

The impact of the principle of collegiality on the functioning of the Supreme Audit Office

Wpływ zasady kolegalności na funkcjonowanie Najwyższej Izby Kontroli

Влияние принципа коллегиальности на функционирование
Верховной контрольной палаты Польши

Вплив принципу колеґіальності на функціонування Верховної
палати контролю Польщі

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Summary: The article's subject is collegiality as the essence of the Supreme Audit Office (NIK)'s activities. The Constitution of the Republic of Poland defines the functioning of the Supreme Audit Office (Polish: Najwyższa Izba Kontroli, abbreviated NIK) based on the principle of collegiality (Article 202 section 3 of the Constitution of the Republic of Poland). However, this requirement is formulated in a very general manner, without specifying the content or form of its implementation, but with the indication that the organisation and functioning of the Supreme Audit Office shall be defined by law (Article 207 of the Constitution of the Republic of Poland). Interestingly, this concept was already embedded in the Act of 23 December 1994, on the Supreme Audit Office, two years before the adoption of the Polish Constitution, and remains in effect in its unchanged form to this day. This article analyses the principle of collegiality, an issue of constitutional and functional significance for the NIK's operations while considering the NIK president's strong leadership role. The study aims to demonstrate that the implementation of the constitutional principle of collegiality in NIK is not limited to the work of the collective body within the Office, namely the NIK Council but obliges the organisation to perform tasks collaboratively at various stages of the audit process. The article's subject determined the research method's choice and the study's structure.

The primary research method employed is the formal-dogmatic method, which involves the analysis of statutory provisions and other legal instruments related to the examined issues, specifically the Constitution of the Republic of Poland and the Act on the Supreme Audit Office. Additionally, the article analyses the standards developed by the International Organization of Supreme Audit Institutions (INTOSAI) concerning the modes of operation of such institutions. Since the principle of collegiality has defined the functioning of the Office from the very first day of its establishment, the historical method was also applied.

Key words: collegiality, Supreme Audit Office, NIK College, oversight authority

Streszczenie: Przedmiotem artykułu jest kolegalność jako istota działalności Najwyższej Izby Kontroli. Konstytucja Rzeczypospolitej Polskiej określa sposób funkcjonowania NIK w oparciu o zasadę kolegalności (art. 202 ust. 3 Konstytucji RP). Wymóg ten został jednak ujęty w sposób bardzo ogólny, bez doprecyzowania treści i formy jego realizacji, ale ze wskazaniem, że organizację oraz tryb działania Najwyższej Izby Kontroli określa ustawa (art. 207 Konstytucji RP). Co ciekawe, koncepcja ta została zapisana już w ustawie z dnia 23 grudnia 1994 r. o Najwyższej Izbie Kontroli, tj. dwa lata przed uchwaleniem Konstytucji RP, i w niezmiennej formie

obowiązuje do dziś. W niniejszym artykule dokonano analizy zasady kolegialności, a więc istotnej ustrojowo i funkcjonalnie kwestii dla działalności NIK, z uwzględnieniem silnej pozycji kierowniczej Prezesa NIK. Opracowanie zmierza do wykazania, że realizacja konstytucyjnej zasady kolegialności NIK nie ogranicza się jedynie do pracy funkcjonującego w Izbie gremialnego organu, jakim jest Kolegium NIK, lecz zobowiązuje do zespołowego wykonywania zadań na różnych etapach postępowania kontrolnego.

Przedmiot artykułu przesądził o wyborze metody badawczej i układzie opracowania. Podstawową zastosowaną metodą badawczą jest metoda formalno-dogmatyczna związana z analizą aktów prawnych odnoszących się do badanej problematyki, tj. Konstytucji RP i ustawy o NIK. Dokonano również analizy standardów opracowanych przez Międzynarodową Organizację Najwyższych Organów Kontroli, odnoszących się do formy działania tych organów. Z uwagi na to, że zasada kolegialności określa sposób funkcjonowania Izby od pierwszego dnia jej powołania, zastosowano również metodę historyczną.

Słowa kluczowe: kolegialność, Najwyższa Izba Kontroli, Kolegium NIK, władza kontrolująca

Резюме: Предметом данной статьи является коллегиальность как сущность деятельности Верховной контрольной палаты (ВКП). Конституция Республики Польша определяет функционирование Верховной контрольной палаты на основе принципа коллегиальности (ст. 202 (3) Конституции Республики Польша). Однако это требование сформулировано в очень общем виде, без уточнения содержания и формы его реализации, но с указанием на то, что организация и режим работы Верховной контрольной палаты определяются законом (ст. 207 Конституции Республики Польша). Интересно, что эта концепция уже была закреплена в Законе от 23 декабря 1994 года о Верховной контрольной палате, то есть за два года до вступления в силу Конституции Республики Польша, и в неизменном виде действует до сих пор. В данной статье анализируется принцип коллегиальности как важного институционального и функционального аспекта деятельности ВКП, учитывая сильную управленческую позицию Председателя ВКП. Цель исследования – показать, что реализация конституционного принципа коллегиальности ВКП не ограничивается работой коллективного органа, функционирующего в палате – Коллегии ВКП, а обязывает коллективно выполнять задачи на различных стадиях контрольного производства.

