

CONTROL ACTIVITIES IN THE FIELD OF PUBLIC ADMINISTRATION WITH A FOCUS ON THE SUPREME AUDIT OFFICE

Kontrolná činnosť v oblasti verejnej správy so zameraním na Najvyšší kontrolný úrad

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ABSTRACT: The paper deals with the control carried out in the field of public administration. Public administration is part of the executive power and therefore it is very important for its activities to be carried out on the basis and within the limits of the law. Control is simply a guarantee in life that everyone will perform their work and mission in society in such a way that it does not interfere in any way with the rights and legally protected interests of others. The aim of the paper is to point out the importance and significance of control in public administration with a more detailed focus on the Supreme Audit Office of the Slovak Republic and its activities.

Key words: control - public administration – the Supreme Audit Office.

ABSTRAKT: Príspevok sa zaoberá kontrolou vykonávanou v oblasti verejnej správy. Verejná správa je súčasťou výkonnej moci, a preto je veľmi dôležité, aby jej činnosť bola vykonávaná na základe a v medziach zákona. Kontrola je jednoducho v živote zárukou toho, že každý bude svoju prácu a poslanie v spoločnosti vykonávať tak, aby nijako nezasahoval do práv a právom chránených záujmov ostatných. Cieľom príspevku je poukázať na význam a význam kontroly vo verejnej správe s podrobnejším zameraním na Najvyšší kontrolný úrad SR a jeho činnosť.

Kľúčová slova: kontrola – verejná správa – Najvyšší kontrolný úrad.

INTRODUCTION

Control is an essential part of any organized and managerial activity and is a subject of interest to several scientific disciplines. Its research and analysis are the subject of investigation in administrative science and the science of administrative law. Effective and especially efficient control is a basic prerequisite for the proper execution of public administration and is one of the guarantees of its correct and legal performance. The emergence of control is not associated with the whims of powerful or wealthy people, nor has an extra-terrestrial origin. Control is simply a guarantee in life that every person will carry out their work and mission in

society in such a way that it does not to interfere in any way with the rights and legally protected interests of others.

If we look at control in the sense of observing, comparing and subsequently evaluating the results of observing a phenomenon, object or action, it is a natural part of every individual's behaviour and had emerged long before people called such activity control. In the area of state administration, control took place at a time when important information between high state authorities was written on parchment sheets, which were then rolled up and stamped with wax seals as both identification and security seals. In order to avoid possible risks of exchange for a false document, a copy of the origin was made at the same time. The documents were then stored and archived in safe places. This safeguard procedure was particularly important when there was some doubt in verifying the authenticity and genuineness of a submitted document by comparing it with the archived copy. Control is therefore a historical phenomenon that has persisted to the present day.

In Slovakia, controlling has experienced a long-term development and related transformations. In the system of legal guarantees in public administration, the control of public administration has a specific position, especially because in most cases, its findings create the preconditions for the application of other legal guarantees.

METHODOLOGY

The research for this article was conducted in two stages. We started by reviewing professional literature, articles, monographs, case law as well as current legislation, which were subsequently analysed and processed.

The second stage consisted of working with data and information on the control activities of the Supreme Audit Office within individual years. For this purpose, it was important to work with the official data published on the official website of the Supreme Audit Office as well as with information about their activities resulting from the annual Control Activity Plan.

1. PROCEDURE FOR PERFORMING CONTROLS IN PUBLIC ADMINISTRATION

The control consists of two process parts. The first phase, the detection and evaluation phase, always takes place, while the second phase is optional, which means that it may or may

not occur. The second phase involves the application of corrective or sanction mechanisms. If a situation arises where the audit findings show deficiencies and deviations in the activities of the audited entity, the second phase becomes mandatory.

The basic legal regulation governing control in public administration is Act no. 10/1996 Coll. on Control in State Administration. This law applies only to the control of the performance of state administration, not the entire public administration.

