

THE ROLE OF THE SUPREME STATE AUDIT IN THE AUDITING OF PPP CONTRACTS AND THE LEGAL VALUE OF CRIMINAL REFERRALS FOR HIGH-VALUE FINANCIAL VIOLATIONS

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Abstract: Public-Private Partnership (PPP) contracts represent one of the most complex and sensitive forms of managing the public interest and state funds, due to their long-term financial and legal impact. In this context, the Supreme State Audit (SSA), as the supreme auditing institution in the Republic of Albania, plays a fundamental role in ensuring legality, transparency, and efficiency in the design, award, and implementation of PPP contracts. This article aims to analyze, from a legal perspective, the competencies of the SSA in auditing PPPs, the nature and legal value of audit reports, as well as their role in initiating criminal proceedings in cases of high-value financial violations. The analysis is based on the relevant legal framework and on specific audit reports published by the SSA, highlighting the importance of public auditing as a preventive and punitive mechanism for the protection of the public interest and state finances.

Keywords: Public-Private Partnership (PPP), public audit, Supreme State Audit, criminal liability, financial violations.

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1. THE LEGAL FRAMEWORK FOR AUDITING PPP CONTRACTS BY THE SUPREME STATE AUDIT

The legal framework governing the auditing of Public-Private Partnership (PPP) contracts by the Supreme State Audit (SSA) is based on a set of constitutional and legal provisions that define the status, competencies, and functions of this institution as the supreme public audit authority in the Republic of Albania.

i. Constitutional provisions

Public auditing and the control of the use of state funds find their fundamental basis in Articles 162–165 of the Constitution of the Republic of Albania, which regulate the organization and functioning of the Supreme State Audit.

Pursuant to Article 162 of the Constitution, the Supreme State Audit is the highest institution of economic and financial control. It carries out its activity independently and is subject only to the Constitution and the laws. The Chairperson of the SSA is elected and dismissed by the Assembly upon proposal of the President of

the Republic, for a seven-year term, with the right of reappointment, thereby ensuring institutional stability and functional independence.

Article 163 of the Constitution expressly defines the scope of the SSA's control, which includes:

- the economic activity of state institutions and other state legal entities;
- the use and protection of state funds by central and local government authorities;
- the economic activity of legal entities in which the state owns the majority of shares or equity, as well as cases where their loans, credits, or obligations are guaranteed by the state.

These provisions constitute the constitutional basis that legitimizes the auditing of PPP contracts, insofar as they directly involve public funds and long-term financial obligations for the state.

According to Article 164, the SSA is obliged to report to the Assembly on the implementation of the state budget, to provide opinions on the financial reports of the Council of Ministers, and to

submit its annual activity report. These mechanisms strengthen parliamentary oversight over the executive and enhance transparency in the management of public funds.

Article 165 provides for the participation of the Chairperson of the SSA in meetings of the Council of Ministers when matters related to the functions of the institution are discussed, and grants the Chairperson immunity equivalent to that of a judge of the Supreme Court, further consolidating institutional independence.

ii. The relevant legal framework

In addition to the constitutional basis, the auditing of PPPs by the SSA is grounded in the specific legal framework, in particular:

- Law no. 154/2014 “On the Organization and Functioning of the Supreme State Audit,” which details the competencies, audit procedures, and the legal force of SSA audit reports;
- Law no. 125/2013 “On Concessions and Public-Private Partnerships,” as amended, which regulates the procedures for the award, implementation, and supervision of PPP contracts.

This legal framework grants the SSA the authority to exercise comprehensive control over both the financial and legal aspects of PPP contracts.

iii. Scope of the Audit of PPPs

Based on the aforementioned constitutional and legal provisions, the Supreme State Audit (SSA) is specifically authorized to audit:

- the procedures for the award and selection of PPP contracts;
- the long-term financial impact of these contracts on the state budget and on fiscal sustainability;
- compliance with the fundamental principles of legality, competition, transparency, and proportionality.