Предмет статьи определил выбор метода исследования и структуру работы. В качестве основного метода исследования использован формально-догматический метод, связанный с анализом правовых актов, касающихся рассматриваемых вопросов, а именно Конституции Республики Польша и Закона о ВКП. Также был проведен анализ стандартов, разработанных Международной организацией высших органов аудита, касающихся формы деятельности этих органов. В связи с тем, что принцип коллегиальности определяет порядок функционирования ВКП с первого дня ее создания, был применен также исторический метод.

Ключевые слова: коллегиальность, Верховная контрольная палата, Коллегия ВКП, контролирующий орган

Анотація: Предметом цієї статті є колеґіальність як сутність діяльності Верховної палати контролю Польщі. Конституція Республіки Польща визначає порядок функціонування Верховної палати контролю Польщі на основі принципу колеґіальності (ч. 3 ст. 202 Конституції Республіки Польща). Однак ця вимога сформульована в дуже загальному вигляді, без конкретизації змісту і форми її реалізації, але із зазначенням, що організація і порядок діяльності Верховної палати контролю Польщі визначається законом (ст. 207 Конституції Республіки Польща). Цікаво, що ця концепція була закріплена ще в Законі "Про Верховну палату контролю Польщі" від 23 грудня 1994 року, тобто за два роки до прийняття Конституції Республіки Польща, і в незмінному вигляді є чинною до сьогодні. У цій статті аналізується принцип колеґіальності, тобто системно і функціонально важливе питання для діяльності Верховної палати контролю Польщі, беручи до уваги сильну управлінську позицію Голови Верховної палати контролю. Дослідження має на меті показати, що реалізація конституційного принципу колеґіальності ВПКП не обмежується лише роботою колеґіального органу, що діє у складі Палати, тобто Колегії ВПКП, а зобов'язує до колективного виконання завдань на різних стадіях аудиторських проваджень.

Тема статті визначила вибір методу дослідження та схему дослідження. Основним методом дослідження є формально-догматичний метод, пов'язаний з аналізом правових актів, що стосуються досліджуваної проблематики, а саме: Конституції Республіки Польща та Закону про ВПКП. Також було проаналізовано стандарти, розроблені Міжнародною організацією вищих органів фінансового контролю, що

стосуються форми діяльності цих органів. У зв'язку з тим, що принцип колегіальності визначає спосіб функціонування Палати з першого дня її створення, було також застосовано історичний метод.

Ключові слова: колегіальність, Верховна палата контролю Польщі, Колегія ВПКП, контролюючий орган

Introduction

The position of the Supreme Audit Office in the political system as the supreme body of state audit is outlined in Article 202 section 1 of the Constitution of the Republic of Poland of 2 April 1997.¹ The NIK does not fit within the classic Montesquieu's tripartite division of powers, although the principle of separation of powers between the legislative, executive, and judiciary, as expressed in Article 10 of the Constitution, does not exclude the existence of other constitutionally empowered authorities.² The placement of regulations regarding the NIK in a separate chapter of the Constitution³ emphasises the Office's distinctiveness and "positioning" between the Sejm (lower house of parliament) and the government. For some,⁴ this provides a basis for identifying a fourth branch of power: the auditing authority.⁵ The NIK is not a public administration body,⁶ but the Constitution grants it a supreme position within the structure of public authorities endowed with state audit competencies.⁷

¹ Journal of Laws 1997 no. 78, item 483 as amended (hereinafter: Constitution of the Republic of Poland).

² M. Florczak-Wątor, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, Warszawa 2019, p. 56; P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997*, Warszawa 2008, p. 391. Similarly: P. Daniel, *Komentarz do Konstytucji RP. Art. 202, 203*, Warszawa 2020, p. 29; M. Sosnowska-Łazińska, *Najwyższa Izba Kontroli*, in: *System organów państwowych w Konstytucji Rzeczypospolitej Polskiej*, ed. H. Zięba-Zalucka, Warszawa 2007.

³ Chapter IX: Bodies of Control and Protection of Law. This chapter, in addition to provisions establishing the Supreme Audit Office (NIK), also contains regulations concerning the Ombudsman and the National Broadcasting Council.

⁴ L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2001, p. 344.

⁵ A. Sylwestrzak, *Kontrola administracji publicznej w III Rzeczypospolitej Polskiej*, Gdańsk 2004, p. 188. The proposal to amend the Constitution of the Republic of Poland and explicitly include the division of power into four branches in Article 10 was put forward by P. Szustakiewicz (see P. Szustakiewicz, *Najwyższa Izba Kontroli – czwarta władza czy organ Sejmu*, *Ius Novum* 2008, no. 3, pp. 139–151). However, the prevailing position in the doctrine is that the NIK functions outside the constitutional separation of powers. Considering the fact that the various powers overlap and intertwine, such a separation would still be imperfect. For example, P. Daniel, *Komentarz...*, Warszawa 2020, p. 34.