Local and regional authorities may use this legislation, but it is preferable for them to create their own rules for the performance of control activities. Ministries, other central state administration bodies, local state administration bodies and other bodies stipulated by law are designated as control bodies in the Act on Control in State Administration. In this case, the Office of the Government of the Slovak Republic has a special position, since as a central state administration body, it has the status of a central body for control of tasks related to state administration, control of petitions and complaints, and control of government program statements and government resolutions.

The first phase of the control process begins with the written authorization of the control body staff, issued by the head of the control body. The authorization should include, in particular, the identification of the control body and the controlled entity, the names and surnames of the persons authorized to carry out the inspection, the subject of the inspection, the inspection period, the date of commencement of the inspection and finally the signature of the head of the control body.

The Act on Control in State Administration grants rights and obligations to certain auditors and audited entities. The basic duty of the auditors is to proceed in such a way that the rights and legally protected interests of the audited entity are not affected in any way. As the purpose of inspection is to achieve objectivity, the law regulates the auditor's obligation to report a fact that could lead to the auditor's bias, and the audited entity also has the right to object to this bias. If that occurs, the auditor is obliged to notify the head of the control body in writing of the facts giving rise to doubts of impartiality without an undue delay. The audited entity also has the right to object to the auditor through a legal remedy called objection. The substantive elements of objection are not formulated in more detail in the law; it is only stated that the controller is biased in which it is possible to have doubts about its impartiality due to its relationship to the subject or subject of the inspection. It shall be noted that if a doubt about impartiality is sufficient, i.e. there does not have to be actual bias. Lodging an objection does not have a suspensive effect on the execution of the inspection, but the auditor to whom the objection concerns may perform only those activities which do not allow a deferral. In such a

case, the objection may be lodged only by the head of the audited entity and shall be decided by the head of the control body. The statutory deadline is 5 working days and the head of the control body informs the person who raised the objection of bias about his/her decision. In the event that an actual bias found, the head of the control body shall delegate the activities related to the inspection to another staff member. However, if the head of the control body decides that the controller is not biased, the controller continues with the already started control. This decision cannot be appealed, but the possibility of lodging a complaint or complaint to the public prosecutor's office is possible. In connection with the execution of the inspection, the staff is obliged to notify the audited entity in advance of the subject, purpose and duration of the inspection and at the same time to present also to prove their performance with a power of attorney together with a document proving their identity.

In connection with the execution of the inspection, the staff is authorized in particular:

- a) to enter buildings, facilities and establishments, land as well as other premises, if they are directly related to the subject of the inspection,
- b) require the audited entity or its employees to provide them with the documents, statements, information or other documents necessary for the execution of the inspection within a certain period of time,
- c) make copies of the collected materials for the purposes of documentation on the report on the result of the inspection,
- d) if necessary, take the originals of documents, written documents and other materials outside the premises of the audited entity,
- e) require the necessary co-operation to carry out the inspection of the audited entity as well as its employees or other state bodies.

The inspection staff also has certain responsibilities in connection with the execution of the inspection, in particular:

- a) to report to the law enforcement authorities the facts which indicate that a criminal offense has been committed,
- b) to maintain the confidentiality of information which come to their notice in the course of an inspection, unless they are relieved in writing of this obligation by the person in whose interest this obligation is.

The audited entity, on the other hand, has the right to comment on the audit findings in writing during the inspection. The duties of the audited entity include in particular:

- a) provide co-operation corresponding to the powers of the control staff, create suitable conditions for the execution of the audit and provide the audit staff with a confirmation of receiving the returned documents and their completeness,
- b) inform the inspection staff of the security regulations applicable to the premises of the audited entity, on the day of the commencement of the audit at the latest,
- c) upon request, provide the inspection staff with the results of audits carried out by other authorities.