This extended competence of the SSA positions the audit of PPPs as an essential instrument for the protection of the public interest and for the prevention of financial violations with serious consequences for public finances.

2. CONCRETE FINDINGS FROM THE REPORTS OF THE SUPREME STATE AUDIT ON PPP CONTRACTS

The auditing of Public-Private Partnership (PPP) contracts has occupied a special place in the activity of the Supreme State Audit in recent years, due to the legal and financial complexity of these contracts and their long-term impact on public finances. The annual and thematic reports of the SSA constitute an important source for identifying systemic violations and highlighting risks related to the mismanagement of public funds in the context of PPPs.

i. Key findings in the SSA Annual Report for 2018

In its Annual Activity Report for 2018, the SSA identified serious issues in a number of PPP contracts, particularly during the preparation and approval stages. According to this report, audit activities revealed that:

“serious deficiencies have been identified in the analysis of financial risk and in the assessment of the real cost that these contracts impose on the state budget.”

The lack of a comprehensive and objective financial risk analysis has been assessed by the SSA as one of the main problems that directly undermines the public interest. In practice, this means that contracting authorities have entered into long-term contractual relationships without a clear assessment of financial consequences, thereby exposing the state budget to unforeseen obligations.

The 2018 report emphasizes that these deficiencies:

- undermine the constitutional principle of protecting the public interest and state finances;
- create a real risk of long-term economic damage due to multiannual budgetary commitments;
- constitute serious indications of violations of criminal law provisions related to abuse of office and mismanagement of public funds.

From a legal perspective, the SSA has underlined that the absence of risk analysis cannot be justified as mere administrative negligence, but rather constitutes a breach of the legal obligations of public officials, who are required to act with heightened diligence in the administration of the public interest.

ii. Findings in the SSA Annual Report for 2019

In its Annual Activity Report for 2019, the Supreme State Audit further deepened its analysis of PPP contracts, focusing on the procedures for the selection of economic operators and compliance with the fundamental principles of competition and transparency.

In this report, the SSA found that in several PPP contracts:

“the procedures for the selection of economic operators did not comply with standards of competition and transparency, thereby undermining the equality of participating entities.”

According to the report, the identified violations mainly relate to:

- the use of non-competitive procedures;
- selectively tailored qualification criteria;
- lack of documentation of the legal reasoning underlying the selection of the economic operator.

Unlike previous reports, the 2019 Report marks an important step in terms of criminal liability, as the SSA referred concrete cases to the prosecution authorities. In its reasoning, the institution emphasized that:

- the identified violations are not merely administrative in nature;
- the economic damage caused or risked exceeds the limits of disciplinary liability;
- there are elements of criminal offenses that require in-depth investigation by judicial authorities.

From a legal perspective, this report consolidates the role of the SSA not only as a control body, but also as an active actor in the mechanism for preventing and sanctioning criminal violations in the field of PPPs.

iii. Thematic Audit Reports on PPPs (2020–2021)

During 2020 and 2021, the Supreme State Audit published a series of thematic audit reports focused exclusively on PPP contracts and their effects on public finances. These reports represent a more advanced level of analysis, addressing not only formal legality but also economic efficiency and fiscal sustainability.

In these reports, the SSA repeatedly identified:

- the absence of a “Value for Money” analysis, which is essential to justify the choice of the PPP model;
- a disproportionate transfer of financial risk to the state, contrary to the principles of contractual balance;
- the creation of hidden budgetary obligations, which burden the budgets of subsequent years.

In several concrete cases, the SSA concluded that:

“the elements identified during the audit create a sufficient basis for the criminal liability of the public officials involved in the decision-making process.”

This conclusion is of particular legal significance, as it underscores that violations in the field of PPPs are not the result of technical errors, but rather the consequence of conscious decision-making that undermines the public interest.

The thematic reports for 2020–2021 emphasize the need for:

- strengthening ex ante legal and financial control;
- increasing the individual accountability of decision-makers;
- using audit as both a preventive and punitive instrument.