⁶ Decision of the Supreme Administrative Court of 13 December 2013, II GSK 2185/13, LEX no. 1432675.

⁷ Judgment of the Constitutional Tribunal of 23 June 2009, K 54/07, OTK 2009, no. 6A, item 86.

The NIK's supremacy does not imply organisational or supervisory superiority over other state audit bodies. Rather, it is expressed through its broadest range of audit competencies, the ability to evaluate the performance of audit functions by other bodies, and the statutory obligation for cooperation imposed on other audit, review, and inspection bodies operating in government administration and local government.⁸ The NIK's supremacy thus refers to its standing among state audit bodies and the importance of its tasks.⁹

Authorities exercising power can be monocratic or polycratic (collegial). A monocratic body is a single-person entity capable of making decisions independently. Thus, not every single-person body is monocratic. What is decisive here is the organ's decision-making autonomy, the absence of hierarchical subordination, and the lack of external authority.¹⁰ As J. Jagielski rightly notes, purely monocratic bodies – those that operate independently and directly – no longer exist, as they are practically supported by auxiliary apparatus.¹¹

The organisation of public power and administrative structures has historically oscillated between monocratic and collegial models. The effectiveness of task execution did not always dictate the choice of model. Often, it was associated with an individual's ambition to concentrate power or with the implementation of safeguards against such ambitions. For instance, in ancient Athens, the collegial structure of offices was intended to prevent power concentration by dictators. These collective bodies generally operated on a majority decision-making basis.¹² Similarly, in the Roman Republic, duumvirates were employed to prevent the return of autocracy. These duumvirates embodied the principle of collegialitas, where two or more individuals simultaneously held the same function.¹³ Each of them could act independently, but their actions could be blocked by the veto of another member, preventing decisions in that domain until a mutually acceptable solution was reached.¹⁴

⁸ Pursuant to Article 12 of the NIK Act, these entities are obliged, upon NIK's request, to provide the results of conducted audits, conduct specific audits jointly under NIK's direction, and carry out ad hoc audits commissioned by NIK.

⁹ L. Garlicki, *Polskie prawo konstytucyjne...*, p. 345.

¹⁰ For example, the Prime Minister is the superior for the voivode. Both bodies are single-member authorities, but only the Prime Minister can be considered a monocratic authority.

¹¹ J. Jagielski, *Kolegialność i jednoosobowość w strukturach samorządu terytorialnego*, *Studia Iuridica* 2020, vol. 85, p. 95.

¹² G. Górski, *Historia administracji*, Toruń 2011, p. 21.

¹³ In ancient Rome, a "duumvir" referred to a member of a two-person commission, see J. Sondel, *Słownik łacińsko-polski dla prawników i historyków*, Kraków 2001, p. 316.

¹⁴ G. Górski, *Historia...*, p. 256. The principle of multi-member offices was abolished during the period of the Principate. It is worth noting that Napoleon Bonaparte's republican Constitution from 1799

1. Collegiality

The essence of collegiality lies in “the requirement that all the competencies of a multi-member body be exercised by the entire collective, with no member acting on behalf of the body alone.”¹⁵ Collegiality is the opposite of single-person decision-making, thus involving group action. It is generally accepted that a collegial body consists of at least three members (in accordance with the Roman maxim: *tres faciunt collegium*¹⁶). The term has two meanings: the first refers to the method of action, based on the collaboration of several individuals;¹⁷ the second refers to the organisational structure, as a collegial body always consists of several individuals with equal rights and obligations.¹⁸

Acting under the principle of collegiality entails decision-making by a multi-member body through the cooperation of its members. Since collegiality contrasts with single-person authority, it is easy to infer that the advantages of one model correspond to the disadvantages of the other. Collegiality is often regarded as advantageous for promoting greater objectivity in decision-making.¹⁹ Decisions are made by a group of individuals with diverse knowledge and experience, through discussions and the presentation of various viewpoints. As a result, matters are considered more comprehensively and less hastily, but this also means that the process takes significantly longer. This, along with the difficulty in assigning responsibility for the decisions of the body and the higher operational costs, is often cited as one of the main disadvantages of collegial functioning.²⁰

The principle of collegiality has accompanied the Supreme Audit Office since its inception. As early as the decree on the Supreme State Audit Office of 7 February 1919,²¹ it was stipulated that the NIK consists of a President, a Vice-President, and

referenced the model of the Roman Empire from the Principate. Although it entrusted executive power to three consuls, the First Consul held independent authority.

¹⁵ P. Sarnecki, in: L. Garlicki, *Komentarz do Konstytucji Rzeczypospolitej Polskiej*, vol. 1, Warszawa 1995, p. 6.

¹⁶ Three make up the assembly. See: J. Jagielski, *Kolegialność...*, p. 95.

¹⁷ J. Starościak, *Prawo administracyjne*, Warszawa 1969, p. 50.

¹⁸ A. Korzeniowska, *Z problematyki kolegialności i kolegialnych organów administracji publicznej, Samorząd Terytorialny* 1997, no. 3, p. 34.

