

[Agenda for the December 2021 web-meetings of the
Forum for INTOSAI Professional Pronouncements \(FIPP\)](#)

<p>Due to the pandemic Covid-19 situation, the FIPP Chairmanship has decided to conduct shorter, more frequent web-based FIPP meetings in order to be agile regarding the FIPP's assigned tasks.</p> <p>The agenda is an overview of all agenda-items planned to be discussed during all sessions. Some items will be discussed in several sessions.</p>			
<p>Meeting days Thursday 2 December 2021 - 12:00–16:00 CET Thursday 9 December 2021- 12:00–16:00 CET</p>			
Agenda Items	Purpose	Output	Meeting material
New FIPP work area			
FIPP work area - a short introduction	FIPP have implemented a new work-area platform and the FIPP Secr will give a short introduction	To give an insight in the working area, new routines, documentation and the interaction to the FIPP web page: https://www.intosaifipp.org/	
Process for developing the Strategic development plan for IFPP			
SDP 2023->	According to due process FIPP is responsible for the development of a proposal for the planning process. When a draft plan is developed, FIPP present the draft SDP to PSC-SC for their approval before forwarding the plan to the INCOSAI for endorsement.	The planning process was initially discussed at the FIPP October 2021 meetings and need to be concluded at the latest by February 2022. The draft plan will then be circulated to the PSC-SC for approval in their first meeting in 2022.	

Project Proposal / Exposure Draft submitted from Goal Chair for discussion / appraisal			
GUID xxxx to support the implementation of the INTOSAI P 50	To discuss/ the project proposal and exposure draft according to FIPP Working Procedures and drafting conventions	For FIPP to conclude on a set of key questions to be communicated by FIPP LO to the WG.	See Appendix 1 Drafting Conventions GUIDs: https://www.intosaifipp.org/wp-content/uploads/2019/03/Drafting-conventions-for-documents-named-as-GUID_final.pdf
Information from FIPP Chair			
INTOSAI Governing Board meeting 23 November 2021	Information from FIPP Chair		
AoB	FIPP Chair		
Concluding the meeting			
Summary of activities	FIPP Chair		
Summary of key decisions in the minutes	FIPP Chair		

Project proposal: Working group on value and benefits of SAIs - WGVBS (Forum of Supreme Audit Institutions with Jurisdictional competences (SAI-J))

November 10, 2021

PART A: PROJECT IDENTITY

Description	Information					
Project number and title as per SDP	GUID to support the implementation of the INTOSAI P 50					
Working title(s) for the new pronouncement(s)	Draft Guidance Pronouncement (GUID) applicable to the jurisdictional or contentious activities of the Supreme Audit Institutions					
Project aim	<p>The development of guidelines based on the INTOSAI – P 50: Principles of jurisdictional activities of SAIs.</p> <p>To set out in an operational way non-binding guidelines with explanations to implement the 12 principles of the INTOSAI-P50.</p>					
Project objectives	<p>This document, which is based on the best practices observed within the Forum, defines a jurisdictional or quasi-jurisdictional decision in universal terms, covers all the stages of the procedure, distinguishes between the provisions applicable to an investigation with a contentious purpose and the "regularity audit standards", and even envisages the quality control adapted to the contentious function and the practices to be promoted in terms of communication.</p> <p>According to the planning, the final objective is to propose the adoption of the GUID by the next 2022 INCOSAI in Rio.</p>					
Project duration	3 years (2020-2022)					
Name of the lead WG	Working Group on Value and Benefits of SAIs (Forum of Supreme Audit Institutions with Jurisdictional competences (SAI-J))					
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Other anticipated project team members (list names and organization)	See document attached annex 1 (list of participants of the last meeting)					

PART B: PROJECT MILESTONES

Milestones

Stage					
		Start Date	End Date	Expected Time in	Comments
1.	Project Proposal (content outline)	2020	2021	Less than 12 months	The Forum members unanimously adopted the draft GUID during his last meeting in Lisbon on October 19th 2021;

2.	Exposure Draft (QA level 1 & 2)	Start Date	End Date	Expected Time in	Comments
		01/01/2022	31/03/2022	3 months	
	Exposure period		90 days		
	Endorsement Version (QA level 1 & 2)	Start Date	End Date	Time in Total (not negotiable)	Comments
		01/05/2022	31/07/2022	3 months	
3.	Final Version	Start Date	End Date	Expected Time in	Comments
			Incosai 2022		

PART C: INITIAL ASSESSMENT AND PROJECT PROPOSAL

N°	Initial assessment - Matters to be covered (Due Process, pages 6 and 7)	
C.1	Explanation of the need for the project Explanation of the purpose of the project	The development of guidelines based on the INTOSAI – P 50: Principles of jurisdictional activities of SAIs (voted at the last INCOSAI)
C.2	Description of the categories of auditing or other engagements that will be covered by the new pronouncement(s)	SAIs with jurisdictional activities
C.3	Description of different types of SAIs / audit engagements that must be accommodated in the new pronouncement	SAIs with jurisdictional activities
C.4	Challenges, if any foreseen, that would have to be managed by	Evolution of legislative framework

	SAIs in implementing the new pronouncements	
C.5	Explanation of how consistency with other existing ISSAIs and other professional pronouncement(s) will be ensured	There is no other existing ISSAIs or professional pronouncement for jurisdictional SAIs. Procedural guidelines for jurisdictional activities will not interfere with existing guidelines for PA, CA or FA/.
C.6	Explanation of the extent to which it will be possible and desirable to build on pronouncements from other internationally recognized, regional or national standard-setters and, if so, the extent to which supplementary pronouncements are needed to provide clarity on new pronouncement	This new guidance will enable jurisdictional SAI to have guidance to apply the Intosai P-50. Such guidance does not exist today. Jurisdictional activities are very rigorous and requiring and their implementation needs to be guided to avoid mistakes with heavy consequences on individuals and the SAI itself.
N	Project proposal - Matters to be covered (Due Process, page 7)	
C.7	Explanation of organization of the project describing how project group members will be drawn from relevant sub committees/ working groups/ other interested parties	As mentioned above, the working group will be associated to the project in the writing of the questionnaires and in the answers. Then the group will also be associated for the writing of the guidance.
C.8	Explanation of the outcome of the project specifying how existing professional pronouncements may be affected.	This new guidance will enable jurisdictional SAI to have guidance to apply the Intosai P-50. This project should not affect any other pronouncement.
C.9	Explain the quality processes that will be applied in the drafting process (see Due Process, page 7 and 8) along with the parties that the project group will consult and engage with.	On this project, quality control will rest upon a constant dialogue within the members of the working group, review by all the Jurisdictional SAIs of the Forum of jurisdictional SAIs, dialogue with the FIPP and submission to the WGVBS, KSC and PSC.

PART D: AUTHORITIES

PERSON	NAME	SURNAME	DATE	SIGNATURE
Project leader	FRENTZ	Rémi	17/11/2021	
Responsible goal chair	Amitabh	Prasad	17/11/2021	

ANNEX 1: LIST OF PARTICIPANTS (Last Forum of Supreme Audit Institutions with Jurisdictional competences (SAI-J) October 2021)

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**Draft Guidance Pronouncement (GUID)
applicable to the jurisdictional or
contentious activities of the Supreme
Audit Institutions**

October 2021

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Introduction

1) Professional standards, guidelines, guides, etc. developed by INTOSAI are essential to the credibility, transparency, quality and professionalism of the audit of the public sector and of all the missions performed by the Supreme Audit Institutions (SAIs). They increase accountability and transparency. *This “standard” GUID XXX* is developed in order to promote the exercise of the jurisdictional and contentious tasks of the SAIs, which have such a mandate, and to promote their exercise in conditions of independence, objectivity/neutrality, legal rigour, public interest and fairness in accordance with the highest international requirements.

2) SAIs with jurisdictional functions have the possibility to engage directly the liability of managers of public funds when their findings show some irregularities or when such irregularities are referred to it by a third party¹.

3) A SAI will be recognised as having jurisdictional or similar functions if it is either:

- Recognised as a jurisdiction, in whole or through one of its components, according to the law of the State applicable to it;
- Vested with the power to make decisions, after contradictory proceedings, which tend to recognise or have a right or obligation recognised, or to impose a sanction².

4) The aim of the jurisdictional activities of a SAI is the protection of the proper functioning of public management as well as the interests of the audited entity and, furthermore, of public authorities and citizens. The jurisdictional activity aims to compensate in whole or in part for losses suffered by a public entity and/or to sanction the personal liability, either financial or disciplinary of individuals found responsible.

5) *INTOSAI-P 50 Principles of jurisdictional activities of SAIs* develops twelve principles to suit the specific context of jurisdictional activities of the SAIs empowered with those missions. INTOSAI-P 50 is to be read and understood in conjunction with INTOSAI Core Principles and with the international principles, included in international treaties and conventions, applicable in the domain of justice.

6) This guide explains these twelve principles for SAIs whose specific mandate corresponds to the definition given above, for the (*objective*) reasons and the scope set out below.

¹Thus, observations made in a financial audit, performance or compliance report by public bodies which or may not result in a report to civil or criminal courts, may be the subject of prompt and appropriate prosecution by the SAI itself within its jurisdictional powers.

²Declaration of Paris, November 2015:: A SAI has jurisdictional competencies when, under the laws of the State - It is, in whole or through one of its components, a recognized jurisdiction;

- It is vested with powers allowing it to take decisions. These decisions are established after an independent and contradictory procedure, which tends to recognize or to make recognized a right or an obligation.

Objectives

7) This guide aims to frame the specific mandate of jurisdictional SAIs by precepts or recommendations exclusively applicable to the exercise of their contentious and/or jurisdictional functions, for each of the twelve principles of INTOSAI-P50

Specific objectives of the "GUID":

8) This guide serves as a reference for all supreme audit institutions that meet the above definition.

9) The "GUID" presents the best way to implement the principles set out in INTOSAI-P 50.

10) It is also a set of precepts and recommendations that can guide SAIs who wish to move closer to a jurisdictional model or which the legislator intends to grant jurisdictional or contentious functions.

On complementarity/non-competition of standards:

11) SAIs with jurisdictional powers operate under different mandates. However, these recommendations are intended to be used by SAIs with jurisdictional mandates to strive towards a high quality performance of the jurisdictional activities.

SAIs are encouraged to apply them and assess their compliance with such provisions in a manner that is most appropriate for their respective environments. National norms can apply the principles of this document through various ways, depending on their national remit, constitutional and legal framework or the strategy of the SAI. This document forms an integral part of the IFPP and those principles are intended to be used in conjunction with those pronouncements. Jurisdictional SAIs must declare which standard they apply when conducting audits using means legally fitted to jurisdictional activities.

12) This position, as a fundamental principle of INTOSAI, is intended to complement others.

13) The recommendations of this guide do not conflict with any of the professional positions adopted so far by INTOSAI.

14) The ISSAI 130 Code of Ethics sets out specific rules for SAI's with jurisdictional powers: INTOSAI recognizes the necessity to take into account the specificities of this kind of SAIs that are jurisdictions. Furthermore, ISSAIs also mention specificities regarding the activities executed by SAIs with jurisdictional functions. *ISSAI 100 - Fundamental Principles of Public Sector Auditing* – recognizes the importance of SAIs with jurisdictional functions through dedicated paragraphs for this kind of SAIs (15 and 51) that mention the possibility to issue judicial decisions.

15) Audits, controls or investigations may be carried out in accordance with both *this "GUID" standard* as well as with standards from other sources, such as ISSAI 3000, on the conduct of regularity audits, provided that the specificity of investigations or investigation measures, with

a jurisdictional purpose, is preserved: In these cases, reference has to be made to both ISSAI 3000 and *this standard "GUID"*.