In summary, the analysis of SSA reports for the period 2018–2021 shows that PPP contracts constitute one of the fields with the highest risk for financial and criminal violations. The repeated findings regarding the lack of risk analysis, breaches of competition, and the creation of hidden financial obligations demonstrate that the SSA’s audit plays a key role in uncovering violations with serious consequences for public finances.

In this context, SSA reports should not be treated merely as administrative documents, but as legal instruments of particular importance for the initiation of criminal proceedings and for the strengthening of the rule of law.

3. SSA REPORTS AS ACTS OF INSTITUTIONAL EXPERTISE

In legal doctrine and criminal practice, the reports of the Supreme State Audit (SSA) are widely regarded as acts of institutional expertise, due to:

- the high level of technical and financial specialization;
- the standardized audit methodology;
- the functional independence of the institution.

As such, these reports:

- guide criminal investigations in identifying possible schemes of financial violations;

- assist the prosecution in determining the subject matter of the investigation;
- serve as a basis for ordering independent financial and accounting expert examinations.

In practice, SSA reports are often used as reference documentation in criminal complaints, substantiating the existence of reasonable suspicion that a criminal offense has been committed.

4. SSA REPORTS AS A BASIS FOR CRIMINAL COMPLAINTS

The Law on the Organization and Functioning of the Supreme State Audit expressly provides for the obligation of this institution to refer cases to criminal prosecution authorities when, during audits, elements of criminal offenses are identified.

In this context, SSA reports:

- serve as a legal and factual basis for criminal complaints;
- contain descriptions of acts or omissions by public officials;
- identify the economic damage caused or risked;
- identify the responsible subjects and the period during which the violations were committed.

Criminal complaints based on SSA reports carry particular weight, as they originate from a specialized and independent institution, thereby increasing the credibility of criminal suspicion.

5. THE GUIDING FUNCTION OF SSA REPORTS IN CRIMINAL INVESTIGATIONS

One of the main legal values of SSA reports lies in their guiding function for criminal investigations. In particular, they:

- help identify financial facts requiring criminal verification;
- contribute to the identification of documentary evidence;
- assist in focusing investigations on the most serious aspects of the violations.

This function is especially important in cases involving PPP contracts, where financial and legal complexity requires specialized expertise.

6. INITIATION OF CRIMINAL PROCEEDINGS IN PUBLIC-PRIVATE PARTNERSHIP (PPP) CASES

Public-Private Partnership (PPP) contracts, due to their complex and long-term nature and their direct impact on public finances, constitute one of the most problematic areas with regard to the criminal liability of public officials. In this context, the Supreme State Audit (SSA), in the exercise of its constitutional and legal functions, has played an active role in identifying violations of a criminal nature and in initiating criminal proceedings before prosecutorial authorities.

The Role of the SSA in Initiating Criminal Prosecution

The SSA does not have the authority to conduct criminal prosecutions; however, under the law governing its organization

and functioning, it has a legal obligation to refer cases to the prosecution whenever elements of criminal offenses are identified during audits. In matters related to PPPs, such referrals have been made primarily on the basis of analysis of:

- contract award procedures;
- the evaluation of bids;
- the actual and potential financial impact on the state budget;
- the compliance of administrative actions with the applicable legal framework.

Criminal referrals by the SSA in the field of PPPs are of particular importance, as they aim not only to punish specific violations but also to prevent harmful practices in the management of public funds.

Most Frequently Referred Criminal Offenses in PPP Cases

a) Abuse of Office (Article 248 of the Criminal Code)

One of the most frequently referred criminal offenses by the SSA in PPP cases is abuse of office. This offense is committed when public officials, in violation of the law, perform or fail to perform acts that cause damage to the legitimate interests of the state or other persons.

In the context of PPPs, abuse of office has mainly been identified in cases involving:

- approval of contracts without comprehensive financial analyses;
- signing of agreements containing hidden budgetary obligations;
- failure to comply with statutory approval procedures;
- tolerance of unjustified contractual amendments in favor of the private partner.

