

Obstacles placed regarding the carrying out of an audit to grant Cypriot citizenship under the Cyprus Investment Programme, as well as other events which endanger the independence of the Audit Office.

A. Legal framework

1. The Republic of Cyprus is an independent state which was established in 1960 and has since then been a member of the United Nations.
2. The Constitution of the Republic of Cyprus is considered one of the most detailed constitutions in the world. Of its 200 articles, three (articles 115-117) concern the Audit Office (SAI).

The first paragraph of Article 116 provides:

“1. The Auditor-General assisted by the Deputy Auditor-General shall, on behalf of the Republic, control all disbursements and receipts and audit and inspect all accounts of moneys and other assets administered, and of liabilities incurred, by or under the authority of the Republic and for this purpose he shall have the right of access to all books, records and returns relating to such accounts and to places where such assets are kept.”

The Law on the Provision of Evidence and Information to the Auditor General (Law 113(I)/2002), specifies the obligation of Ministers and civil servants to provide all necessary information to the Audit Office as soon as possible and determines that the refusal or failure to comply with these obligations constitutes a criminal offence.

3. It is noted that pursuant to Article 113 of the Constitution, “the Attorney General has the power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for an offense against any person in the Republic.” Therefore, in order for criminal proceedings to be initiated against any person, the approval of the Attorney General is required.

4. Pursuant to Article 81 of The Fiscal Responsibility and Financial Framework Law (Law 20(I)/2014), the Auditor General carries out the external audit of the accounts of the Republic on the basis of internationally recognized auditing standards, as he sees fit.

The above law is one of a superior level of legal hierarchy, and with the exception of the Constitution, its provisions are applied despite the provisions of any other law, general or specific, preceding or following it.

As explicitly stated in the Audit Guidelines issued by the Auditor General, the audits of the Audit Office are conducted in accordance with the International Standards on Auditing (ISAs) issued by the International Federation of Accountants (IFAC) and the International Standards of Supreme Audit Institutions (ISSAIs) which are issued by the International Organization of Supreme Audit Institutions (INTOSAI).

B. Facts

5. Within the framework of measures taken to encourage direct foreign investments and attract natural persons of high income levels to establish themselves and their businesses in Cyprus, the Council of Ministers, in 2013, radically revised the programme that had been in effect since 2007 and developed the “Cyprus Investment Programme” in order to grant Cypriot citizenship, through naturalization by exception to non-Cypriot investors/businesspersons.

The procedure for naturalization by exception of foreign businesspersons and investors requires the payment of fees for the examination of the application as well as to issue a naturalization certificate. It is part of an investment Programme through which the Republic grants Cypriot citizenship by exception in return for investments which generate income for the Republic, directly (through fees and tax revenues) and indirectly (through the attraction of capital which leads to the support of certain economic sectors and the creation of new jobs). In terms of direct revenue, the Programme did not significantly affect public finances, but in due course became material by nature when, especially after 2018, exposés and reports were made about abuse of the Programme. In addition, the various allegations in these reports raised very serious concerns regarding compliance issues, which raised the significance of the topic as a potential audit area by our Office.

6. After questions were posed to the Audit Office by a Member of Parliament in February and June 2019 regarding shortcomings of the Programme, in July 2019 the Audit Office decided to carry out an audit regarding the implementation of the Programme and requested from the competent department (Civil Registry and Migration Department) a list of all cases, from 2014 until that date, to whom citizenship had been granted under the Programme, together with the amount invested, the number of dependents and the law firm representing the investors. There was a delay in their response, and a reminder was sent on 19.9.2019. On 3.12.2019 a reply was received that the Programme was being handled by the Ministry of Interior.

7. In the meantime, within the context of the examination of another procedure in which the Presidency of the Republic had chartered an aircraft, it became apparent that the owner of the private jet with which the President of the

Republic had travelled, was a Saudi Arabian citizen who had become naturalized under the Programme. Thus, the audit was extended to cover the specific naturalization process, for which a Special Report by the Audit Office was issued on 31.1.2020. This Special Report dealt with the procedure which was followed in order to issue a passport to the specific Saudi Arabian citizen, as well as to another 41 persons who were naturalized with him in a joint application.