Scope

16) This guide is addressed to Supreme Audit Institutions, which, according to the above definition, are considered either:

- a SAI recognised as a court by the law of the State/Country to which it belongs;
- or a body, whatever its organisation or name, which can take decisions to recognise a right or obligation, or to impose a sanction, after an adversarial procedure.

These two criteria are alternative (not cumulative).

17) The recommendations of this guide set out successively, for each of the twelve principles, set out and described in INTOSAI-P50, the actions to be undertaken by the said jurisdictional SAIs, as well as the behaviour to be adopted by their different members/actors (see definitions), in order to comply with them, without modifying or interfering with any of the institutional elements, derived from the Constitution, the law or the regulation, which serves as the framework for their mandate.

18) The recommendations of this guide are not intended to replace the legal and regulatory provisions that characterise each SAI.

19) Each jurisdictional SAI:

- belongs to a model of SAI with which it shares a number of institutional, organizational, functional (their mandate as jurisdiction) or procedural characteristics;
- either constitutes, on its own, a model of jurisdictional SAI, if these different characteristics are unique.

20) The recommendations in *this guide* are in no way a list of the “best practices” observed in the different jurisdictional SAIs.

21) They were developed on the basis of the most objective possible analysis of the characteristics of the different jurisdictional SAIs³. *Where the practice of one or more jurisdictional SAI(s) is mentioned, it is not by itself a recommendation, but it illustrates a general recommendation.*

For each of the twelve principles set out in INTOSAI-P50, this guide makes recommendations addressed to the Supreme Audit Institution, its management, its members to the agents it employs and, exceptionally, to the representatives of the Public Prosecutor’s Office as actors in the procedure: these recommendations describe the room for manoeuvre, their share of free will or discretion, within their constitutional, legal or regulatory framework.

³The exploitation of responses to a survey on the explanations of the 12 INTOSAI-P50 principles by voluntary SAIs participating in the Jurisdictional SAI Forum (August-December 2020).

This room for manoeuvre, which is part of free will or discretion, is more or less important according to the principles concerned. Some principles depend on the framework set by the Legislator (principle 1-5), while others depend only moderately (principles 6-9) or very few (principles 10-12).

Definitions

22) General jurisdictional competences: These consist in powers vested in a SAI recognized as jurisdictional, either as a whole or through one of its components. These powers grant the SAI with the authority to issue judgements passed following an independent and contradictory procedure. Those judgements tend to assert or reassert a right or an obligation or impose a sanction and they are enforceable decisions (*res judicata*).

23) Judgement of the persons involved in the management (managers) of public funds and alike: The SAI issue a judgement on irregularities and mismanagement caused by managers of public funds or considered as such, accountable by law and pinpointed in a financial, performance or compliance audit report drafted by the SAI or transmitted to it by a third party.

24) Judgement of accounts: Among their jurisdictional activities, some SAIs must judge public accountants and/or other persons accountable by law, on the accounts kept and handed over by them. By these jurisdictional activities, the SAI engages the personal and financial liability of those accountable when they commit an irregularity concerning the regulations related to expenditure and revenue execution, or more generally the rules of public accounting.

25) Persons accountable by law: These are individuals who, due to their function and as a result of the law, are subject to the SAI jurisdictional competences. They mainly consist in:

- managers of public funds and alike (public undertakings, bodies regardless of their status receiving public money, body in charge of a public service or an activity of general interest under the control of the SAI, e.g. social protection bodies, etc.) intervening in public management;
- public accountants, in particular where a specific responsibility is imposed on that category of public officials;
- Elected officials, for example at the head of cities, municipalities and other decentralised authorities, when the law allows it;
- any individual interfering with public management without having the legal authority to do so.

A glossary is attached to this guide to explain the vocabulary.

Actors:

26) In the exercise of a jurisdictional or contentious function, the role of the various actors or “authorities” within the SAI cannot be reduced to the role which is simply assigned, by the

other ISSAI audit standards, to the auditor, who then defines himself either as the head of the SAI, or as all the persons to whom the task of conducting the audits is delegated (audit teams, person in charge of the supervision or management).

27) Within the SAI, several functions are essential to the implementation of jurisdictional competencies. Reference has to be made to the definitions given below.

Investigators:

28) The employees, public officials, or members of the SAI (including Public Prosecutor's Office or the department under the authority of a Public Prosecutor's Office) in charge of the preliminary investigation but with a jurisdictional purpose, or an investigation of a contentious nature (identification and analysis of facts that may constitute irregularities/infringements, with regard to the various applicable standards and lead to the prosecution of the persons to whom these facts are attributable), up to the drafting of the report leading to the launching of jurisdictional procedures.

"Members of the jurisdictional collegial body" (Financial judges):

29) The members of the SAI in charge of the judgement making process, in the first instance in appeals or in remedies. Their status is outlined in the national law and their independence guaranteed. In some cases, he/she can also be a single judge.

The Public Prosecutor's Office or the Public prosecutor and its collaborators, when the Law provide:

30) Formed by one or several members, its mission is to defend the public interest and the due application of the law. It is placed within the SAI with jurisdictional function or within jurisdictional section. It safeguards the public interest and the proper use of the law, mainly with regard to the legal framework set by the law and can be the holder of the investigative activity. He/she is independent of the formation of judgment and does not take part in the adoption of the jurisdictional decision.

31) He/she may intervene to institute proceedings and to express his/her opinion on the judgement to be issued. In some countries and depending on the applicable legislation, it can directly carry out investigations before referring the case to the SAI. The law must also ensure the independence of the Public Prosecutor from the executive branch.

The management of the SAI

32) Regardless of the role it may play in the jurisdictional proceedings, as a judge or magistrate, the person or persons who direct or chair the SAI manage the SAI. In general, they decide on the programme of work and allocate the resources of the SAI among the various legal tasks entrusted to it, including the means allocated to the exercise of jurisdictional and contentious powers.

*

I. Legal basis of the responsibilities regime

Reminder of INTOSAI-P 50 (Principle 1):

The law must define the liability and sanction regime applicable to persons accountable before the SAI.

Exclusivity of the law: The SAI's jurisdictional function and the liability regime it implements are exclusively defined by the law.

Guidelines:

33) No SAI may

- punish irregular behavior in the management of public funds,
- nor order the payment of a sum as compensation for a breach of an obligation that has resulted in damage, direct or indirect, to public finances, if it has not previously been vested with jurisdictional competence, for this purpose, by the Constitution or by law.

34) No SAI define or extend, on its own initiative, its area of jurisdictional competence.

35) No SAI may impose a sanction or a payment in compensation for damages against a person that the Constitution or the law has implicitly or explicitly excluded from the SAI's list of persons accountable before the SAI.

Legal priority: The liability regime implemented by the SAI must have been defined before the acts to which it applies were committed.

Guidelines:

36) No jurisdictional SAI can pronounce any sanction for irregular behavior, if it cannot be qualified as irregular and punishable by a law that came into force before it was committed.

37) The jurisdictional SAI can order no reparation to compensate for the damaging consequences of an act or failure in public management, if the liability principle, in relation to that act or failure, has not been previously defined by the law or by the secondary legislation based on the law.

Explanations:

38) The two guidelines previously defined (§ 36) and 37)) are at the core of the principle of legality: they help to guarantee to all the persons accountable before the SAI's that no sanction or penalty, nor any obligation to repair a damage will be addressed to them without having an assured legal basis.

39) These guidelines concern, for the first one (§36)), SAIs exercising a jurisdictional function of a repressive or disciplinary nature, for the second one (§37)), SAIs with a jurisdictional function of a restorative or compensatory nature.

40) Although closely dependent on the legal framework imposed on the SAI, compliance with this fundamental principle imposes rules of conduct on the various members, agents and authorities of the SAI involved in the proceedings.

Practical consequences for the various members and staff of the SAI involved in the proceedings (investigation or inquiry, prosecution, judgment)

Guidelines:

41) The members of the SAI or the public officials of the SAI in charge of the investigation or inquiry for jurisdictional purposes, where appropriate the public prosecutors in charge of the prosecution and the members of the collegial body that pronounces the jurisdictional decision ensure, each in so far as he or she is concerned, that this principle is respected at the different stages of the proceedings.

42) The members of the SAI or the public officials in charge of the investigation or inquiry for jurisdictional purposes

- verifies that the law permits the prosecution of defendants;

- looks for elements that ensure:

- The exact dates on which, or the period during which, the facts likely to give rise to a jurisdictional decision were committed;
- The date on which the legal, regulatory, professional or contractual provisions, which would allow these facts to be qualified, came into force and were applicable;
- Correct attribution of responsibility for the facts established to the various persons concerned.

-can verify/specify on which legal grounds the responsibility of the persons concerned is based.

-can demonstrate the calculation of the predicted damage or loss is based on objective criteria and how that calculation is made.

43) They can record all these elements in a report, which will document the continuation of the procedure. If the question of the interpretation of the law arises, this is also recorded in the report.

44) The officers of the public prosecutor, or of the service responsible for initiating proceedings or giving an opinion on the initiation of legal proceedings, where such a provision exists, will ensure that the law is properly applied.

45) Accordingly, when initiating legal proceedings, they provide reasonable assurance that the facts being prosecuted are indeed committed after the entry into force of the provisions that would qualify them as an irregularity or misconduct.

46) A lawsuit cannot be explicitly directed against a person whom the Constitution or the law would have explicitly excluded from the list of persons accountable before the SAI.

47) The collegial body that pronounces the judgment (collegial body or single judge) ensure that the Constitution or the law has given it jurisdiction over the persons and facts presented to it, taking into consideration the dates on which the facts were committed.

48) The collegial body of judges may not pronounce sanctions or order compensations for facts that exceed the scope of those that were the specific subject of the proceedings.

49) The collegial body of judges may not pronounce a sanction that has not been previously provided for and precisely defined by a law that came into force before the facts in question.

50) If the law is changed after the commission of an offence, and if the court has not given a verdict yet, the court applies the more lenient law. The retroactive application of a more lenient, later law is an exception to the principle that penalties must be lawful.

51) The collegial body of judges may not order compensation for a breach of an obligation that was not defined at the time of the breach by law. The the panel fixes the amount, payment of which may be ordered, following the calculation methods previously provided for by law.

Explanations:

52) Verification of the legal basis of the jurisdictional decision is the responsibility of all persons who take part in the proceedings at any time (prosecution, investigation or instruction, jurisdictional decision).

53) The verification mainly concerns:

- The competence of the SAI;
- The status or function of the respondent;
- The prior definition of the irregularity or fault (in relation to a precisely defined liability regime);
- The legality of the sanction.

54) The aim is to avoid any arbitrary sanction.

II. Independence of SAI's members involved in jurisdictional activities

Reminder of INTOSAI-P 50 (Principle 2):

The member(s) of the SAI, involved in the jurisdictional activities, must benefit from guarantees legally spelled out, which explicitly ensure their independence towardsthe public authorities.

The persons participating in the collegial body that pronounces the judgment

Guidelines:

55) The members of the deliberative collegial body of the SAI that pronounces the judgment, or the member of the SAI (single judge) that pronounces the judgment, are appointed according to legal or regulatory modalities that guarantee their independence from all public authorities, political parties and groups of influence.

56) The persons mentioned in § 55) are not revocable, neither by the authority that appointed them nor by the authority or authorities that contribute to the appointment of the leaders of the SAI, before the duly fixed term of the period for which these persons have been appointed.

57) The authorities who direct or supervise the SAI, the chair of the deliberative collegial, body cannot influence the composition of the deliberative collegial body as they wish,especially if its members cannot be removed

58) The persons mentioned in § 55) do not receive any general or particular instructions, threats or incitements of any kind that could influence or guide the judgments they help to make.

59) No one may take part in the deliberation preceding the pronouncement of the judgment before having been duly appointed and installed in this function.