The SSA has argued that such actions, due to the large financial values involved and their long-term consequences, fulfill both the objective and subjective elements of this criminal offense.

b) Violation of Equality in Tenders (Article 258 of the Criminal Code)

Another criminal offense frequently referred in SSA reports concerns violations of equality among participants in procurement and concession procedures.

In PPP cases, the SSA has identified:

- qualification criteria drafted in a discriminatory manner;
- favoritism toward specific economic operators;
- procedures conducted without genuine competition;
- lack of transparency in the evaluation of bids.

These violations have not been assessed merely as administrative irregularities, but as actions that undermine the constitutional principle of equality and fair competition, thereby creating grounds for criminal liability.

c) Forgery of Official Documents

In several cases, SSA reports have identified elements of forgery of official documents, through:

- submission of inaccurate financial data;
- manipulation of feasibility studies;
- misrepresentation of risk analysis;
- fictitious documentation of decision-making procedures.

Forgery of official documents, in the context of PPPs, carries increased risk due to its impact on state decision-making and the allocation of public funds.

d) Economic Damage with Serious Consequences for Public Finances

A common element in most SSA criminal referrals is the identification of significant economic damage. In many cases, this damage:

- is not immediate but extends over several years;
- manifests through long-term budgetary obligations;
- increases public debt and limits the state's fiscal space.

The SSA has emphasized that economic damage in PPPs should not be assessed solely at the moment of contract signing, but throughout the entire life cycle of the contract.

PPPs as a High Criminal Risk Area

In its reports, the SSA has repeatedly emphasized that:

“Public-Private Partnership contracts, due to their long-term nature, financial complexity, and the involvement of significant economic interests, constitute a field of high criminal risk.”

This assessment is based on:

- information asymmetry between the parties;
- limited capacities of the public administration;
- lack of in-depth financial analyses;
- political and economic pressure in decision-making.

The analysis shows that the initiation of criminal proceedings in PPP cases constitutes a necessary mechanism for the protection of the public interest and state finances. SSA referrals play a key role in identifying criminal violations and in establishing individual accountability of public officials.

However, the effectiveness of this mechanism depends on:

- the seriousness of criminal investigations;
- the specialization of prosecutorial authorities;
- inter-institutional cooperation.

Only through such an integrated approach can PPPs genuinely serve as instruments of development rather than sources of abuse of public funds.

7. USE OF SSA REPORTS IN THE JUDICIAL PHASE

Even at the trial stage, SSA reports may be used:

- as auxiliary documentary evidence;
- as a source for questioning experts and witnesses;
- as comparative elements for assessing judicial expert opinions.

Courts remain free in their evaluation of such reports, but they cannot ignore the findings of a constitutional institution drafted on professional and legal grounds.

8. CRITICAL LEGAL ASSESSMENT

The legal analysis shows that SSA reports constitute an indispensable instrument in combating financial violations and economic crime; however, their effectiveness depends on:

- the prompt and professional response of the prosecution;
- the development of independent expert examinations;
- inter-institutional cooperation.

In the absence of effective criminal prosecution, SSA reports risk remaining formal documents without real impact.

Conclusion

In conclusion, although the reports of the Supreme State Audit do not constitute final criminal evidence, they possess particular legal value as acts of institutional expertise. They serve as a basis for criminal complaints, guide investigations, and contribute to the construction of a fair and effective criminal process, especially in

complex cases related to the management of public funds and PPP contracts.

9. Conclusions:

The auditing of PPP contracts by the Supreme State Audit constitutes a fundamental mechanism for the protection of the public interest. The SSA reports, documented and published over the years, demonstrate that financial violations in this field are not isolated cases but represent a systemic problem. From a legal perspective, strengthening the role of the SSA and ensuring serious criminal treatment of its referrals are essential conditions for guaranteeing the rule of law and financial discipline.

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