If the event that the audited entity does not comply with the obligations imposed by the Act on Control in State Administration, and knowingly or unknowingly obstructs the audit, impedes the result or correction of identified deficiencies, the control body is entitled to impose a disciplinary fine of up to 650 euros. When determining the amount of the fine, the control body shall particularly take into account the degree of difficulty in carrying out the audit or the loss of the result of the inspection. A disciplinary fine may also be imposed repeatedly, but up to a maximum of EUR 6,500.

The period for imposing a fine is 2 months from the date of the finding about the breach of legal obligation, but no later than one year from the breach of legal obligation.

Subsequently, once the inspection staff finds out the facts of the case, they compare it with the state that is desirable for the relevant case. There are two types of conclusions to be drawn, namely the identification or non-identification of deficiencies. If the control body does not find any errors, they draw up a record of the audit, which is signed by the inspection staff and subsequently handed over to the head of the audited entity.

However, if deficiencies are found in the activities of the audited entity, an audit report shall be drawn up. The audit report shall contain the name of the control body, the audited entity, place, time, subject of inspection and inspection period, inspection findings, list of annexes, date of report together with the date of notification of the protocol, as well as the name of the head of the audited entity, who has been acquainted with the protocol, the annex to the protocol if the deficiency found by the audit is an irregularity underling to a special regulation, as well as a report on the detected irregularity.

The control body is obliged to inform the head of the audited entity of the report on the result of the audit, even before it is discussed, and to request comments on all audit findings in writing within a reasonable time. An appeal against the protocol is not possible, but written objections may be lodged against it, which may call into question the audit findings. The inspection staff shall examine the objection and its validity, and in case of substantiated objections, they shall take them into account in the addendum to the protocol, inform the head

of the audited entity and, conversely, substantiate the unfounded objections in writing to the audited entity no later than the date of discussion of the protocol. Subsequently, the inspection staff must discuss the report with the head of the audited entity, who is obliged to appear for its discussion. Rather, the minutes of the discussion of the protocol are set, in which the head of the audited entity is determined a period within which they are obliged to submit the measures taken in order to eliminate the identified deficiencies to the control body. The inspection is concluded by the discussion of the protocol and the protocol is considered to be discussed even if the head of the audited entity does not appear for the discussion or refuses to sign the minutes of the discussion of the protocol without giving a reason. These facts are then reported by the inspection staff in the minutes of the discussion of the protocol.

2. CONTROL ACTIVITY OF THE SUPREME SUPERVISORY AUTHORITY

The Supreme Audit Office of the Slovak Republic is an independent state body that controls the management of funds and property of the state, local government and, finally, the funds provided by the European Union. It carries out its control activities on the basis of a resolution of the National Council of the Slovak Republic (hereinafter NRSR) and according to its own annual control activity plan.

The Supreme Audit Office is obliged to submit the results of its audit activities to the NRSR on an annual basis. The purpose of this report is, in addition to pointing out how the Office is fulfilling its responsibilities, to provide some insight into how to use its resources efficiently and effectively.

The Supreme Audit Office is not the only competent body to control the use of public resources. The basis of internal control is currently financial control or internal audit. However, the findings available to the SAO SR indicate that audit as a management tool is not used sufficiently, as it does not focus on specific risks, but rather on the formal aspects of financial management. What the SAO SR considers to be the most serious problem at present is the non-utilization of the potential of internal audit. Internal audit serves to a large extent primarily the middle management for eliminating formal deficiencies. However, this situation is not caused by the lack of auditors or their insufficient quality, but rather by the low interest in using audit on the part of the competent authorities. Internal audit is one of important management tools and should primarily serve the management of the organization to focus on key areas of their activities and to determine whether there are any serious problems associated with the use of funds. An interesting finding is that almost every audit by the SAO SR identifies problems and

shortcomings that might have not arisen in the case of a functioning internal control system. Insufficient internal control consequently results in the SAO SR's obligation to address basic issues related to compliance with budgetary rules and laws, despite the fact that the SAO SR's primary mission as the highest national authority for external control is to determine whether individual public policy objectives are being fulfilled economically, efficiently and effectively.