¹⁹ The NIK Act identifies the objective determination of audit results as one of the primary duties of an auditor (Article 71 (2)). Acting objectively is a basic principle expressed both in INTOSAI standards and in standards for auditing in public administration. Cf.: S. Dziwisz, *Profesjonalny osąd i sceptycyzm zawodowy. Ocena dowodów w postępowaniu kontrolnym NIK*, *Kontrola Państwowa* 2024, no. 1, pp. 28–43.

²⁰ J. Jagielski, *Kolegialność...*, p. 96.

²¹ Polish State Law Journal of 1919 r. no. 14, item 183.

members of the College who held the title of SAO councillors (Article 2). It also indicated that the Office operates collegially (Article 6). The members of the College were irremovable and, like judges, were only subject to disciplinary liability. In the Act of 3 June 1921, on State Audit, the very first article stated that: “State Audit is a power based on the principles of collegiality in its actions, equal to the ministers, independent of the government, and directly accountable to the President of the Republic of Poland.”²² The Act of 9 March 1949, on State Audit²³ also provided for the functioning of the NIK’s College, which consisted of the President and three Vice-Presidents (Article 11). However, it should be noted that during this period, the NIK was not an independent institution but rather a tool of the Council of State.²⁴ Further changes, which completely stripped state audit of its independence, were introduced by the Act of 22 November 1952, on State Audit.²⁵ The Supreme Audit Office was replaced²⁶ by the Ministry of State Audit, incorporating state control into the administrative apparatus. This situation lasted for five years until a 1957 amendment to the Constitution of the Polish People’s Republic (22 July 1952)²⁷ restored the existence of the Supreme Audit Office and the NIK College (Articles 14–16). Another significant change in the functioning of the NIK occurred in 1976, with a constitutional amendment subordinating the Office to the Council of Ministers.²⁸ Consequently, in the new Act on the NIK, the President was²⁹ designated as the supreme administrative authority, with no provision for the functioning of the College. Another constitutional amendment established the NIK’s subordination

²² Journal of Laws 1921 no. 51, item 314 as amended. The details of the functioning of the NIK College were regulated by Articles 20–22.

²³ Journal of Laws 1949 no. 13, item 74. The scope and manner of operation of the NIK College were determined by Articles 12 and 13 of the Act.

²⁴ P. Czarny, *Mała Konstytucja z 1947 r. a polska tradycja konstytucyjna*, Przegląd Sejmowy 2007, vol. 15, no. 5, p. 67.

²⁵ Journal of Laws 1952 no. 47, item 316.

²⁶ Provisions of the Constitution of the Republic of Poland of 22 July 1952 (Journal of Laws 1976 no. 7, item 36 as amended) led to the deconstitutionalisation of the Supreme Audit Office, which allowed for changes in the functioning of a state audit in the 1952 Act on State Audit. Cf.: A. Sylwestrzak, *Historia Najwyższej Izby Kontroli i jej miejsce w konstytucji*, Kontrola Państwowa 2010, no. 1 (special issue), p. 15; S. Dziwisz, M. Jędrzejczyk, *Kontrola Wspólna i pod kierownictwem NIK. Niedoceniana metoda współpracy czy wadliwa instytucja*, Kontrola Państwowa 2021, no. 6, p. 16.

²⁷ Act of 13 December 1957, amending the Constitution of the Polish People’s Republic, Journal of Laws 1957 no. 61, item 329.

²⁸ Act of 10 February 1976, amending the Constitution of the Polish People’s Republic, Journal of Laws 1976 no. 5, item 29.

²⁹ Act of 27 March 1976, on the Supreme Audit Office, Journal of Laws 1976 no. 12, item 66.

to the Sejm,³⁰ and the Act on the NIK of the same day as the amendment restored the NIK College (Article 11).³¹

The current Constitution of the Republic of Poland defines the constitutional position of the supreme state audit body, pointing to its subordination to the Sejm and its operation based on the principle of collegiality.³² Subordination to the Sejm is neither organisational nor hierarchical in nature. It is understood as a “legal-institutional bond whereby organizationally superior entities may intervene in an objectively and constitutionally defined scope of action at any stage and to any extent, using whatever means deemed appropriate for the situation.”³³ Despite the constitutionally established subordination, the NIK remains an independent state authority that autonomously exercises its entrusted function of state audit.³⁴ Subordination to the Sejm primarily manifests in the NIK’s assistance in the Sejm’s supervisory function, its support in legislative work,³⁵ as well as the Sejm’s or its bodies’ influence on personnel decisions, including the appointment of the NIK President, Vice-Presidents, and College members.³⁶ This institutional bond also materialises in the Sejm’s and its bodies’ authority to commission audits from the NIK (Article 6 section 1 of the NIK Act).