Explanations:

60) The person accountable by law has the assurance that the person or persons called upon to pronounce a judgment against him/her have been duly designated.

61) These guidelines are as valid for the member(s) of the SAI, called to constitute a deliberative collegial body, as for the persons outside the SAI who are possibly called upon, by reason of their legal and jurisdictional competence, to complete this jurisdictional collegial body.

The persons who participate in the direction of the investigation or pre-trial that precedes the contentious decision

Guidelines:

62) Persons designated to direct an investigation or pre-trial with contentious purposes are chosen in a manner that protects them from any pressure that may be exerted by the public authorities, political parties or influence groups.

63) When the persons referred to in the § 62) have the status of magistrate or judge, or when they benefit from the same status as the persons who are in the jurisdictional collegial body making the judgment, they enjoy the same guarantees and protections. The direction of (or participation in) the investigation or inquiry assigned to them may not be removed against their will.

64) When these same persons are officials, public managers, members of the Public prosecutor's office or the department in charge of prosecutions, the leadership of the SAI or the hierarchical authority on which they depend take all useful measures to protect them from any pressure that may be exerted by public authorities, political parties and influential groups.

65) They may, however, receive guidelines that provide a framework for public action and help to define a general prosecution policy.

Explanations:

66) While the magistrates or judges who make the judgment enjoy the highest guarantees accorded to magistrates, including security of tenure, it is essential to guarantee, under at least equivalent conditions, the independence of the persons who actively participate in or direct the investigation or pre-trial that precedes the intervention of the jurisdictional collegial body that pronounces the judgment. For this purpose, the persons in charge of the investigation or pre-trial are assured that neither the SAI's management nor any other authority will be able to relieve them of this investigation or inquiry without their agreement.

67) For the same reasons, the collegial body that will make the judgment is not be arbitrarily, on a case-by-case basis, by the person chairing it, by the authority directing or supervising the SAI, or by any other authority.

68) As for the officials or agents in charge of prosecutions, where they exist, they are most often subject to a hierarchical authority. However, if they are involved in the investigation or pre-trial, the written instructions they receive must remain of a general nature.

III. Freedom of access to information

Reminder of INTOSAI-P 50 (Principle 3):

The SAI must have legal powers or rights guaranteeing its access to information.

The right of the SAI to be provided with the documents that are useful for establishing the truth of the facts and the resolution of the legal case.

Guidelines:

69) The members of the SAI in charge of an investigation or pre-trial for jurisdictional purposes, as well as the members of the body called upon to pronounce a judgment, have the right to be communicated or to have access, with no delay, to any document of any nature whatsoever relating to the case in question.

70) The basis of this right is expressed on a legal text of a sufficient level, which may be that of the law.

Explanations:

71) This prerogative is not specific to the exercise of a jurisdictional mission, but it is reinforced for a jurisdiction. It constitutes the basis of the investigations that are carried out within this framework.

72) It is necessary for success and quality of investigations carried out,
- or within the framework of a control of regularity for jurisdictional purposes which takes place before the beginning of the truly contentious phase of the procedure: this phase will be designated by the term *investigation*;
- or within the framework of a litigation proceeding already opened (by an act of pursuit), but requiring a new series of investigations (in general but not exclusively, carried out by a magistrate, or under the authority of a magistrate, or under the authority of a member of the public prosecutor's office): this phase will be referred to as a *pre-trial*.

73) The discovery of irregularities or serious negligence implying individual responsibility and leading to personal sanctions is confronted with various obstacles that hamper the search for evidence (concealment, falsification or destruction of data, documents or papers). Therefore, it may rely on extensive powers of investigation and those who oppose it can be sanctioned.

74) This prerogative may be called the “right of communication”: It is not exclusive of other prerogatives that agents in charge of investigation or instruction may have, which vary according to the law applicable in each country.

The most widespread are the following:

- the right of access to the premises of the establishment,

- the right of access to information held by third parties (e.g. partners, contractors of the public body being audited),
- the right of access to information held by other public entities,
- the right of access to information held by other jurisdictions,
- the right of access to information held by auditors,
- lifting or unenforceability of protected secrets (cf. § 79)),
- the power to request expert opinions,
- the power to order precautionary measures, for example of a financial nature.

Guidelines:

75) The management of the SAI takes all necessary measures to ensure that its members or the persons in charge of an investigation or pre-trial for jurisdictional or contentious purposes have free access to all financial, legal and accounting information that makes it possible to establish the reality and materiality of the facts, which are the subject of contentious proceedings or an investigation or inquiry prior to such proceedings.

Explanation:

76) For this principle to be effective, it is necessary that;

- the SAI be provided with the material means and well-trained human resources necessary to carry out the investigations required for the proper accomplishment of its jurisdictional missions;
- the allocation of human resources and the organization of the SAI's work be planned in such a way as to allow the smooth conduct of investigations and pre-trials;
- the material means enabling the exercise of the right of communication and other prerogatives, which are recognized by the law of the country, be granted to magistrates or persons in charge of the investigation or instruction.

Guidelines:

77) Other legal prerogatives of investigators or members of the SAI in charge of an investigation for jurisdictional or contentious purposes vary from one country to another, depending on the applicable legislation.

78) However, investigators or members of the SAI in charge of a jurisdictional instruction may not presuppose that they will be denied access to information before making a request. They may request a waiver or special authorization to access information that they consider useful to establish the reality and materiality of the facts under investigation, in the context of due process.

Explanations:

79) An illustration will highlight this principle. There are many secrets protected by the law, related for instance to national security and defense, to the protection of economic interests, to the protection of privacy; other secrets of a financial nature are of a professional nature, such as tax secrecy, banking secrecy or the secrecy of auditors.

80) In a number of countries, these secrets are not enforceable against members of the jurisdictional SAI. In others, they are partially enforceable, but sometimes complex authorization procedures allow SAI members to have access to protected information. However, in all situations, public officials or members of the SAI in charge of an investigation or pre-trial may not presuppose that their request for access to a formation or for the communication of a document justified by the jurisdictional investigations they are conducting will be refused. Only after they have ascertained the refusal and the reasons for it they will be able to assess, in their professional judgment, whether or not the refusal to disclose was based on lawful grounds and whether or not it can be legally enforced (see § 94) 95)).

Retention and traceability of documents obtained

Guidelines:

81) The management of the SAI, the members of the SAI in charge of the investigation, and, if appropriate, the public prosecutor's office in charge of the prosecution, take all necessary steps to preserve the acts, decisions, contracts, accounting documents, documents relating to management, digitized information and data, and documents of any kind that make it possible to document the investigation and provide the jurisdictional collegial body with the material evidence on which the court's judgment is based.

82) When such a document is filed by one of the parties during the investigation, pre-trial or hearing, it is acknowledged, and its inclusion in the file is certified.

Explanations:

83) An exhaustive file is constituted, in which all the elements are traceable throughout the procedure, up to the judgment. The traceability of this information is guaranteed. Whatever the support used, any precaution is taken by the SAI to guarantee the good conservation, the absence of alteration and the legibility.

84) A specialized administrative service, generally called a *registry* in a jurisdiction, is responsible for the registration and proper preservation of all the documents in the file. Registrations, written records, and generally speaking the entries validated by this service are deemed to be true and authentic. A manual or a detailed note describes the procedures for the collection and preservation of documents and the method of filing them.

Oral Evidence

Guidelines:

85) Within the framework of its general and jurisdictional powers, the SAI has the right to summon for interview any public manager, official, administrator or employee of a body audited by the SAI.

86) This convocation is, according to the practices of each SAI, either a judgment of the SAI or an individual decision of the members of the SAI in charge of an investigation or a pre-trial, or of the department in charge of the prosecution.

87) When it is possible and necessary to take oral testimony in the framework of an investigation or an instruction, those in charge of this investigation or instruction take all necessary steps to ensure its traceability.

88) When it is possible and necessary to take oral evidence or a position in a public hearing that directly affects the meaning of a jurisdictional decision, the presiding member of the SAI takes all appropriate measures to ensure its traceability (see principle 6, § 159).

Explanation:

89) A specialized administrative service, generally called a *registry*, operates in any jurisdiction:

- Within the framework of an investigation or a pre-trial, and when the procedure provides for it, the representative of the registry service or any equivalent administrative service, contributes to authenticate, by his signature, the transcription of the possible testimonies collected orally;
- During a public hearing, the representative of the registry service may either record the transcript of an oral communication made by one of the parties or one of the persons who may intervene orally, or record in writing the remarks made or the facts that occurred during the hearing under the direction of the judge presiding over the jurisdictional collegial body.

Practicing the right of communication with the criminal jurisdictions and institutions in charge of the fight against corruption

Guidelines:

90) When the legal framework so provides, and in particular when a public prosecutor's office/prosecution service has been set up within the SAI, the members of the SAI in charge of an instruction or a contentious investigation approach the authorities in charge of fighting fraud and corruption, or the courts in charge of repressing and punishing offences (criminal jurisdiction), in order to have access to the elements of evidence that enable them to complete their investigation or pre-trial.

91) In all cases, the jurisdictional SAI freely establishes close and regular institutional relations with the authorities in charge of fighting fraud and corruption, as well as with the courts in charge of suppressing and sanctioning offences (criminal jurisdiction), in order to increase or complete its information on breaches of probity occurring within the scope of public management subject to its controls/audits and likely to be subject to a sanction pronounced by the SAI.

Explanations:

92) The existence of a public prosecutor's office in an SAI is not universal. It promotes the exchange of information with other jurisdictions, either because the public prosecutor's office has been exclusively given this function by the law or because it contributes to it informally.

93) Access by investigators or members of the SAI to facts that have been identified elsewhere, including within the framework of criminal proceedings, is often crucial to provide a solid basis for jurisdictional investigations conducted by or on behalf of the SAI.

Penalty for obstructing the SAI's prerogatives

Guidelines:

94) The SAI's management makes its best efforts to ensure that the legislation of the country guarantees the effectiveness of the right of communication, granted to investigators and members of the SAI, that it is not hindered in any way that would prejudice the establishment of the materiality of the facts and that any irregular hindrance is subject to appropriate sanctions.

95) In countries where such legislation exists, investigators and members of the SAI, who find an impediment to the exercise of their investigative and control prerogatives, in particular with regard to access to information, report the facts to the authorities, internal or external to the SAI, legally empowered to implement, or to have implemented, the sanctions legally provided for such impediment.

IV. Statute of limitations

Reminder of INTOSAI-P 50 (Principle 4):

An irregular fact may be prosecuted or sanctioned only before the expiry of a reasonable time from the moment it was committed or discovered.

The existence of appropriate limitations periods of facts allows for the proper administration of justice and the SAI will ensure that they are respected at all stages of the proceedings.

Guidelines:

96) At all stages of the procedure, it is the responsibility of the SAI members to ensure that the facts in question are not prescribed under the law of the country. Consequently, it is up to:

- **The authorities in charge of the prosecution (public prosecutor's office, prosecution service) not to refer to the jurisdictional SAI facts that are clearly prescribed;**
- **The agents or members of the SAI in charge of the investigations or the pre-trial to indicate in writing in their report that the facts prosecuted are prescribed completely or partially;**
- **The jurisdictional collegial body of the SAI, **under the conditions provided by the national legal framework**, to pronounce a dismissal of the case in the event of a search for responsibility with regard to prescribed facts.**

Explanation:

97) The existence of a prescription of the responsibility of the actors of public management is not always well understood by the citizen. It is, however, an indispensable provision for the proper functioning of a jurisdictional system. Whether it is to investigate, prosecute and judge wrongful behavior (repressive or disciplinary logic) or to assert an obligation to make compensations (restorative or compensatory logic), it is necessary for the proper administration in charge of justice to define a time limit, so as not to prosecute or punish facts that are too old.

