be fined for misdemeanor in the amount of twenty to three hundred –fold the minimum wage in the Republic (Article 10).

The authorized person in the audited entity shall be fined for misdemeanor as described in paragraph 1 of this Article in the amount of one half to twenty-fold the minimum wage in the Republic.

Article 53

The audited entity, which fails to inform the Institution about the circumstances described in Article 25 of this Law, shall be fined for misdemeanor in the amount of twenty to three hundred–fold the minimum wage in the Republic.

The authorized person in the audited entity shall be fined for misdemeanor described in paragraph 1 of this Article in the amount of one half to twenty-fold the minimum wage in the Republic.

Article 54

The auditor, who publishes data of confidential nature before the completion of the audit (Article 11), shall be fined for misdemeanor in the amount of twenty to three hundred-fold the minimum wage in the Republic.

The authorized person in the Institution shall be fined in the amount of one half to twenty-fold the minimum wage in the Republic for the misdemeanor described in paragraph 1 of this Article.

VII TRANSITIONAL AND FINAL PROVISIONS

Article 55

Members of the Senate shall be appointed within three months from the day of entry into force of this Law.

Article 56

Secondary legislation for the implementation of this Law shall be adopted within three months from the day of the appointment of the Members of the Senate.

Article 57

The selection of the Auditors shall be made within three months from the day of expiry of the period referred to in Article 56 of this Law.

Until the adoption of the program referred to in Article 45, paragraph 4 of this Law, the Auditors may be appointed from among those who did not pass the State Auditors Exam, if he/she meets the other conditions and if he/she has passed the civil service exam or the state exam for accountants and auditors in line with the law.

The employee as described in paragraph 2 of this Article shall pass the State Auditors Exam within two years from the day of adoption of the program referred to in the Article 45, paragraph 4 of this Law.

Unless the employee passes the State Auditors Exam within the deadline prescribed in paragraph 3 of this Article, his/her employment shall be terminated.

Article 58

The President of the Senate is entitled to a salary equal to the amount of the President of the Constitutional Court. Member of the Senate is entitled to a salary equal to the amount of the judge of the Constitutional Court, as well as other rights, which belong to the bearers of the constitutional and judicial function.

Article 59

Provision provided for in Article 51, paragraph 2, item 1 of the Law on Budget (Official Gazette of the Republic of Montenegro 40/01) shall be repealed when the first Annual Report of the Institution is submitted.

Article 60

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of the Republic of Montenegro.