2.1 Plan of control activities of the Supreme Audit Office of the Slovak Republic

As the mandate of the Audit Office is broad and very important from this point of view, the planning of control activities is very important and plays a key role.

2.1.1 Analysis of the plan of control activities of the Supreme Audit Office of the Slovak Republic for 2019

The plan of control activities for 2019 was focused primarily on the areas of efficient and transparent public administration, sustainable public finances, or transport infrastructure and information and communication technologies. The plan included a total of 25 audits. Two audits were planned as part of the fulfilment of the legal obligation arising from § 5 (1) of the Act on the SAO SR, concerning the obligation to prepare an opinion on the draft of the state closing account of the Slovak Republic for 2018 and also an opinion on the draft state budget of the Slovak Republic for 2020. The other 23 audits focused primarily on the assessment and control of the management of selected entities. The plan envisaged a total of 440 audited entities, namely state administration entities, local governments, joint-stock companies, state enterprises as well as natural and legal persons in terms of granted subsidies and funds from the EU. As part of the audits, two performance audits were planned, five compliance audits and the other audits were combinations of compliance audits with the planned 12 elements. The other four audits were planned to be performed as compliance audits with financial control elements and finally two audits. should be focused on preparing an opinion on the draft state closing account of the Slovak Republic for 2018 and an opinion on the draft state budget of the Slovak Republic for 2020. In these cases, audit actions are a combination of all types of controls, i.e. compliance, performance and financial audit.

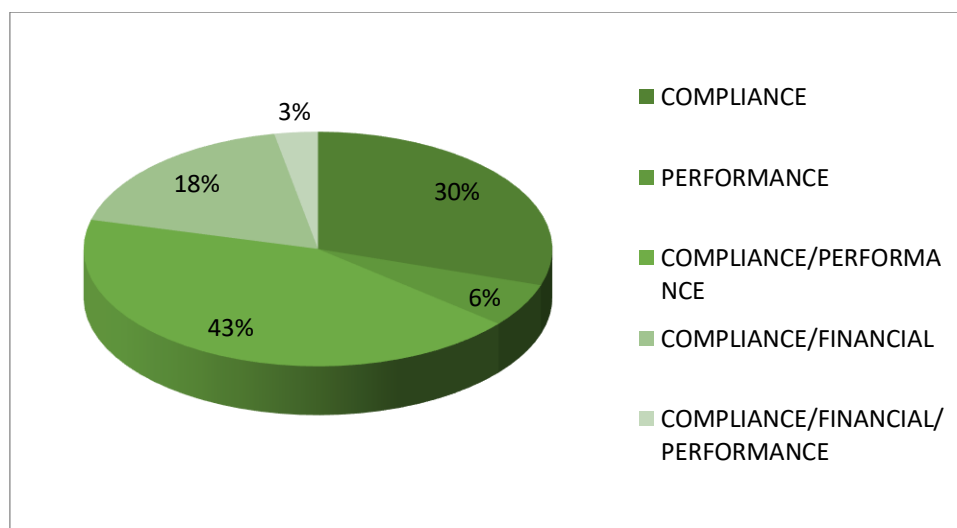
In 2019, the SAO SR's inspectors executed a total of 39 audits. The discrepancy in the number of executed audits in 2019 with the planned number of audits for a given year lies

primarily in the complexity of some significant and international audits. Specifically, in 2019, 6 audits were completed, which were opened in 2018 and are the subject of this report.

Most audits, namely 18, focused on efficient and transparent public administration. In another group, 4 audits were carried out focusing on sustainable consumption and production, energy efficiency and environmental sustainability, 5 audits concerned sustainable public finances and fiscal policy, 2 audits on defence and security, 2 on transport infrastructure and information technology. 4 on communication technologies and the last audit focused on education, research, development and innovation.