Such a principle is established:

- on the one hand, to guarantee the security of long-acquired legal situations (otherwise, the persons responsible would be confronted with permanent insecurity throughout their professional activity or retirement)
- on the other hand, in order to encourage the competent services, and first and foremost the SAI itself, to plan investigations and audits, so as to avoid limitations of the most serious irregularities, which would make it impossible to repair or sanction them.

The rules of limitation must be interpreted in accordance with the law.

Guidelines:

98) The authorities in charge of prosecutions, the agents or members of the SAI in charge of the investigations or pre-trial and the jurisdictional collegial body of the jurisdictional SAI strictly interprets, for the benefit of the persons subject to trial, the rules of limitation of facts and liabilities.

The jurisdictional collegial body cannot interpret flexibly the legislative provision that creates a limitation regime.

99) When the event giving rise to an irregularity breaks down or is prolonged in several acts spread out over time, or when a procedural act has interrupted the limitation period, the authorities in charge of the prosecution, the agents or members of the SAI in charge of the investigation or pre-trial and the SAI's jurisdictional collegial body, specify in the act of prosecution, in the report of the investigation or instruction and in the judgment, each one in so far as it concerns them, the method of calculation of the limitation period that is used.

Explanations:

100) The detail of these limitation regimes falls under the competence of the legislation of each country and the interpretation given by each jurisdictional SAI. They are numerous and differ according to the nature of the litigation in question.

101) However, it appears that the majority of limitation periods for management acts, which may be prosecuted before the SAI, are between 3 and 5 years, with some notable differences. This period is frequently, but not systematically, aligned with the ordinary period in civil proceedings according to the legislation of the country. In some legislations, the time limit is 10 years, often for potentially serious matters.

102) The starting point for calculating a limitation period is usually the date on which the sanctioned irregularity was committed or the date on which the damage to be compensated was caused.

103) If required by law, the starting point for calculating a limitation period for the same facts may be the date on which they were discovered.

104) The starting point for calculating a limitation period, when the jurisdictional SAI is also in charge of the jurisdictional review of the accounts of public accountants, is commonly the date on which the account for a year was made available or deposited with the SAI, in a complete state.

105) Jurisdictional proceedings interrupt the course of limitations (Cf. § 97). Jurisdictional SAIs strictly interpret, i.e., according to the letter of the law, the provisions relating to the calculation of the limitation period: when appropriate, for example, if acts have interrupted the limitation period, the methods for calculating the limitation period are made explicit throughout the proceedings as well as in the judgment.

Avoiding the risk of limitation periods for serious, or simply irregular, facts by planning audit work at an early stage, upstream of the court proceedings, on the basis of the information available to the SAI.

Guidelines:

106) The SAI's work, plan the work and audits of the SAI in accordance with the risks of which they are aware, particularly when they have serious and consistent indications of serious malfunctions in the management of the bodies they may audit, in order to avoid that the perpetrators of irregularities or failures that cause damage, benefit from a favorable limitations regime.

107) The public prosecutor's office/department in charge of prosecutions, when it exists, plays a prospective and proactive role in order to bring before the jurisdictional SAI the facts, causing irregularities or having caused serious damage, with financial implications, of which it may have knowledge. The objective is to avoid that the perpetrators of irregularities or breaches that cause damage do not benefit from a favorable limitations regime.

Explanations :

108) It is the responsibility of all the authorities that are in charge and supervise the SAI, as well as the prosecuting authorities placed under them, when they exist, to plan audit work or investigations in good time in order to be able to refer to the jurisdictional SAI facts that are not prescribed.

109) In addition to the risk of impunity, an excessive long delay between the facts and the investigation relating to them would greatly complicate the search for missing, damaged, hidden or inaccessible evidence, to find possible witnesses, and to interpret the case law or the rule of law, which may have changed significantly over a long period of time.

V. Appeal and annulment of the judgement

Reminder of INTOSAI-P 50 (Principle 5):

Any judgement of the SAI must be open to be objected and reconsidered and is subject to appeal or annulment in accordance with the national regulation.

The right to a second review must apply to any judgment adversely affecting individuals

Guidelines:

110) In accordance with applicable laws, the SAI informs all parties to the litigation, who are notified of the first jurisdictional decision, according to appropriate formal and practical modalities, of the possibilities of appeal which they have the right to raise, for a second review of that decision if they contest it on the basis of its merits.

111) When the first jurisdictional decision is not the final one, for example, when it merely orders further investigation without resolving the dispute or question of law, the SAI is not necessarily required to disclose the existence of any right of appeal.

112) The jurisdictional SAI will correct, on its own initiative or at the request of the persons accountable by law, clerical errors which it considers to be common sense. The jurisdictional decision, thus corrected by the SAI, opens a new time limit for appeal.

Explanation:

113) The jurisdictional and final judgment ("*res judicata*"), by which the SAI pronounces on the liability of a person for wrongful conduct or damage caused, must be subject to review, on the initiative of a party to the dispute, or even a public authority (e.g., the public prosecutor's office) or, more generally, any interested third party. The possibility of using these means of appeal concerns, in principle, decisions involving the liability of a person and imposing a sanction, as well as those concluding that the case must be dismissed.

- The means of appeal allow a second examination of the first judgment, for reasons of the form (competence of the court, respect of procedure, the statute of limitations of the facts, etc.) or of substance (correct appreciation of the facts, correct interpretation of the law, etc.).
- The means of appeal (apart from the correction of clerical errors, which does not alter the assessment of the facts or the interpretation of the rule of law) take very different forms and names depending on the country, but three situations can be distinguished, which can be combined according to national legislation:
 - Reconsideration by the jurisdictional collegial body that took the first judgment (generally for new facts or situations, unknown at the time the first judgment was taken).

- The review (appeal) of the first judgment by a new jurisdictional collegial body, completely separate from the first, either within the SAI itself or externally; this review covers both form and substance.
- Review of the first decision, or even of the second decision, by a supreme court (this type of appeal often leads, in the event of annulment, to a referral back to the first court for a new review "on the merits", but by a different collegial body from the first).

114) However, when the Sai's judgement is temporary (the case will be re examined by the SAI after a complemetnary inquiry), remedies or appeal are not necessary.

The information of the person accountable by law on the possibilities of appeal is effective and complete.

Guidelines:

115) The role of the administrative services or the registry of the SAI and of the jurisdictions concerned is decisive, on the one hand, to ensure the correct information of the litigants who wish to lodge an appeal and, on the other hand, to guarantee its registration.

116) The services of the jurisdictional SAI are provided by the SAI's management, with material, legal and human resources necessary to fully provide this service to the persons accountable by law.

117) The information of the persons accountable by law, on the means of appeal open to them, is accessible and complete. It covers the time limit for appeal, the address of the addressee of the appeal and, when appropriate, the form required: it provides the person accountable by law with all the indispensable information for the admissibility of his/her appeal.

118) The information may be explicit or implicit, by reference to a legal or regulatory provision or a procedure published online.

119) If the law so provides and if the petitioner so requests, the jurisdictional collegial body that made the judgment may grant a postponement of execution of that judgment.

Explanations :

120) In all cases, it is important that the persons accountable by law, as well as all persons having the right to challenge the judgment, be fully informed of this right and of the practical arrangements for exercising it usefully (time limits, forms to be respected, recipients of the appeal, etc.). The SAI is fully responsible for the effectiveness of this information, for example, when notifying the jurisdictional decision or by any other means (e.g. reference to information available online).

121) The postponement of execution of the contested judgment cannot be systematic: the persons accountable by law must, however, be able to request it, when the immediate execution of the judgment would be irreversible or sufficiently penalizing to render artificial the right to a second examination of the case.

122) Finally, the effective right to a review of the merits of the SAI's jurisdictional decision is an essential element of quality control, particularly appropriate to the specific nature of a jurisdiction's activity (See chapter on principle 10).

VI. Right to a fair trial

Reminder of INTOSAI-P 50 (Principle 6):

The SAI must ensure that the persons accountable before it undergo a fair trial guaranteed by the legal procedures.

Every presumed accountable person to the law for his or her management of public funds is entitled to a fair examination of his or her case at a hearing before an independent and impartial jurisdiction, which will determine whether his or her liability may be incurred. This person is then qualified as a person accountable before the SAI with jurisdictional jurisdiction.

123) This principle is strictly linked to the jurisdictional activities of the SAI.

124) Access to an independent and impartial judge, rendering an explicit reasoned decision, in a contradictory procedure that respects the rights of the defence, which may include a public hearing or, failing that, allowing the expression and confrontation of views, is a compelling necessity.

125) The omission of only one of these criteria, which define the fairness of the trial before the SAI, may undermine the legitimacy of the decision rendered and compromise its validity, in the event of an appeal.

General guidelines

126) In case of the engagement of his/her liability before a jurisdictional SAI for the management of public funds, everyone is entitled to a fair examination of his or her case:

- **before a single judge or a collegial body , whose independence (cf. principle n°2) and impartiality (cf. principle n°7) are guaranteed,**
- **in a contradictory procedure,**
- **in a manner that allows the free exercise and expression of the rights of defence,**
- **preferably during a public hearing.**

127) The International Covenant on Civil and Political Rights and the regional human rights conventions (European, American and African)⁴, signed by States, recognise and contribute to defining the right to a fair trial.

Explanations :

128) These guarantees, strictly linked to the SAIs jurisdictional activities, are the pillars of the “right to a fair trial”. The main criteria are the independence of the jurisdiction and the impartiality of the judge (which are the subject respectively of the chapters on Principles No. 2 and No. 7), the right to genuinely contradictory proceedings before the jurisdiction and the guarantee of respect for the rights of the defence (the subject matter of this chapter).

International⁴ Covenant on Civil and Political Rights (1966), art. 14, para. 1; <https://www.ohchr.org/fr/professionalinterest/pages/ccpr.aspx>; European Convention on Human Rights (1950), art. 6, para. 1 (ibid., para. 2795); American Convention on Human Rights (1969), art. 8, para. 1 (ibid., para. 2797); African Charter on Human and Peoples' Rights (1981), art. 7 (ibid., para.

129) The institutional implementation of these rights depends, quite largely, on the legislation of each country, which is also a signatory to the various international conventions which define the “right to a fair trial”. In particular, Article 14.1 of the International Covenant on Civil and Political Rights, ratified by almost all UN member states, provides that: *“everyone must be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, which will decide either on the merits of any criminal charge against him/her or to contesting his rights and obligations of a civil nature.”*

130) However, the practical implementation of these principles depends mainly on the SAI authorities alone and takes into account the reservations made by some countries to the above-mentioned International Covenant.

Any person presumed to be responsible by law has the right to be informed promptly and in detail of the nature and cause of the charges against him or her of the obligations he or she must meet.

Guidelines for the initiation of jurisdictional proceedings

131) Any jurisdictional proceedings likely to lead to a decision is initiated by an act which specifically mentions:

- **The nature of the grievances or charges, rights or obligations involved in the proceedings;**
- **The names of the persons alleged to be responsible in the proceedings; the persons so called in question are referred to as person accountable by law in the remainder of the chapter;**
- **Organisations to the detriment of whom the defendants are presumed to have committed irregularities or misconduct (qualified as stakeholders);**
- **The name of the person who is responsible for directing the instruction or investigation that will precede the jurisdictional decision.**

132) The act opening the jurisdictional proceedings constitutes a decision:

- **Or, most commonly, by the Public Prosecutor’s Office/Prosecuting Service, which intervenes on its own initiative or as a result of the legal referral to the SAI itself, another jurisdiction or any other public authority, such as ministerial or parliamentary;**
- **Or, in exceptional situations, the SAI itself, without the intervention of a public prosecutor’s office/prosecuting department, in the form of a self-referral, usually as a result of the audit work of the SAI itself.**

133) As soon as it is rendered, the act which initiates the jurisdictional procedure is notified by the competent service of the SAI to the persons involved who are known at this stage of the proceedings, including the representative of the body whose funds or decisions have given rise to alleged irregularities or faults.