2. The Principle of Collegiality in the NIK Act

The Constitution establishes the principle of collegiality in the functioning of the NIK but does not define its scope. It leaves this task to the legislature, explicitly stating that the organisation and mode of operation of the SAO will be determined by law (Article 207 of the Constitution of the Republic of Poland) Article 202 of the Constitution, which states that the NIK operates based on the principle of collegiality (as well as its subordination to the Sejm), forms the fundamental legal framework

³⁰ Act of 8 October 1980, amending the Constitution of the Polish People’s Republic, Journal of Laws 1980 no. 22, item 81.

³¹ Act of 8 October 1980, on the Supreme Audit Office, Journal of Laws 1980 no. 22, item 82 as amended.

³² B. Naleziński, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, p. 56.

³³ Judgment of the Constitutional Tribunal of 1 December 1998, K 21/98, OTK 1998, no. 7, item 116.

³⁴ P. Sarnecki, *Relacje Najwyższej Izby Kontroli z polskim parlamentem. Konstytucyjne granice podległości*, Kontrola Państwowa 2014, special issue, pp. 90 ff. See also: J. Mazur, *Współpraca Najwyższej Izby Kontroli z Sejmem. Między podległością a współdziałaniem*, Kontrola Państwowa 2015, no. 2, pp. 8–27.

³⁵ Cf. S. Dziwisz, *Możliwość oddziaływania NIK na jakość prawa*, Kontrola Państwowa 2020, no. 2, pp. 8–20.

³⁶ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2009, p. 887.

defining the NIK's identity and determining the scope of statutory regulation.³⁷ The Constitution does not foresee the institution of the NIK College at the constitutional level but only mentions collegiality as a principle guiding the Office's functioning.³⁸ M. Stębeliski rightly notes that an interpretation of Article 202 section 3 of the Constitution leads to the conclusion that collegiality should apply to the "method by which the NIK conducts state audits. The provision speaks of operation 'on the principles of collegiality.' In this sense, collegiality primarily characterizes the method by which the NIK performs the audit function entrusted to it by the Constitution of the Republic of Poland."³⁹ Therefore, the provision does not determine the structure of the NIK or its collegial nature but rather the method by which the audit function is executed (the functional aspect), with the NIK Act further defining the collegial nature of the NIK's operation and thereby clarifying the constitutional principle.

The principle of collegiality is expressed in Article 1 section 3 of the Act. The development of this principle is found in other provisions of the Act, which indicate the functioning of a multi-member, permanent body within the NIK – the NIK College – which is entrusted with specific tasks that have a decisive impact on the Office's functioning (as described below). It is important to note that both the Constitution and the NIK Act describe the NIK's operation as being "based on the principles of collegiality," indicating the multi-faceted nature of this concept.⁴⁰ Consequently, the NIK's collegial functioning cannot be reduced solely to its multi-member structure and collective decision-making process. Scholars rightly emphasise that the principles of collegiality apply to the NIK's complex structure and state audit function. This leads to the identification of the obligation for the collective execution of tasks.⁴¹ For instance, the appeal process is based on the operation of a polycratic body, as objections to the post-audit report are reviewed, depending on the addressee, by three-member adjudicating panels of the adjudicating commission or the College.⁴² Not as a collegial body, but collectively, as a result of teamwork, almost all audit

³⁷ M. Stębeliski, in: *Konstytucja RP. Komentarz*, vol. 2, eds. M. Safjan, L. Bosek, Warszawa 2016, p. 1361.

³⁸ Both the March Constitution and the April Constitution explicitly stipulated the operation of the College within the Supreme Audit Office (Article 9 section 1 of the Constitution of 17 March 1921, and Article 77 section 1 of the Constitution of 23 April 1935).

³⁹ *Ibidem*, p. 1369.

⁴⁰ A. Sylwestrzak, *Zasada kolegalności w NIK*, *Kontrola Państwowa* 1994, no. 4, pp. 19 ff.

⁴¹ For example: W. Sokolewicz, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, part V, ed. L. Galiński, Warszawa 2007, p. 19; T. Zaborek, *Zasada kolegalności i jej znaczenie dla Najwyższej Izby Kontroli*, *Studia Społeczne* 2022, no. 4, p. 147.

⁴² Pursuant to Article 23 section 4 of the NIK Act, objections to statements addressed to the President of the National Bank of Poland, heads of central and governmental administration bodies, and heads of entities specified in Article 4 section 1 of the NIK Act are considered by the College of NIK, while the adjudicating panels of the adjudication committee review other objections.

documents are prepared, from the audit program to the information on the audit results.⁴³ In this way, NIK minimises the risk of error while increasing the objectivity of the assessments expressed regarding the factual state found during the audit.⁴⁴ Establishing a polycratic body in the NIK Act and granting significant competencies concerning the functioning of the Office ensures the implementation of the requirement for NIK to operate on the principles of collegiality. The collegiality indicated constitutionally as the principle of NIK's functioning does not mean that this is the only form in which the Office operates. The NIK Act introduces a one-person leadership.⁴⁵ The President of NIK is empowered to issue orders regarding the internal organisation and functioning of the Office (including rules for preparing audits, tasks of auditors, and rules for drafting audit result information, recruitment procedures, auditing applications and examinations, and competitions for the position of director of an organisational unit of NIK). The President of NIK manages the Supreme Audit Office and is accountable for its activities to the Sejm, but it is the College that adopts and approves the most important documents related to the activities of the Office, including those related to its obligations to the Sejm.⁴⁶ Doctrine emphasises that pointing to the principle of collegiality in both the Constitution of the Republic of Poland and the NIK Act, rather than referring to the collegial nature of the Office, indicates the legislator's intention to avoid the "impression that NIK, as a state body, can operate only collegially and that any combination of collegiality with competencies exercised individually, especially with the one-person leadership of the President of NIK, is constitutionally prohibited."⁴⁷ In this way, the Office operates on the borderline between two modes of exercising power: monocratic and collegial.⁴⁸ NIK, therefore, is not a classic collegial body but an "institutionally distinct entity with legally assigned tasks and competencies, where the principle of