8. On 6.11.2019, and while the above matter was being investigated, the Council of Ministers took a decision whereupon a three-member Committee would be formed whose task would be to examine whether all cases of investor naturalization had been approved in accordance with the applicable regulations and criteria at the time of the approval of their application. Following the Council of Ministers' decision, the Audit Office decided to wait for the completion of the Committee's task before proceeding with its own audit.

9. In the summer of 2020, the foreign television network Al Jazeera began airing reports of abuse and malpractice. This worsened the already negative image of the Programme and so the Audit Office, on 28.8.2020, decided to conduct a relevant compliance audit. This was announced in a public statement by the Audit Office.

10. On 31.8.2020, officers of the Audit Office, after consulting with the competent officer of the Ministry of Interior, visited the Ministry and received a list (without names) of all the naturalizations that had been carried out after 21.5.2018 (the period under audit). They also obtained photocopies of files relating to five cases that had been included in the Al Jazeera reports, which, following the risk assessment performed for the purposes of audit sampling, were included in the audit sample. Based on this list, after additional sampling, the Audit Office identified another fifteen cases. In light of this, Audit Office officers visited the Ministry on the following day in order to request photocopies for the files relating to these cases, too. The competent officer of the Ministry of Interior informed the Audit Office staff that she had been given instructions not to provide them with any further information, pending a reply to a legal opinion they had requested from the Attorney General.

11. On 2.9.2020 the Presidency of the Republic announced that the President of the Republic would propose to the Attorney General at the next meeting of the Council of Ministers, the appointment of an Investigative Committee with terms of reference to be determined by the Attorney General. These would cover the course of the Investment Programme from 2007 until the date of approval of the new legislative framework by the House of Representatives (31.7.2020). The relevant proposal was approved by the Council of Ministers

on 3.9.2020 and the Attorney General, by decree, appointed an Investigative Committee on 7.9.2020.

12. The appointment of the Investigative Committee was made on the basis of the Commissions of Inquiry Law which provides for the appointment of a Committee by the Council of Ministers. In the event that the issues to be investigated involve the President of the Republic or a Minister, then the Committee is appointed by the Attorney General. In this case, since the matter to be investigated concerned decisions taken by the Council of Ministers, the appointment was made by the Attorney General. It is also noted, for a clearer depiction of the situation, that the Attorney General served as a Minister during the period 31.5.2019 - 29.6.2020. The same applies to the Deputy Attorney General, who also served as a Minister, for the period 1.3.2018 - 29.6.2020.

13. On 8.9.2020 the Minister of Interior informed the Audit Office that based on a legal opinion received from the Attorney General, all relevant files, archives, records and/or documents held by the Ministry should be secured by them in order to be provided to the Investigative Committee, and that therefore, no further information would be provided to the Audit Office at that stage.

14. Data from the Civil Registry and Migration Department was requested on 11.9.2020, within the context of the audit that the Audit Office had begun on 28.8.2020. Specifically, the data requested was to ascertain whether the naturalized persons had paid the required legal fees (€2,000 for the submission of an application and €5,000 for the Naturalization Certificate). In his letter on the same date, the Minister of Interior informed the Audit Office that this data would not be provided to the Audit Office on the basis of the same legal opinion given by the Attorney General. This was followed on 17.9.2020 by the refusal of the Ministry of Interior to comment on the draft of the Special Report sent by the Audit Office on 14.9.2020 and their demand that "the Report should not be made public." The Report was finally published on 24.9.2020.

It is significant to note that, in the context of the statutory audit of the financial statements of the central government for the year ended 31.12.2019, a statistical sample of transactions to be audited was compiled. This sample included one transaction regarding revenue generated from receipts from the aforementioned Programme. Even access to the supporting documentation of these transactions, for the purpose of obtaining the required audit evidence in the context of our statutory audit, was denied.

15. Among other findings concerning naturalizations that did not meet the applicable criteria, the Audit Office discovered that 23 of the 748 applications

relating to the one-year audit period, had been handled as a matter of priority on the instructions of the competent Minister of the Interior. When it became clear that a large number of these applications concerned investments in a large casino project in the form of a public contract, and that these persons had been naturalized in their capacity as senior executives of the management company, the Audit Office decided to also audit this category of naturalizations.

During the audit, the Government continued to refuse to provide the Audit Office with any information, whether this was in the form of files submitted to the Investigative Committee, or data from the Civil Registry and Migration Department concerning the payment of fees for applications and Naturalization Certificates, or even whether it concerned photocopies of decisions made by the Council of Ministers. It is noteworthy that the Government refused to provide the Audit Office with a copy of a relevant Decision of the Council of Ministers even while the foreign television network Al Jazeera had already published this Decision.