Explanations :

134) The jurisdictional proceedings are transparent and cannot begin without the knowledge of the person accountable by law . Otherwise, it would not be fair

135) This requirement may have the effect of facilitating the disappearance or modification of evidence by the person accountable by law as soon as he has received notification of the commencement of the jurisdictional proceedings, before the first investigations have taken place.

136) It is therefore recommended that the act of initiation of proceedings be notified only when the SAI is ready to start the investigation or to undertake the jurisdictional action under the applicable national legal framework. .

137) It is possible that the act of opening the proceedings will subsequently be extended and notified to other persons accountable by law, depending on the progress of the instruction or investigation. First litigants are then informed of these new notifications.

Any person presumed to be responsible, any person who is a person accountable by law SAI must have the right to have the time and means necessary for the preparation of his defence, in particular by having access to all documents and information filed before the jurisdiction by any party, and to verify that the penalties which may be imposed against him are based on evidence.

Guidelines for the Preparation and Access of Parties

138) Persons or members of the SAI in charge of the instruction or investigation file all physical and paper or digital documents that they collect during the course of their investigations, as well as the documents that the individuals wish to communicate to the jurisdiction. They are assisted by a specialised administrative department of the SAI, generally referred to as “registry”.

139) When personnel or members of the SAI, in charge of the instruction or investigation, make requests to the persons accountable by law they set a reasonable time frame to respond to such requests.

140) The SAI defines rules to ensure that any person accountable by law:

- **have access to all the documents in the file constituted at the end of the instruction or investigation phase and have a reasonable period of time, before the public hearing, if it is organised and, in any event, before the date on which the jurisdictional decision will be taken. This time limit may enable him or her to be informed in good conditions, personally, through a lawyer or through the authorised representative of his choice, of the documents of the file and of the evidence on which the judge or the collegial body will base his decision;**
- **are informed of the date on which the instruction or investigation, prior to the trial phase, is terminated.**

Explanations :

141) The fairness of the trial is largely based on the conditions for access by the person accountable by law to the records of the defence documents in support of the jurisdictional decision to be rendered against him.

142) The SAI adopts clear rules on the constitution of this file: who feeds it, who keeps it, how everyone can access it, how everyone is informed of the evolution of this file, how long does everyone have to study it. The rules adopted address these issues by specifying both what forms (paper file, digital file) and how individuals can access them.

143) In particular, it is recommended that all parties be informed that a new exhibit has been placed on file by one of them.

144) In the case of a paper file, the SAI provides suitable premises and technical equipment for comfortable and effective consultation to those who come to it.

145) In the case of a digital file, the SAI provides for remote consultation arrangements.

146) In the first case, and even more so in the second case, the SAI makes the necessary arrangements to ensure the confidentiality of the entire file, as each person accountable by law or party cannot disclose documents that are not filed. The SAI explicitly reminds the person accountable by law of these confidentiality requirements.

147) It is recommended that:

- the SAI keeps track of these physical or remote consultations in a registry;
- persons who request to consult the file and the procedure documents locally or remotely first state their identity and powers, whether they are the person accountable by law, his lawyer or his representative.

148) The file, which contain the procedure documents, constitutes an indivisible whole, as it is formed. It may not contain sub-folders which would be accessible only to a single person accountable by law or to the persons responsible for the instruction or investigation, or to the Public Prosecutor's Office/Prosecuting Service.

Any person accountable by law has the right to be assisted by a lawyer of his choice under the law

Guidelines for assistance or representation of the applicant by counsel

149) Any person accountable by law who so wishes must be able to defend his or her interests alone in jurisdictional proceedings before the SAI, unless otherwise provided by law.

150) Any person accountable by law who so wishes may be assisted by a lawyer in the jurisdictional proceedings before the SAI, from the beginning of the proceedings, during the

instruction or investigation phase and during the trial phase, until the end of the proceedings.

151) Where a person accountable by law is assisted by a lawyer, the lawyer takes part in the public hearing or hearing alongside his or her client.

152) Any person accountable by law who so wishes, may be represented by a lawyer:

- at the public hearing before the SAI, unless the single judge or the president of the collegial body considers it essential to hear a person referred to the jurisdiction;
- or to appeal against the jurisdictional decision.

On the other hand, the lawyer cannot completely substitute for the person accountable by law, especially when during the instruction or investigation phase, the authorised staff or members of the SAI decide to hear personally a person who is a person accountable by law.

Explanation :

153) In most countries, the use of a lawyer and the practice of the profession of lawyer are governed by legal or regulatory provisions.

The jurisdictional procedure before the SAI may comply with this ordinary legislation, or specify its application, for example by defining:

- the categories of persons who can attend or represent the person accountable by law;
- the written notification to the SAI by the person accountable by law of the lawyer he or she has appointed;
- the nature of the acts the lawyer can perform;
- the stages of the proceedings at which the lawyer may intervene and the modalities of his intervention (including access to the file, exchange of briefs, role in the hearing of judgment or in the presentation of appeals);
- the secrecy that covers the relationship between the person accountable by law and his lawyer;
- cases in which the SAI may require the individual's physical presence or response without being represented.

The various persons accountable by law involved in the jurisdictional procedure have the right to be heard by a single judge or a collegial body, who must decide on their case.

Guidelines for hearing or public hearing

154) The SAI provides persons accountable by law with the right to be heard together and, if necessary, separately before the judgment is rendered. Respect for the fairness of the trial leads to the recommendation of a public hearing, without necessarily imposing it.

155) Where the applicable rules of procedure require the SAI to render the jurisdictional decision at the end of a public hearing, it is the SAI's responsibility to organise the decision under conditions that will enable all persons accountable by law who wish to attend the decision to attend in the best possible conditions, in order to assert their rights, present

their interpretation of the facts and communicate to the jurisdiction any document they believe to be relevant to the manifestation of the truth or the judgment of the case.

156) Where the applicable rules of procedure do not require the SAI to render the jurisdictional decision at the end of a public hearing, three hypothesis are to be considered:

- The SAI may, at its initiative (single judge or president of the collegial body) or at the suggestion of the Public Prosecutor's Office/Prosecuting Service, initiate a public hearing or hearing of relevant stakeholders;
- The SAI may organise, at the request of one of the relevant stakeholders, a public hearing or a non-public hearing of the relevant stakeholders;
- Where the SAI considers that the rules, which apply to it, do not allow it to hold a public hearing or a hearing, the judge or the collegial body makes all appropriate arrangements that enable the persons accountable by law to communicate directly with the jurisdiction and to assert their rights before it.

157) The procedure for exchanging written arguments between the jurisdiction and the persons accountable by law concerned may then substitute for the absence of a public hearing or hearing: in this case, the persons accountable by law communicate by means of written submissions, to which the jurisdiction may reply by so-called "provisional", "unenforceable" or "pre-say-right" judgments, accompanied by injunctions or questions.

158) If a request is made by a person accountable by law to postpone the date of the hearing, the judge or the president of the collegial body makes his or her decision explicitly known, in the event of a refusal, to the party who made the request, and in the case of all persons accountable by law.

159) The specialised registry or administrative service of the SAI is made available to the single judge or for the training of judgment by the management of the SAI, in order to carry out the material organisation, the preparation of the public hearing or the hearing, as well as the notifications and registrations required by the hearing procedure. He places on file the exhibits disclosed at the hearing.

160) The persons accountable by law are invited to take part in the public hearing, when it is organised.

- Where the jurisdictional body has a repressive or disciplinary purpose, the single judge or the president of the collegial body may ask the person referred to the jurisdiction to attend the hearing, unless there is a specific reasoned situation.
- Where the jurisdictional body does not have a repressive or disciplinary purpose, but seeks, at least as a principal measure, to compensate for damages, the persons accountable by law are not obliged to take part in it: in this case, no one is compelled to appear, against his will, before the jurisdiction sitting in a public hearing. In return, the jurisdictional decision may be rendered in the absence of the persons accountable by law ("*in absentia*").

161) When a public hearing or hearing is organised, the specialised registry or administrative service made available to the single judge or the collegial body is responsible for transcribing some of the words made at the hearing, at the request of the judge or the presiding officer of the collegial body, in order to place them in the record of the proceedings.

162) Sound or audio-visual recording of public hearings or hearings is previously authorised by law or, failing that, by the SAI if the law does not prohibit it.

Explanation

163) In order to ensure the traceability of arguments exchanged at public hearings or hearings and to facilitate the subsequent drafting of the judgement, the SAI seeks the balance between the oral nature of the proceedings and the written nature of the evidence and exchanges that preceded it. It is therefore useful for a sworn officer to take written notes during oral proceedings of the public hearing or hearing..

Guidelines (public hearing)

164) Where a public hearing is held, the judge or the president of the collegial body may decide whether to be held in “closed-doors” if the circumstances so require.

Explanation

165) The SAI may decide on its own initiative, or by granting a request from a person accountable by law or the Public Prosecutor/Prosecuting Service, to restrict access to the hearing only to the parties. The reasons for this can be the preservation of data covered by secrecy (security and defence, medical secrecy, secrecy of competition...), the physical or legal integrity of individuals, the serenity of the debates. “closed doors” may also be pronounced in the interests of morality, public order or national security, or where the publicity of the hearing would be likely to affect the interests of justice.

Guidelines (public hearing)

166) Person accountable by law invited to take part in the public hearing, have a reasonable period of time to prepare their submissions before the jurisdiction.

Explanation

167) Without lengthening the duration of the jurisdiction proceedings in order to meet the reasonable time requirement (Principle No.11), the SAI ensures that persons accountable by law have time to prepare their arguments prior to the public hearing, including when a new factual or legal element occurs or is produced.

168) The granting of such a time limit may lead the single judge or the the collegial body to postpone the date of the hearing of judgment, but avoid yielding to delaying manoeuvres.

169) The postponement may also be decided during a public hearing, and a new hearing may be scheduled.

Guidelines (public hearing)

170) The SAI implements all the secure technical means at its disposal to enable persons accountable by law to take part in the public hearing, in particular through video-conference.

Explanations

171) The difficulty of physically attending a trial hearing, whether it is the result of general limitations in the area under consideration or the constraints experienced by a person accountable by law, is taken into account by the SAI.

172) The SAI may organise hearings entirely or partially at a distance, with physical participation or video-conference of judges, persons accountable by law. It takes responsibility for organising it technically but is not responsible for the difficulties or impossibility of connecting certain individuals. These difficulties or impossibilities, if repeated and cannot be verified, may not lead the SAI to over-refer the hearing of judgment, which may take place after a reasonable period of time even in the event of failure to connect persons accountable by law.

Guidelines (public hearing)

173) In some countries, it is a rule that the rights of the defence include the right of the person(s) accountable by law to speak last at the end of the hearing, before the jurisdictional decision is rendered.

Explanations

174) In some countries, where the person accountable by law is presumed innocent until the judgement is rendered, the rule of giving him the last floor at the end of the hearing is due to the desire to leave a final impression to the single judge or the collegial body that is closest to the position expressed by the person accountable by law .

175) Such a rule is also explained by the need to have a criterion to put an end to the debate, failing which, in the name of compliance with the contradictory procedure, the right of reply of each party to an intervention by another party may lead to an exaggerated or even indefinite public hearing.

176) This rule is therefore both ethical and practical.

Guidelines (public hearing)

177) The members of the collegial body do not debate not comment the case in the presence of the person accountable by law and the public.