The purpose of the compliance check is to verify the compliance with the criteria stipulated by law, regulations and contracts. This includes checking the correctness and compliance with the general principles governing the sound management of public funds. Audits with elements of financial control focus on the veracity, completeness and verifiability of financial and financial statements. The purpose of the performance review is to verify that the public funds entrusted have been used in accordance with the principles of economy, efficiency and effectiveness. The SAO SR looks at the economy mainly from the point of view of possible waste, i.e. whether the given activity or goods is necessary. The Office also monitors for possible overpricing, i.e. it assesses whether the activity or the purchased goods are of the required quality. In terms of the principle of efficiency, the Office focuses on possible losses, and in the event that the funds spent do not lead to the anticipated and expected results, whether the optimal ratio of inputs and outputs is set. The principle of effectiveness is a certain view of the fulfilment of the set goals, or the search for causes of their non-fulfilment.

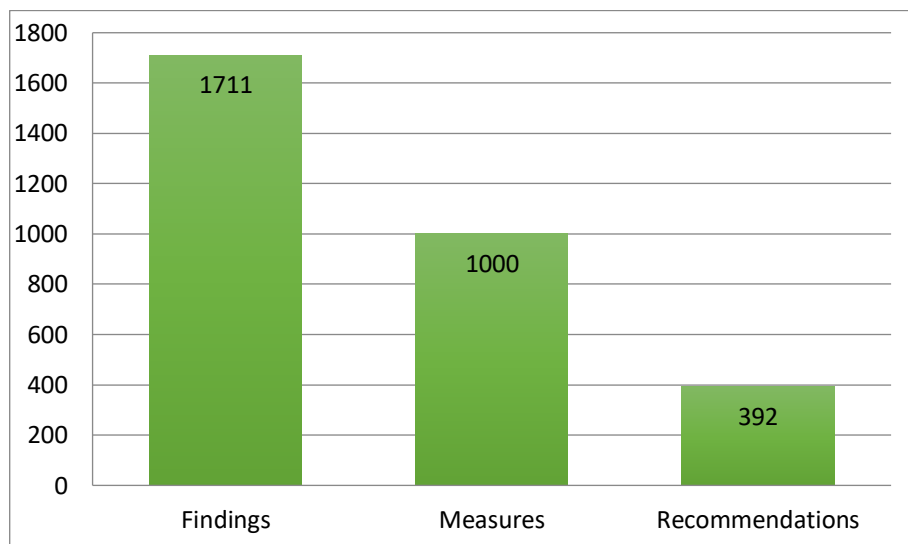
Graph 1: Control actions by type of control



Zdroj: www.nku.gov.sk.

In 2019, auditors inspected a total of 426 entities, which identified 1,711 deficiencies from various areas of their activity. The entities adopted a total of 1,000 measures and the auditors formulated a total of 392 recommendations, the adoption of which could prevent the identified deficiencies in the future. The most serious findings were suspicions of criminal activity, which were subsequently referred to law enforcement authorities. In 2019, the SAO SR filed a total of 7 criminal reports and the SAO SR representatives submitted 16 non-criminal reports to the Prosecutor's Office. The SAO SR forwarded a total of 7 submissions to the Public Procurement Office.

Graph 2: Overview of the number of findings, measures and recommendations for 2019



Zdroj: www.nku.gov.sk.

2.1.2 Analysis of the plan of control activities of the Supreme Audit Office of the Slovak Republic for 2020

In accordance with the 2020 audit planning schedule, audit services submitted a total of 45 topic proposals. The task of the Planning Board was then to assess the proposals and decide which of them should be continued in the planning process or proposed to the audit pool. The Planning Board subsequently recommended 23 out of 45 topic proposals in the next planning process. Based on free capacities, another 7 topics of control actions and topics within the control of complaints were added.