⁴³ The detailed procedure for planning, preparing, conducting audit proceedings, and implementing audit results is regulated by Order no. 9/2020 of the President of the Supreme Audit Office dated 5 February 2020 (unpublished). Even if the audit activities are carried out by one person, other auditors (advisors, coordinators, deputy directors, and directors) also participate in the process as supervising and reviewing individuals. In the case of audit reports signed by the President or Vice President of the Supreme Audit Office, the Counsellor to the President of the Supreme Audit Office is also involved.

⁴⁴ *Podręcznik kontrolera*, eds. S. Dziwisz, M. Jędrzejczyk, Warszawa 2024, p. 50.

⁴⁵ According to Article 13 of the NIK Act, the President of the Supreme Audit Office leads the Supreme Audit Office and is accountable to the Sejm for its activities. The position of the President of the NIK also appears in the Constitution of the Republic of Poland (Articles 198, 205, and 206).

⁴⁶ A. Jackiewicz, in: *Prawo konstytucyjne*, ed. S. Bożyk, Białystok 2014, p. 385.

⁴⁷ W. Sokolewicz, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, part V, ed. L. Garlicki, p. 19.

⁴⁸ T. Zaborek, *Zasada kolegialności...*, p. 145.

collegiality coexists with one-person leadership.⁴⁹ The position of the President of NIK is not limited solely to managing the Office but also includes competencies enabling practical participation in the audits conducted. For example, the President of NIK approves the program for planned audits (Article 28a section 1 of the NIK Act), authorises ad hoc audits (Article 28a section 2 of the NIK Act), and signs reports addressed to the key audit recipients listed in Article 53 section 4 (1) of the NIK Act.⁵⁰ The President is also authorised to conduct audits personally (Article 30 section 1 of the NIK Act). The NIK Act also contains provisions restricting the President of NIK from engaging in economic activities and prohibiting them from belonging to a political party while also limiting the circumstances under which the President can be dismissed to those enumerated in Article 17 of the NIK Act. Thus, the legislator intended to assign the President of NIK the function of safeguarding the Office's independence and impartiality.

Also, the INTOSAI's audit standards⁵¹ do not dictate how the highest audit institutions should operate. The Lima Declaration⁵² states that members of the highest audit institutions should be understood as those who "make decisions on behalf of the highest audit institution and are accountable for those decisions to third parties, including members of collegial bodies or the head of the highest institution."⁵³ The INTOSAI Code of Ethics also indicates that a collegial organisation of a supreme audit institution is one of two possibilities.⁵⁴ However, it is essential that, in the case of a collegial body, legal provisions ensure its independence.⁵⁵ In the NIK Act, such a guarantee is provided by Article 22 section 3, which states that persons who are part of the College of the Supreme Audit Office are independent in performing their duties.

NIK's operation on the principles of collegiality is primarily implemented by ensuring the participation of the NIK College in making decisions on the most important matters for the Office's activity. In addition to the aforementioned obligation to consider objections to the post-audit report submitted by the most important

⁴⁹ J. Jagielski, *Kompetencje Prezesa i Kolegium NIK – Izba w latach 1919–2013*, Kontrola Państwowa 2014, special issue, p. 81.

⁵⁰ Pursuant to Article 53 section 5 of the NIK Act, the President may reserve the right to sign any other post-audit statement.

⁵¹ The International Organisation of Supreme Audit Institutions.

⁵² Adopted by the 9th INTOSAI Congress in 1977, it sets out the basic principles of public audit.

⁵³ INTOSAI-P 1/II.6.

⁵⁴ ISSAI 130/3. Similarly, ISSAI 200/44.

⁵⁵ INTOSAI-P 1 Preamble.

state bodies,⁵⁶ this body's competencies take three forms: approval, adoption, and opinion issuance. Pursuant to Article 23 of the NIK Act, the NIK College:

- approves: the analysis of the execution of the state budget and monetary policy assumptions, as well as the report on NIK's activities for the previous year;
- adopts: (1) an opinion on the granting of a discharge to the Council of Ministers; (2) motions for the Sejm to address specific issues related to the activities of public task-executing bodies; (3) reports containing allegations resulting from the audit concerning members of the Council of Ministers, heads of central offices, the President of the National Bank of Poland, and persons managing institutions mentioned in Article 4 section 1 of the NIK Act; (4) the draft statutes; (5) the draft budget of NIK; (6) the annual work plan of the Office,
- gives opinions: on audit programs and reports of particularly important audits submitted by the President of NIK, as well as other matters brought by the President of NIK or presented by 1/3 of the College members.

