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## 12. THE NATIONAL AUDIT OFFICE

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### **The independence of the National Audit Office (Article 134 of the Constitution)**

*The Constitutional Court's ruling of 6 December 1995*

... Chapter XII of the Constitution determines the functions and framework of the activities of the National Audit Office – a state institution exercising economic financial control, which supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget. It is accountable directly to the Seimas, which exercises parliamentary control over this institution.

[...]

Article 134 of the Constitution prescribes: “The National Audit Office shall supervise the lawfulness of the possession and use of state-owned property and the execution of the State Budget. The Auditor General shall submit a conclusion to the Seimas concerning the report on the annual execution of the budget.” ...

To enable the National Audit Office to fulfil all functions vested in it objectively, the independence of this institution must be safeguarded.

### **The incompatibility of the office of the Auditor General with the office of a member of a municipal council (Paragraph 2 of Article 133 and Paragraph 1 of Article 134 of the Constitution)**

*The Constitutional Court's ruling of 30 May 2003*

Paragraph 1 of Article 134 of the Constitution provides that the National Audit Office supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget. The National Audit Office is headed by the Auditor General (Paragraph 2 of Article 133 of the Constitution).

[...]

As the Auditor General is empowered to control and supervise the activities of municipal councils, he/she may not simultaneously be a member of a municipal council.

The legal regulation according to which the same person could be both the Auditor General and a member of a municipal council at the same time would be in conflict with Paragraph 1 of Article 119, Paragraph 2 of Article 120 and Paragraph 1 of Article 134 of the Constitution.

### **The constitutional mission and autonomy of the National Audit Office and its powers to carry out state audits (Paragraph 1 of Article 134 of the Constitution)**

*The Constitutional Court's ruling of 16 May 2019*

... Chapter XII of the Constitution provides for the institution of national audit.

Under Paragraph 1 of Article 134 of the Constitution, the National Audit Office supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget.

As stated by the Constitutional Court in its ruling of 6 December 1995, under the Constitution, the National Audit Office is an institution of economic and financial control, supervising the execution of the state budget; it is accountable directly to the Seimas, which exercises parliamentary control over this institution; to enable the National Audit Office to objectively fulfil all the functions assigned to it, this institution must be autonomous.

In its ruling of 30 September 2003, the Constitutional Court held that state-owned property is not an objective in itself, it should benefit society; while acting in the interests of society, state institutions must serve the common good of the people; according to Paragraph 1 of Article 134 of the Constitution, state-owned property must be possessed and used lawfully; this is supervised by the National Audit Office. In this context, the Constitutional Court also held that the provision of Paragraph 2 of Article 23 of the Constitution, under which the rights of ownership are protected by law, also means that laws must protect the rights of all owners; thus, laws must also protect the right of ownership of the state as the organisation of all society; the

striving for an open, harmonious, and just civil society, which is consolidated in the Preamble to the Constitution, the constitutional principle that ownership includes obligations, Paragraph 2 of Article 23 of the Constitution, under which the rights of ownership are protected by law, the provision of Paragraph 2 of Article 128 of the Constitution that the procedure concerning the possession, use, and disposal of state-owned property is established by law, as well as other provisions of the Constitution, give rise to the requirement that state-owned property must be used sparingly and not wasted; this property must be managed rationally.

Thus, Paragraph 1 of Article 134 of the Constitution, according to which the National Audit Office supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget, interpreted in the context of the other provisions of the Constitution, *inter alia*, Paragraph 2 of Article 23 and Paragraph 2 of Article 128 thereof, gives rise to the powers of the National Audit Office to verify the lawfulness and effective use of state-owned property, *inter alia*, state budget funds, i.e. whether state-owned property is used to serve the common good of the people, *inter alia*, whether it is used sparingly and not wasted, and whether it is managed rationally and effectively. In other words, under Paragraph 1 of Article 134 of the Constitution, the National Audit Office has the powers to carry out a state audit, i.e. to inspect state assets, *inter alia*, state budget appropriations and the activities of the managing and using entities, *inter alia*, in terms of economy, efficiency, and effectiveness, among other things, the National Audit Office has the powers to assess the lawfulness of the management and use of state assets, as well as, *inter alia*, the compliance of the management and use of state assets with the objectives set in the Constitution and/or laws.

It should be noted that the constitutional mission of the National Audit Office and the constitutional principles of a state under the rule of law and the separation of powers imply the constitutional requirement for the National Audit Office to exercise its powers, arising from Paragraph 1 of Article 134 of the Constitution, *inter alia*, to carry out a state audit, independently from other state authorities, *inter alia*, from the Seimas, the President of the Republic, or the Government. Therefore, the fact that, under the Constitution, the National Audit Office is accountable to the Seimas does not mean that the Seimas may, *inter alia*, by exercising parliamentary control over the National Audit Office, take over the constitutional powers of the National Audit Office or otherwise interfere with their implementation, *inter alia*, even if it assigns the National Audit Office the task of carrying out the state audits of entities managing and using state assets, *inter alia*, state budget appropriations.