The total number of audits proposed in the 2020 audit plan for 2020 was 32. The inspection plan envisaged audits in 215 entities, including state administration bodies, local governments, joint-stock companies, other public administration entities as well as natural and

legal persons in terms of granted subsidies and funds from the EU. As part of the audit actions, 4 performance checks and 6 compliance checks were planned. Other control actions are combinations of performance control with compliance control elements, of which 10, 5 control actions were planned to be performed as compliance control elements and finally 2 control actions as financial control with compliance control elements. Two audits were planned to be carried out focusing on the preparation of an opinion on the draft state final account of the Slovak Republic for 2019 and an opinion on the draft state budget of the Slovak Republic for 2021.

Finally, the SAO SR's audit plan for 2020 contained a total of 35 audits, while the plan already anticipated that 8 audits initiated in the second half of the year would not be completed until 2021 due to their complexity, which is not extraordinary and occurs every year. At the end of each audit, a report or record is drawn up containing the findings and proposed recommendations to address the deficiencies in the audited institution or to help it do better.

Finally, most audits carried out in 2020 were aimed at efficient and transparent public administration (16). The second group consisted of controls focusing on sustainable consumption and production, energy efficiency and environmental sustainability (5), sustainable public finances and fiscal policy (4). Further actions focused on education, research, development and innovation (3), transport infrastructure and information and communication technologies (2) and social policy (2). Four international audits were also carried out and covered medium-term budgetary frameworks, protection of the population against infectious diseases, plastic waste, a system for collecting and managing social security contributions and old-age pension savings. The SAO SR covered audits focused on the issue of countries' preparedness for infectious diseases, comparing the effectiveness of social insurance systems and the issue of applying medium-term budgetary frameworks in scale policy.

In 2020, the auditors inspected a total of 216 entities, which is a significantly lower number compared to 2019. 1552 audit findings were subsequently identified in the audited entities, ranging from violations of the law to systemic deficiencies. The entities adopted 958 measures and the SAO SR formulated 385 recommendations, the adoption of which could prevent the identified deficiencies in the future. The most serious suspicions of criminal actions were passed on to law enforcement authorities. In 2020, the SAO SR filed 4 criminal reports. The 11th SAO SR forwarded 2 submissions to the National Criminal Agency, 2 submissions to the Public Procurement Office and 1 submission to the Antimonopoly Office of the Slovak Republic.

Graph 3: Overview of the number of findings, measures and recommendations for 2020



Zdroj: www.nku.gov.sk.

CONCLUSIONS

Undoubtedly, one of the basic tasks of a state is to create a functioning environment where internal coherence and legal certainty are ensured for citizens in the area of public administration. In order to achieve these goals, the state establishes bodies and institutions with powers through which they carry out their activities and help to achieve these goals. These bodies also include law enforcement authorities performing control activities in the internal structures of the state.

The main conditions for control activities that must be met in order to achieve the desired control effect are independence from all other powers in the state and expertise. It is the attribute of expertise that is absent in the Slovak legal system, which can subsequently lead to errors in control activities due to the unprofessionalism of auditors. It is thus necessary to enshrine the requirement of expertise in the legal order and, in addition, to constantly increase the demands on control staff in order to improve control.

Since the SAO SR's powers to control financial resources in the area of territorial self-government were expanded, the opinions of experts on this issue have differed significantly. On the one hand, proponents welcome this model of control, as it is an effective means of detecting corruption and eliminating errors in the management of funds. On the other hand, some municipalities and higher territorial units or even other

representatives do not agree with this extension of powers, and even perceive this model as interfering with the autonomy of local governments, and even as a violation of the Charter of European Municipalities.

However, it is important to note that the Supreme Audit Office does not interfere in any way with the autonomy of local governments, it only carries out the control of financial efficiency and compliance with legal regulations.

Given that inspections carried out in the area of local government have repeatedly pointed to mismanagement of funds, shortcomings in the provision of subsidies, but also to repeated breach of generally binding legislation, I am inclined to believe that the extension of powers and the overall control activity of the Supreme Audit Office is a positive action for the state and is duly substantiated. After all, as we have also stated in the graphs, only in the period of 2019-2020, 3263 findings, 1958 measures and 777 recommendations were identified within the audit activities of the Supreme Audit Office.

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