The Attorney General expressed the view that while an investigation is being carried out by the Investigative Committee, it would not be right for the Audit Office to conduct an audit at the same time and therefore its audit should be postponed for later.

Ultimately, the audit was carried out using reliable data obtained from data registers to which the Audit Office has permanent access, such as data from the Tax Department, the Social Insurance Services, the Department of Registrar of Companies, the Department of Lands and Survey, and the data register of the Civil Registry and Migration Department. This allowed for safe conclusions to be drawn for some of the audit criteria, while for some other criteria there was an inability to obtain sufficient and appropriate audit evidence that could provide a basis for conclusions. Prior to the publication of the Report, a letter from the Attorney General of the Republic was received in which he insisted strongly that the Audit Office not publish the Report. The Report was made public on 27.11.2020.

16. Following the publication of the Report, the Government Spokesman issued a statement in which, among other things, he accused the Auditor General of deviating from and violating the provisions of the Constitution, ignoring and undermining other institutions, and that the Auditor General's misconduct affects the authority, credibility and independence of the institution he has been called upon to serve. It is noted that the reference to "misconduct" refers to the dismissal of the Auditor General since the Constitution provides that the Auditor General may be dismissed on the ground of misconduct.

C. Violation of the Principles of Independence of the Mexico Declaration

17. The core principles on SAI Independence are the following:

- (i) The existence of an appropriate and effective constitutional/statutory/legal framework and the de facto application provisions of this framework
- (ii) The independence of SAI heads and members of collegial institutions, including security of tenure and legal immunity in the normal discharge of their duties
- (iii) A sufficiently broad mandate and full discretion, in the discharge of SAI functions
- (iv) Unrestricted access to information
- (v) The rights and obligation to report on their work
- (vi) The freedom to decide the content and timing of audit reports and to publish and disseminate them
- (vii) The existence of effective follow-up mechanisms on SAI recommendations
- (viii) Financial and managerial/administrative autonomy and the availability of appropriate human, material and monetary resources.

18. Based on the afore-mentioned facts, the Audit Office is of the opinion that the actions of the Government, on the basis of the legal opinions of the Attorney General, violate the following principles:

Principle (ii)

As explained in ISSAI 10, this principle includes immunity to the Auditor General to any prosecution for any act, past or present, that results from the normal discharge of their duties as the case may be.

In the present situation, the Auditor General is being accused of misconduct which can lead to dismissal because the Auditor General, acting in the normal discharge of his duties, carried out an audit and made public the report that was prepared.

Principle (iv)

The Government has put forward very serious obstacles and has barred the Audit Office from accessing data on the grounds that they have been given to the Investigative Committee. In the Audit Office's opinion, this is an excuse

since photocopies of the data could easily have been given instead of the originals. There was also a refusal to provide data even for matters not being examined by the Investigative Committee, such as the receipts for the fees regarding the application and the Certificates of Naturalization.

ISSAI 10 emphasizes that SAIs should have adequate powers to obtain timely, unfettered, direct, and free access to all the necessary documents and information, for the proper discharge of their statutory responsibilities.

Principle (v)

The Government and the Attorney General put pressure on the Audit Office not to publish its two reports and after these were made public, the Auditor General was accused of misconduct which suggests his dismissal.

Principle (vi)

The Government and the Attorney General decided that the Audit Office should carry out its audits after the completion of the work of the Investigative Committee that they appointed.

The Audit Office expressed the view that the work of the Investigative Committee in no way conflicts with the work of the Audit Office and that they could coexist as has happened in a previous case where an Investigative Committee was appointed.

The Audit Office also expressed the view that its own powers derive from the Constitution while those of the Investigative Committee are derived from a law that is subordinate in the levels of the legal hierarchy.

ISSAI 10 explains that SAIs are free to decide on the timing of their audit reports except where specific reporting requirements are prescribed by law.

19. The above grave violations to the principles of independence pose a serious threat to the independence of the Audit Office. The Audit Office considers the intervention of INTOSAI imperative, who by using the SAI Independence Rapid Advocacy Mechanism (SIRAM), will clarify to the Government, the Parliament and the Attorney General, the need to comply with these principles.

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