Therefore, the NIK College adopts the most important documents submitted to state authorities and makes strategic decisions for the Office's functioning.⁵⁷ In this case, the position expressed in the resolution of the College is of a decision-making nature. The College also assists the President of NIK by presenting its opinion on matters submitted by them.

3. The composition of the NIK College and the procedure for adopting resolutions

As mentioned, the essence of a collegial body's operation lies in collective decision-making by a defined group of people. Therefore, it is necessary to have provisions defining the number and method of selecting members of such a body, as well as a *quorum*, i.e., the minimum number of members required for the validity of decisions made. According to Article 22 of the NIK Act, the College consists of 19 persons: the President (serving as chairperson), three vice-presidents, the general director, and 14 members (seven representatives of legal or economic sciences and seven directors of NIK's organisational units or NIK President's advisors) appointed

⁵⁶ I.e. entities listed in Article 54 section 3 of the NIK Act.

⁵⁷ E. Jarzęcka-Siwik, in: E. Jarzęcka-Siwik, M. Berek, B. Skwarka, Z. Wrona, *Najwyższa Izba Kontroli i prawne aspekty funkcjonowania kontroli państwowej*, Warszawa 2018, p. 73.

for a three-year term by the Speaker of the Sejm at the request of the NIK President, after consultation with the relevant Sejm committee.⁵⁸

The key to selecting the members of the NIK College is an agreement between the President of NIK and the Speaker of the Sejm, as a lack of such agreement can prevent the College's composition from being filled. This risk materialised in recent years, limiting the College's composition to just three members (the NIK President and two Vice Presidents). The situation became so serious that the SIRA mechanism (Supreme Audit Institution's Independence Rapid Advocacy Mechanism) was applied. As a result of the work of international experts (INTOSAI Development Initiative), a report was created highlighting systemic restrictions on NIK's independence imposed by the most important Polish state institutions,⁵⁹ stating that a threat to several key principles of independent state audit had emerged in Poland.⁶⁰

The position of all members of the NIK College is equal. Pursuant to Article 22 section 3 of the NIK Act, members of the College are independent in exercising their functions and may register dissenting opinions in the minutes regarding the resolutions adopted.⁶¹ Ensuring independence, similar to the case of judges, requires that individuals performing these functions possess the professional competence appropriate to the tasks entrusted to them and adhere to ethical standards.⁶² Institutional guarantees that shield College members from external influences are also crucial. One such safeguard is the requirement for political neutrality, which is legally binding only for members of the College representing the NIK.⁶³ Another measure

⁵⁸ State Audit Committee.

⁵⁹ <https://www.nik.gov.pl/plik/id,27698,vp,.pdf> [access: 4.06.2024].

⁶⁰ In particular, these principles include independence, freedom to perform statutory tasks, unrestricted access to information during audits, financial and administrative autonomy, and the availability of appropriate human, material, and financial resources. These are the principles indicated in the Mexico Declaration of the Supreme Audit Institutions Independence (INTOSAI P-10, principle no.: 2,3,4 and 8, respectively), https://www.intosai.org/fileadmin/downloads/documents/open_access/INT_P_1_u_P_10/INTOSAI_P_10_en_2019.pdf [access: 4.06.2024].

⁶¹ A member of the College can submit a dissenting opinion regarding the resolutions being adopted either in writing or orally for the record during the College meeting. A member of the College may submit a justification for their dissenting opinion within 14 days from the meeting date. It will be attached to the minutes of the College meeting (§ 10 of the resolution of the College of the Supreme Audit Office dated 12 December 2012, regarding the regulations of the College of the Supreme Audit Office).

⁶² Resolution of the Joint Chambers of the Supreme Court dated 23 January 2020, reference number BSA 1-4110-1/20.

⁶³ Pursuant to Article 74 of the NIK Act, the auditor cannot be a member of a political party or publicly express political views. The auditor's position cannot be combined with the mandate of a member of parliament, senator, member of the European Parliament, or local councillor. According to Article 75 section 1 of the NIK Act, the auditor may not engage in activities that would compromise the interests

ensuring independence is the protection against removal from office during their term. An analysis of the provisions of the NIK Act shows that not all members of the NIK College have terms of the same length. Representatives of the NIK and academia are guaranteed a three-year term. They are irremovable unless one of the statutory grounds for dismissal occurs.⁶⁴ The President is a member of the NIK College throughout their six-year term.⁶⁵ However, the Vice-Presidents and the Director General do not have a legally defined term and may be dismissed at any time (Article 21 section 1 and 2 of the NIK Act). If dismissed, they automatically cease to be members of the NIK College. The legislator has not, however, provided for the possibility of excluding a College member from participating in a case being processed for reasons similar to those outlined in the Act as grounds for excluding an auditor from control proceedings (Article 31 of the NIK Act), an expert or specialist (Article 49 section 6 of the NIK Act) or even the entire NIK audit unit (Article 31 section 5 of the NIK Act). Therefore, it would be reasonable to consider introducing a provision that allows for the exclusion of a College member in cases where there are doubts about their impartiality.⁶⁶