Explanations

178) If the publicity of contradictory discussions with the person accountable by law and the Public Prosecutor's Office/Prosecuting Service is an additional guarantee of the fairness of the trial, it does not follow that internal discussions in the collegial body must also be public. The preservation of the independence of each member of the collegial body (cf. chapter on Principle n°2), the secrecy which, except for exceptions, covers his opinion (chapter on Principle n°7), and the serenity of the debates lead to the organisation of the debates without the presence of third parties.

179) Therefore, either they leave the courtroom during the time of the deliberation, or the collegial body goes to another place to deliberate.

Guidelines (public hearing)

180) A person accountable by law may not require that the jurisdictional decision be rendered immediately at the end of the public hearing or within a few hours.

Explanations

181) The single judge or the collegial body is the master of the time necessary for them, after hearing the parties, to deliberate and to render their judgment. They are able not to deliberate or render their decision "on the seat", i.e. immediately or shortly after the conclusion of the public hearing.

182) It is often possible that the length of the proceedings at the hearing, the complexity of the content of the deliberations, the time required to recover any incidents or emotions that may have affected the hearing, the unavailability of some members of the collegial body if the hearing has been unduly prolonged, may lead to a preference to postpone the debate and decision-making at a later time, away from a few hours or days from the end of the hearing.

183) In addition, it is often preferable to make the decision publicly only when it is fully written and accessible to persons accountable by law and stakeholders, which takes time when it is complex.

184) The judge or the jurisdictional collegial body may therefore set the hearing at a later date at which the judgment will be delivered and accessible, and notify the person accountable by law as soon as possible.

185) However, this date is reasonably close to that of the contradictory debate, for several reasons:

- Compliance with the reasonable time limit for jurisdictional proceedings (see chapter on principle 9);
- The interest that the facts and arguments exchanged during the hearing are still recent and therefore all present in the mind of the single judge or the members of the jurisdictional collegial body, even if notes were taken during the hearing;

- Reducing the risk that, in too long a period between the hearing of the contradictory debate and the hearing of the judgment,
 - o Either new facts occur and are likely to affect the decision
 - o Either pressure is exerted on the single judge or members of the jurisdictional collegial body.

Any person accountable by law has the right to know the explicit reason(s) for the decision issued. The reasoning of a judgment must be clearly and precisely expressed in the decision itself, which will then be consistent with the principle of the intelligibility of justice and will allow for the exercise of appeals.

Guidelines on motivation of the judgment

186) The single judge or the collegial body decide explicitly and in advance, where appropriate, on the admissibility of the act which refers to the case, and on his competence to judge it.

187) The single judge or the collegial body give the precise reasons for the jurisdictional decision rendered.

188) The single judge or the president of the collegial body and the member of the collegial body appointed to finalise the jurisdictional decision ensures that the decision:

- Recalls the acts marking the various stages of the jurisdictional procedure;
- Recalls the complaint or charge, the right or obligation involved in the act that brought the matter before the jurisdiction;
- Describe, at least summarily, the facts with which the alleged person responsible, such as those facts, was established in the course of the proceedings;
- Mentions precisely, in the light of the rules of law or enforceable norms, the nature of the irregularity or fault which underlies the commitment of the responsibility of the person accountable by law;
- Adjudicate explicitly on possible complaints of violation of the jurisdictional procedure that would be invoked by a person accountable by law (*or the Public Prosecutor's Office/Prosecuting Service*);
- Responds to all useful arguments, whether procedural or formal, de facto or legal, raised by the persons accountable by law.
- Decides, explicitly and in each case, on the accountability of the irregularity or fault to the person or persons responsible;
- Explicitly pronounces on the admissibility of arguments presented as exonerative of liability or intended to mitigate, or *a contrario* to aggravate, the liability of the person accountable by law (attenuating or aggravating circumstances);
- Explain or justify the nature of the penalty imposed for each person accountable by law and its *quantum where* the penalty is pecuniary;
- Mentions precisely, *a contrario*, the reasons why it is held that the liability of a person accountable by law is not incurred;
- Finally, mentions the name of the member(s) of the collegial body who deliberated the jurisdictional decision.

189) The judge or the president of the collegial body and the member of the jurisdictional collegial body appointed to finalise the jurisdictional decision ensures that its drafting is at the same time complete, argued, clear and precise.

Explanations

190) The rationale for jurisdictional decisions is a fundamental principle of the law that reinforces the acceptability of the decision by the person accountable by law or any third party (stakeholders, public authorities, the media, citizens) and which also allows the effective exercise of remedies.

191) This motivation allows:

- To explain the analysis and conclusions of the single judge or the the collegial body, while specifying the facts that are retained;
- Explain the reasons why an individual sanction is imposed or, on the contrary, rejected;
- Avoid reproach of arbitrariness, bias, incompetence, darkness that could be formulated by the person accountable by law or any third party;
- To construct specific arguments designed to refute the reasoning or the judgment procedure through the exercise of appeals;
- Where appropriate, to clarify, on the basis of the individual case in question, a legal position which may refer and be a source of case law.

192) Where the reasoning followed is based on identical reasoning given in previous judgments, the reasoning seeks to repeat exactly the same wording as in those judgments, or refer to it, in order to make the elaboration or application of case law visible.

193) The judgment motivation is written in a logical order, in precise but clear and intelligible language: it avoids archaisms, approximations and repetitions, as well as the overuse of synonyms to describe a single reality. Technical, legal or financial terms, which are often unavoidable, must be understood at least by the person accountable by law and stakeholders (i.e. clearly defined). Sentences are as short and the style as clear as possible. The length of the judgment is reasonable and proportionate to the complexity of the case, neither too short to avoid elliptical motivation, nor burdened by unnecessary descriptions or twists of idle sentences.

194) Quality control of jurisdictional proceedings (see chapter on principle 10) is exercised in particular on the quality of the reasons and the drafting of the judgment.

VII. Impartial judgement and decision-making

Reminder of INTOSAI-P 50 (Principle 7):

The impartiality of the judgement process must be guaranteed by regulations governing the activities of jurisdictional SAIs and the resulting proceedings.

The persons accountable by law must be assured of the impartiality and neutrality of the judge or the members of the training who will issue the judgment concerning them. Any suspicion of partiality at this level may void the decision.

Guidelines

195) The jurisdictional decision may be made by a single judge or a jurisdictional collegial body (usually three or more persons).

196) The appointment of the persons who will judge the case is governed by general rules established by the SAI or by an external legal authority, and not dependent on each case.

197) Consequently, on the one hand, the choice of the jurisdiction and, within it, of the collegial body and, on the other hand, the choice of the single judge or of the persons making up the collegial body to which the case is submitted, depend on the application of general rules, which are devoid of personal character. This will reduce the risk of partiality favorable or unfavorable to the person accountable by law: the person accountable by law does not choose the judge and the judge does not choose the person accountable by law .

Explanations

198) In a SAI that issues decisions of a jurisdictional nature, the single judge or the members of the collegial body are not specially appointed to hear a particular case. The cases to be tried are referred to them on the basis of the application of rules which are general and impersonal, and not decided for the purposes of a particular case.

199) This guideline applies as much to the determination of the jurisdiction (collegial body or single judge) to which the case will be submitted as to the composition (appointment of the person or persons to sit) of that jurisdiction.

200) The general rules laying down the type of jurisdiction to be tried may be legislative (see Chapter No. 1 on the principle of legality).

201) The general rules determining, within the jurisdiction, the collegial body, are generally internal rules within the SAI.

202) These rules depend in particular on the nature of the alleged offences, the status of the persons prosecuted or the public funds involved, and the geographical location where the alleged offence was committed.

203) The rules establishing the nominative composition of the collegial body may be internal or external to the SAI .The important thing is that this nominative composition cannot vary according to the cases to be tried. The nominative composition of a collegial body may result from a designation by law, or by the head of the SAI, or an election within the SAI.

Guidelines

204) Any judge or member of a collegial body refrain from participating in a hearing, deliberation, and generally taking part in the preparation and decision-making, where he or she finds that his impartiality in respect of a case could be challenged.

This deportation procedure is provided in particular in the following hypothesis:

- **The judge or member of the collegial body has already taken a stand, without qualifications, or in his personal capacity, on the whole or part of the case, in danger of being accused of having made a prejudgment on the question to be decided by the jurisdiction ;**
- **The judge or member of a collegial body has a personal interest, direct or indirect, in the decision to be rendered by the jurisdiction, particularly if he or she is in a relationship of kinship, friendship or alliance, enmity or mistrust with one of the parties to the jurisdictional proceeding.**

205) Any person accountable by law has the possibility to challenge his or her judges, i.e. to ask the jurisdiction that a person, whose impartiality he suspects (in particular in the cases listed in § 204) above), be excluded from the hearing, deliberation, and, in general, the preparation and decision-making of the case to which that person is a party.

206) It is up to the person accountable by law to provide evidence to objectively base the partiality he suspects.

207) The management of the SAI, where appropriate, the officials of the Public Prosecutor's Office (Prosecuting Service) and the other members of the collegial body, alert the judge or the member of the collegial body when he or she presents a risk of partiality of which they may be aware. The management of the SAI is systematically warned of this.

208) The SAI management or the president of the collegial body invite the judge or the member of the collegial body concerned to voluntarily depart from the proceedings.

Explanations

209) Justice is administered independently and the impartiality of physical persons who have taken part in the jurisdictional decision must not be suspected.

210) It is therefore important that judges who prejudged or simply appear to have prejudged a case that the jurisdiction must decide, or judges who share with that case or one of the parties any interest, do not take part in the jurisdictional decision.

211) It is desirable that, by a voluntary approach, the judge or the member of the training concerned must depart from the proceedings (deportation procedure).

212) Failing this, the person accountable by law may ask the jurisdiction (or, according to the applicable law, another authority, e.g. the authority presiding over or directing the SAI) to dismiss the judge or the member of the relevant collegial body of the proceedings (recusal procedure).

213) Finally, depending on the national regulations which differ on this point, the judge or the member of the collegial body concerned may be invited to depart by internal authorities at the SAI.

214) In any event, this question is of fundamental character to the extent that a jurisdictional decision issued by a person who may be convinced that he or she has prejudiced it, that he or she is even indirectly interested in the solution that has been chosen, or of having a common interest or a clear disagreement with one of the parties, may be void. The existence of a code of conduct or a declaration of interest procedure can contribute to the objective of impartiality.

The members of the collegial body, when it is collegiate, are assured that their personal opinion will not be disclosed, outside the legal framework provided for.

Guidelines

215) Where a jurisdictional decision is issued by a collegial body, two situations may arise according to the law and procedural rules applicable in the country:

- **The jurisdictional decision is deemed to be the one of the entire jurisdiction; the manner in which it is drawn up and the differing opinions which have not been retained is covered by the secrecy of the deliberations;**
- **Or, mention is made of the unanimity or majority with which the jurisdictional decision was obtained; in the event of a majority, it is then possible for minority members of the collegial body to make known, under certain conditions of form or substance, regulated by national law, the reasons for their dissenting opinion.**

216) In both assumptions (absolute respect for the secrecy of the willful, regulated possibility to publicise a minority opinion), the rules internal or external to the SAI define the confidentiality obligations of the members of the collegial body respecting the following principles:

- **until the decision is made official, the judge or members of the collegial body are bound to secrecy and keep their opinion confidential;**
- **After this hearing and once the court decision is made public, the members of the collegial body comply with the rules that guarantee respect due to the authority of *res judicata* (" *res judicata* ") and impartiality of the jurisdiction.**

217) In all hypothesis, the judge or members of the collegial body refrain from commenting publicly on the jurisdictional decisions in which they have taken part.

This requirement of impartiality also applies to the entire instruction or investigation process, but in appropriate manner. If the instruction or investigation preceding the jurisdictional decision is biased, it is the quality of the jurisdictional decision that may be affected.

Guidelines

218) The requirement of impartiality also concerns, but in different ways, the instruction or investigation phase that precedes jurisdictional decision-making.

219) The rules specific to the SAI or the statute of judges provide that instruction or investigation likely to lead to a jurisdictional decision may not be entrusted to persons who may be accused of:

- **not to be impartial;**
- **have an interest, direct or indirect, in the conduct of the instruction or investigation;**
- **To have a relationship of kinship, friendship or alliance, or, *a contrario*, enmity or mistrust, with one of the persons directly concerned by the instruction or investigation.**

220) This requirement may be graduated depending on the share of authority they hold and the influence they actually exert on the direction of the management of investigation. The requirement of impartiality is maximum with respect to those who direct the instruction or investigation.

221) Where there is a Public Prosecutor's Office/Prosecuting Service, it is a party to the proceeding. Consequently, it is not required that he demonstrate his impartiality. He is deemed to act in the interest of the law, in the service of the general interest: it participates in the proceedings through its requisitions (proceedings), opinions or conclusions, but does not directly participate in the jurisdictional decision.

222) An instruction or investigation is carried out on a charge and discharge basis. The persons in charge of the instruction or investigation must not neglect or dismiss any argument or evidence capable of proving the responsibility of one of the persons, natural or legal, involved in the procedure or their co-responsibility, or *a contrario* to exempt him from his responsibility.

Explanations

223) The requirement of impartiality, during the instruction or investigation phases that precede jurisdictional decision-making, is of the same nature as that of the hearing and deliberation that precedes the publication of the jurisdictional decision. The persons in charge of the instruction or investigation are considered as impartial, having refrained from previous positions on the case and free from conflicts of interest. They refrain from participating in the instruction or investigation when the risk of partiality appears to them to be too high and the SAI authorities, when aware of this risk, avoid entrusting them with these responsibilities.

224) However, the requirement of impartiality manifests itself differently.

225) In fact, if a jurisdictional decision rendered by a court whose impartiality is not manifest, is void as an immediate sanction, the sanction of an instruction or investigation, which would not have been carried out on the charge or in the course of a hearing, will give rise to an explanation caused by the person accountable by law in the course of an contradictory procedure or during a hearing. In the event of a lack of impartiality affecting the instruction or investigation and found by the collegial body, the latter may then remedy it by ordering an additional instruction or investigation.

VIII. Effectiveness of jurisdictional activities

Reminder of INTOSAI-P 50 (Principle 8) :

The SAI must ensure that exercise of jurisdictional activities leads to notified and implemented judgement. The sanction of the personal liability of the litigant must be effective.

The SAI must notify its decision to the parties concerned and the authorities in charge of its implementation.

Guidelines

226) When a SAI performs a jurisdictional function (see Chapter 1 Introduction), the measures it orders, with the authority of *res judicata* (" *res judicata* "), have the character of decisions.

227) The drafters of the jurisdictional decision handed down by the SAI ensure that it specifies whether it definitively decides the point of law (recognition of liability, sanction, etc.), or whether it retains a provisional character (application addressed to one of the person accountable by law, request for further instruction or investigation, provisional measure or "before right" decision).

228) It is up to a specialised administrative department of the jurisdictional SAI, usually referred to as the Registry, to receive the jurisdictional decision, to register it and then to notify it promptly (see chapter on principle 6, on the right to a fair trial).

Explanations

229) The measures ordered by a SAI in the exercise of its jurisdictional mission are genuine decisions, not mere recommendations or proposals. The implementation of a judgement is the action to put its provisions into practice.

230) A jurisdictional decision is enforceable when it is immediately applicable.

231) A decision is not enforceable, for example, when it orders a purely precautionary measure or a measure of instruction, or when it has the character of a judgment "before right".

232) In SAIs where contradiction with the persons accountable by law is not ensured in the context of a public trial (public hearing), the contradiction is ensured, within the framework of a written procedure by means of the successive notification of several judgments or jurisdictional decisions which are only of a provisional nature, until the final jurisdictional decision is issued.

233) This is why the definitive or enforceable nature of a jurisdictional decision of the SAI is clearly inferred from its reading.

Guidelines

234) In order to be executed, i.e. to ensure its effectiveness, any judgement is notified in advance by the competent service of the SAI to all persons concerned (particular person accountable by law, stakeholders) as well as to the authorities, administrative services or persons legally responsible for the implementation of the decision. Proof of this notification is approved and recorded.

235) Suspension of implementation of the decision is possible in the event of appeal and re-examination of the case. The procedures for its implementation are organised by the law of each country: the filing of an appeal does not always automatically result in a suspension of execution and, in this case, it must be the subject of a reasoned request from the author of the appeal. In any event, the implementation of a jurisdictional decision of the SAI is delayed until the expiry of the time limit for the exercise of a means of appeal.

Explanations

236) In the absence of proof of notification, no time limit for appeal may be opposed to the person accountable by law. Once notified, the judgement may be enforced, provided that it is enforceable.

237) The time limit for bringing an appeal begins to run only from the date on which the notification is certain. A suspension of execution of the decision, in the event of an appeal, does not constitute a universal rule: in many countries, such a request must be seriously reasoned and addressed to the jurisdiction that will rule on the appeal, and which may or may not grant such a suspension.

238) Some jurisdictional SAIs do not have a legal mandate to enforce their own decisions. This is, moreover, the case of most ordinary law jurisdiction, which are not themselves responsible for the enforcement of their decisions.

239) Most of the decisions issued by the jurisdictional SAIs, which have the character of sanctions, have an exclusively financial translation, either in the form of damages or financial compensation either in the form of fines or financial penalties, or in a mixed form in which the penalty has a compensatory purpose but the amount of which is disconnected from the reality of the damage which may be incurred.

240) Exceptionally, sanctions may have an impact on the professional career of those recognised as responsible. Therefore, a specialized unite from SAI as , which may be attached to the Ministry of Finance (Treasury), or to any other authority designated by the law of the country has the responsabilité to implement financial measures. Exceptionally, it may be the public administration or entity, the legal person for whose benefit the jurisdictional decision has been made, which may be responsible, itself, for the recovery of its claim from the person or persons sentenced to pay an amount (injury or penalty).

241) It is therefore important that the competent department, in order to recover, if necessary, the sums due by the convicted person(s), be officially informed of the jurisdictional decision which it ensures the implementation.

242) Conversely, as a result of a dismissal of the case (or discharge), it is necessary to return to the person accountable by law the sums which would have been the subject of an early forced payment (e.g. following a precautionary measure ordered by the jurisdiction).

The SAI, which does not have a legal mandate to enforce its own decisions, must ensure that its decision has been executed, with the assistance of the competent public authorities, and have adequate means to do so.

Guidelines

243) The implementation of the jurisdictional SAI's decision, except where the decision is set aside or amended as a result of an appeal, is a right for the entity or creditor (to whose benefit the decision was issued, or to whom the proceeds of the penalty will be paid) and an obligation for the person(s) who are entitled to pay the same amount.

244) It provides an additional guarantee of the proper use of public money in view of the financial public order.

245) Although the SAI is not directly responsible for the implementation of its jurisdictional decisions, it seeks to inform itself, by any means at its disposal, of the manner in which its decisions are to be carried out, with the authorities or services responsible for the recovery of the sums ordered by it to be paid.

246) The SAI may make public the information it obtains on the implementation of jurisdictional decisions it has issued.

247) The SAI, by virtue of its general mandate for the audit of public management, may make public any failures or shortcomings of the authorities or services responsible for the recovery of the sums charged to the convicted persons accountable by law, which it would find following an audit of the regularity and performance of those public authorities or services.

248) Where it exists, the Public Prosecutor/Proceedings Service may use its own communication power for the same purpose. In particular, it may refer the matter to the administrative or judicial authorities in a position to put an end to such dysfunctions.

249) If it is not directly in charge of the implementation of the jurisdictional decisions it takes, the jurisdictional SAI has in certain cases legal prerogatives to influence the course of such implementation. This is the case when:

- **The SAI has been given the legal mandate to give a public official its financial or accounting management (the quitus is delayed until the execution of the decision);**

- **The SAI pronounces a periodic penalty payment which is due by the convicted person accountable by law, until the execution of the decision.**
- The SAI sets a deadline for the execution of the professional sanction

Explanations

250) Although it is not legally responsible for directly implementing measures for the implementation of its jurisdictional decisions, which are most often of a financial nature, the SAI cannot ignore an issue whose proper functioning guarantees financial public policy.

251) Generally speaking, the right to implementation of a judgement is one of the fundamental aspects of the right of access to a jurisdiction (see chapter on principle 6).

252) If it is not spontaneously informed by the authorities or services specialised in the recovery of the sums charged to the persons accountable by law, the conditions under which its decisions are finally executed, the SAI seeks actively such information from the same authorities or services.

253) This requirement is the minimum transposition, in the exercise of the SAI's jurisdictional powers, of the obligations imposed on the controlled entities to inform it of the follow-up to its recommendations following a control or audit.

254) However, this obligation becomes an overriding necessity, since it is a matter of informing the SAI of the actions actually reserved for its decisions with the authority of res judicata.

255) If the authority or service responsible for carrying out the implementation of the SAI's jurisdictional decisions fails to comply with its obligations with due diligence (recovery of the sums charged to convicted litigants and/or insufficient information from the SAI on the implementation of its decisions), the SAI management may use the right of communication or the general supervisory powers of the SAI (audit of the regularity and performance of public management), in order to make known such failures publicly.

256) Finally, in the legislation of several countries, certain legal mechanisms allow the jurisdictional SAI to play an incentive role, such as to expedite the implementation of its decisions. This is the case when the SAI has sole jurisdictional activity to find that its decisions have been executed, giving definitive leave of its management to a person accountable by law. The same applies when the SAI may attach a financial penalty payment to its decisions.

The implementation of the SAI's jurisdictional decision is compatible with the legal introduction of practical measures to facilitate and guarantee the payment of the debt of the person accountable by law.

Guideline

257) The implementation of the SAI's jurisdictional decision leaves the debtor person accountable by law free to request the adjustment of the terms of payment of his debt facing to the authority or service in charge of the recovery or the creditor legal person, provided that he respects the framework laid down by law in this matter.

258) The aim of such arrangements is first of all to facilitate the most complete, if not total, implementation of the SAI's jurisdictional decision.

Explanations

259) Enforced implementation of the jurisdictional decision may run counter to the unwillingness of the person accountable by law sentenced to a financial sanction, but also to a real solvency problem.

260) The objective pursued by the service or authority in charge of recovery is to guarantee the effectiveness of the financial sanction whatever its nature.

It is therefore not contrary to the authority of *res judicata* or to the principle of effectiveness of the jurisdictional decision that:

- The debtor person accountable by law may benefit from an averaging of the payment of his debt, if his or her capital situation so warrants and if permitted by law;
- The payment of the debt is partially covered by an insurance scheme, or its equivalent, if the debt charged to the person accountable by law has the nature of damage or compensation;
- The payment of the debt may be the subject of a pardon or amnesty, if the debt charged to the person accountable by law has the nature of a fine or penalty, provided that it is expressly provided for by law.

IX. Accumulation of sanctions for the same irregularity

Reminder of INTOSAI-P 50 (Principle 9):

A person accountable cannot be condemned for the same irregularity to several sanctions of the same nature imposed by the SAI. A person accountable can only be condemned for the same irregularity to sanctions of a different nature imposed by the SAI and other courts if the law so permits.

The same irregularity must not be punished several times by the SAI, or by the SAI and by another jurisdiction, unless the sanctions imposed by different jurisdictions have separate objectives or are permitted by law.

General explanations

261) The general principle is that the same irregularity may not be punished several times by the SAI and other jurisdictions when their decisions are of the same nature and pursue the same objective.

262) A person accountable by law cannot be sentenced twice for the same irregular acts, unless permitted by law and, in principle, because the sanctions are complementary (e.g. a penalty for compensatory loss and another sanction for repressive or disciplinary purposes).