The stance expressed by the College is the position of the body, not of the individuals making up its composition. Two stages are necessary to formulate this stance. The first involves allowing members of the body to express individual opinions, which others can freely review. The second stage aims to arrive at a unified position, representing the stance of the College (entity). The mechanism that enables the transformation of individual opinions into the position of the entire College is voting

of the Supreme Audit Office or conflict with its tasks, nor may they undertake duties that could raise suspicions of bias or self-interest. The President of the NIK (Article 19 of the NIK Act), as well as Vice-Presidents and the Director General (Article 21 section 4 of the NIK Act), may not belong to a political party, hold any other position except that of a professor at a higher education institution, engage in other professional activities, or conduct public activities incompatible with the dignity of their office.

⁶⁴ Pursuant to Article 22 section 6 of the NIK Act, the Speaker of the Sejm, at the request of the President of the Supreme Audit Office (NIK), may dismiss a member of the NIK College if they have: resigned from their position; ceased to hold the position of director of a NIK audit unit or counsellor to the President of NIK; not participated in NIK College meetings for a period exceeding one year; or have been convicted by a final court judgement for committing a wilful crime.

⁶⁵ Article 17 of the NIK Act specifies the grounds for dismissing the president of the Supreme Audit Office.

⁶⁶ These solutions are similar to those provided for in the Act of 14 June 1960. Code of Administrative Procedure, Journal of Laws 2024 item 572, which provides for the exclusion from participation in the proceedings of an employee of a public administration body (Article 24 of the Code of Administrative Procedure), the authority responsible for settling the case (Article 26 § 2 of the Code of Administrative Procedure), an expert (Article 84 § 2 of the Code of Administrative Procedure). Unlike the NIK Act, the provisions of the Code of Administrative Procedure also provide for the possibility of excluding a member of a collegial body (Article 27 of the Code of Administrative Procedure).

and the adoption of the appropriate resolution.⁶⁷ Meetings of the NIK College are held in the presence of at least half of its members. According to Article 24, section 2 of the NIK Act, the College adopts resolutions by a majority vote and secret ballot, with at least half its members present. This provision conditions the possibility of adopting a resolution on achieving *a quorum*, calculated not based on the statutory number of 19 members but on its actual composition.⁶⁸ In doctrine, this measure is deemed appropriate as it prevents a deadlock within the NIK, which is significant given the importance of the issues on which resolutions are made.⁶⁹

Conclusion

The Supreme Audit Office (NIK) is not a collegial body but operates based on collegiality principles. The functioning of the NIK College is not constitutionally defined but rather established by statute. Operating on collegiality principles does not imply a limitation to group-based decision-making, particularly given the statutory single-person leadership of the NIK President.

The ability to adopt a resolution by the NIK College depends on achieving a quorum based not on the statutory number of 19 members but on its actual composition. However, this does not absolve the entities involved in appointing College members from acting to ensure the fastest possible completion of the College's composition. The legislator has entrusted the NIK College with tasks that have a decisive impact on the functioning of the Office. Therefore, ensuring this body's continuous and proper functioning with a full complement is crucial. To this end, it would be appropriate to change the method of selecting NIK College members to prevent the blocking of this body's composition from being filled.

The principle of objectivity is one of the fundamental principles of conducting audit proceedings and applies to each of its stages. The institution of exclusion from proceedings helps maintain impartiality and objectivity, applying to both the auditor conducting the audit activities, the participants in the proceedings (experts and specialists), as well as the entire NIK control unit (department/branch office). It would be appropriate to introduce a provision into the NIK Act defining the

⁶⁷ J. Jagielski, *Kolegialność...*, p. 95.

⁶⁸ E. Gierach, *Sposób liczenia kworum niezbędnego do podjęcia uchwały przez Kolegium Najwyższej Izby Kontroli*, *Zeszyty Prawnicze BAS* 2022, no. 4.

⁶⁹ E. Jarzęcka-Siwik, B. Skwarka, *Najwyższa Izba Kontroli. Komentarz do ustawy o Najwyższej Izbie Kontroli*, Warszawa 2017.

rules and procedure for excluding a NIK College member. Such regulation should specify the grounds (reasons for exclusion, whose occurrence raises justified doubts about the College member's impartiality), the procedure, the authority responsible for exclusion (the chair of the collegial body, i.e., according to Article 22 section 1 of the NIK Act – the NIK President) and the initiative for exclusion (request from a College member, ex officio). Since this provision concerns a collegial body, it would be unreasonable to introduce provisions allowing a College member to take urgent actions from the time of the request for their exclusion until a decision is issued on the matter.⁷⁰

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⁷⁰ Article 31 section 6 of the NIK Act provides for this solution in the case of a request to exclude an auditor from the audit proceedings.

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