263) The principle is reflected in different legal constraints, depending on the exact nature of the litigation dealt with by the jurisdictional SAI.

Indeed, the main objective pursued by the jurisdictional SAI is

- To cause compensation for loss, by the person or persons he or she claims to be responsible for damage (reparative and compensatory purpose);
- To impose a penalty on the person or persons he or she deems responsible for an irregular act or conduct, or liable by virtue of his or her position (repressive or disciplinary purpose);
- Either a combination of these two objectives (punish and repair).

This distinction is set out above (see chapter on principle 1).

Where the SAI orders a person to compensate for the loss for which he or she is held responsible, the person responsible must not be obliged to pay the same amount twice, as compensation. The entity receiving the compensation cannot be compensated twice for the same loss.

Guidelines

264) Where the legal mandate of the jurisdictional SAI is to determine the liability of one or more persons accountable by law for losses for which it establishes the reality, the SAI ensures, within the limits of the information available to it, at the various stages of the proceedings (proceedings, instruction or investigation, jurisdictional decision):

- That no other jurisdiction or equivalent institution has already issued a decision seeking compensation for the same loss;

- that no other ongoing proceedings could lead to a decision seeking compensation for the same loss.

265) Where another jurisdiction, or equivalent institution, has issued a decision seeking compensation for the same loss, before the proceedings before the SAI have been completed, it is up to:

- the Public Prosecutor/Proceedings Service, where available, to inform the staff and members of the SAI concerned by the instruction, investigation or judgment of the case and to inform them whether the action has become moot;
- the agents or members of the SAI in charge of an instruction or investigation to analyse the decision rendered, to verify whether the entire loss has been compensated in accordance with the decision of the other jurisdiction, and to document this point for the full information of the jurisdictional collegial body
- the single judge or to jurisdictional collegial body of the SAI to declare that the action has become moot or to justify its decision by specifying that all or part of the loss, resulting from the same facts, had not been fully compensated by the decision of the other jurisdiction.

266) Where another proceeding before another jurisdiction or equivalent institution, of which the SAI is not aware of the term, is likely to lead to a decision seeking compensation for the same loss, it is:

- the Public Prosecutor/Proceedings Service, where there exists, to inform the staff and members of the SAI concerned by the instruction, investigation or judgment of the case, of the limitations or scope of the other compensation procedure;
- the officers or members of the SAI in charge of an instruction or investigation to ascertain the exact limits or scope of the other compensation process and to document this point, for the complete information of the jurisdictional collegial body ;
- To the single judge or to the jurisdictional collegial body of the SAI to assess the loss, on the basis of all the elements of fact and the right at its disposal, to order, where appropriate, compensation by a jurisdictional decision ("*res judicata*") and to make, in particular in the text of its decision, any legal provision in order to prevent a single loss from giving rise to double compensation (total or partial), by the same person or persons.

267) The Public Prosecutor/Proceedings Service, where it exists, intervenes at all stages of the procedures in order to facilitate the exchange of information and consultation between all the jurisdiction and institutions concerned.

268) In the absence of a Public Prosecutor/Proceedings Service, the single judge or the presiding judge of the jurisdictional collegial body who issued the decision exchanges useful information between jurisdictions in order to resolve the difficulties arising from competition between several jurisdictional decisions.

269) A mean of appeal (see chapter on principle 5) is open to the benefit of a person accountable by law who would be ordered by a decision of the SAI to have to pay twice the

same debt, or to have to pay a debt that another jurisdiction, or equivalent institution, has charged to a third person.

270) In order to avoid possible conflicts of jurisdictional activity, the Public Prosecutor/Proceedings Service, where it exists, or the management of the jurisdictional SAI ensures that the jurisdictional SAI has its own jurisdictional activity, to the exclusion of any other jurisdiction.

271) As far as it is directly concerned, the SAI ensures, at all stages of the procedures, that compensation for the same loss is not ordered twice or multiple times.

Explanations

272) Where the principal objective pursued by the jurisdictional SAI is remedial and compensatory, it is a question of determining whether one or more persons, involved in the management of an entity that has suffered loss, are liable for such loss and order them to compensate in whole or in part (payment of damages). It is therefore important that, at all stages of the procedures, the jurisdictional SAI be able to ensure that it does not risk taking an enforceable decision whose legal purpose, with the authority of *res judicata*, competes with another enforceable decision.

273) Where it exists, the Public Prosecutor/Proceedings Service contributes to the exchange of information between jurisdictions and on the procedure to be followed. In particular, it ensures, as well as the management of the SAI and any competent person within the SAI, respect for the jurisdictional mandate for which the SAI is exclusively responsible.

274) It is also important that the person accountable by law has easy access to the SAI, at all stages of the procedure, in order to alert them to such situations.

275) Different legal techniques exist to resolve conflicts of jurisdictional activity between jurisdictions and the risks of competing decisions. They generally consist of:

- That is to say, if necessary preventively, that the decision ordering a compensatory payment will not duplicate any other decision having the same purpose and/or the same person accountable by law
- To organise, where concurrent decisions have been taken, a dialogue between the jurisdictions, sometimes with the assistance of the Public Prosecutor/proceedings Service, if any, in order to specify the procedures for the execution of their respective decisions;
- To provide for an action before a third jurisdiction, in order to prevent a conflict of jurisdictional activity from leading to double compensation for the same loss.

Where the SAI punishes irregular conduct with a financial or disciplinary purpose, the possibility that another sanction may be imposed for the same facts is strictly regulated: It must be a sanction pursuing a different object (the principle "*Ne bis in idem*")⁵.

⁵Or "Non bis in idem"

Guideline

276) Where the legal mandate of the jurisdictional SAI is to convict the person or persons it deems responsible for an irregular act or conduct for the payment of a fine or a financial penalty, or to a professional sanction, the SAI ensures, within the limits of the information at its disposal:

- **The compatibility of procedures before its jurisdiction with other procedures before other courts or institutions with a sanctioning power;**
- **The possibility of imposing such a sanction of a repressive nature, taking into account other procedures, pending or completed, before other jurisdictions or institutions.**

277) Where another jurisdiction or institution with a sanction power has imposed a disciplinary or repressive sanction in respect of the same facts as those before the SAI, it is up to:

- **the Public Prosecutor/Proceedings Service, where available, to inform the staff and members of the SAI concerned by the instruction, investigation or judgment of the case and to indicate to it whether the action has become moot;**
- **the officers or members of the SAI in charge of an instruction or investigation to analyse the decision rendered, to verify the compatibility of the two criminal procedures and to document this point for the complete information of the jurisdictional collegial body;**
- **the single judge or to the SAI's jurisdictional collegial body :**
 - **To order the release (Dismissal of the case of sanction) of the persons accountable before the SAI who have been returned to its jurisdiction, if it is *inappropriate* to punish the same facts by different jurisdictions in the light of the provisions in force;**
 - **or justify its sanction in the opposite case.**

278) Where another procedure before another jurisdiction or institution with a sanction power is likely to lead to the imposition of a disciplinary or repressive sanction in respect of the same facts as those before the SAI, the same is the responsibility of:

- **the Public Prosecutor/Proceedings Service, where available, to inform the staff and members of the SAI concerned by the instruction, investigation or judgment of the case and to inform them whether the repressive action before the SAI can be prosecuted;**
- **the agents or members of the SAI in charge of an instruction or investigation to verify the compatibility of the two repressive procedures and to document this point for the complete information of the jurisdictional collegial body ;**
- **the single judge or to the jurisdictional collegial body of the SAI to justify the sanction imposed, in the light of the provisions in force on the recognised possibility of sanctioning the same facts by different jurisdictions, seised concurrently.**

279) The Public Prosecutor /Proceedings Service, where it exists, intervenes at all stages of the procedure in order to facilitate the exchange of information and consultation between all the jurisdictions and institutions concerned.

280) An appeal (see chapter on principle 5) is open to the benefit of a person accountable by law sentenced by the SAI to a sanction, which could no longer be imposed on the same facts.

Explanations

281) The principle, general and universal, remains that the same irregularity is not be sanctioned several times, by the SAI and nor by other jurisdictions or institutions with sanction powers, when decisions are of the same nature or pursue the same objective (the principle known as “Ne bis in idem” or “Non bis in idem”).

282) Where the principal objective pursued by the jurisdictional SAI is to determine whether one or more persons, involved in the management of an entity, are responsible for an irregular act or conduct which it may punish as a repressive or disciplinary jurisdiction, and when another equivalent jurisdiction or institution, also with repressive or disciplinary jurisdictional activity, is seized of the same facts, or has already sanctioned them, it is for the SAI to ensure that, before taking any decision, that the SAI can legally impose a sanction

283) It is also important that at all stages of the procedure, the jurisdictional SAI be able to ensure that it is not in danger of making an enforceable repressive or disciplinary decision with the authority of *res judicata* (“*res judicata*”), which is incompatible with another ongoing, repressive or disciplinary procedure, competing.

284) Where it exists, the Public Prosecutor/Proceedings Service at the SAI contributes to the exchange of information between the jurisdictions and institutions concerned.

285) The legislation of each country, including the legislation governing the SAI, therefore provides whether the accumulating of different sanctions, for the same irregularity and the same facts, is permitted or prohibited.

In principle, the same facts may give rise to compatible sanctions imposed by two different jurisdictions in the following cases:

- Where the purpose of one of the two sanctions is remedial, the SAI may impose a sanction of a repressive nature on the basis of the same facts;
- Where the two jurisdictions have been established with a repressive or disciplinary purpose, but in order to pursue different objectives or to protect distinct interests.

286) If the mandate given to the jurisdictional SAI by the law of the country so provides, the SAI may issue, in respect of the same facts, a jurisdictional decision with a restorative or compensatory purpose and a jurisdictional sanction of a repressive or disciplinary nature.

287) This principle is entirely specific to decisions that may be taken by the jurisdictional SAI.

X. Quality control

Reminder of INTOSAI-P 50 (Principle 10):

The SAI must guarantee the quality of jurisdictional procedures through an efficient and systematic quality control.

The risk of the engagement of the liability of the person accountable by law and the importance of the effects resulting from the jurisdictional decisions of the SAI fully justify the establishment of quality control, both effective and adapted to the specificity of the jurisdictional function, in the form of an “integrated quality control” linked to the proper performance of the procedural acts prescribed by normative provisions.

Guideline

288) The quality control of the exercise of the jurisdictional function within a SAI, to be organized according to the national legal framework, results from:

- scrupulous compliance with the rules of law applicable to the whole procedure, i.e. to the succession of its necessary acts: opening (referral or proceeding), setting up the file, written and oral hearings of adversarial procedures, deliberate by the judge (judges), exercise of means of appeal and publication of the judgment for implementation;
- verification of the reliability of the proof gathered at the time of instruction or investigation, as well as the soundness of the arguments exchanged
- the relevance of the legal reasoning on which the judgment is based

Explanation

289) The last two controls, on the reliability of the elements of the file and the relevance of the reasoning, are of the same nature as those carried out in the context of a regularity audit. They do not call for additional requirements under the jurisdictional function, however, noting that their failure has a heavier impact on the individual situation of the persons involved in the jurisdictional function than in the audit function.

Guidelines

290) With regard to the quality control of the jurisdictional procedure, all members and staff of the SAI are responsible for its implementation depending on the stage of the procedure at which they are involved.

The following are mainly concerned:

- Members or personnel of the SAI, or attached to the SAI by any link, in charge of the instruction or investigation prior to the jurisdictional decision;
- The authority in charge of opening the instance, i.e. proceedings or referral of the jurisdiction (the Public Prosecutor/Proceedings Service, where it exists);
- The judge or members of the jurisdictional collegial body, in particular the judge who presides over the collegial body, and the member of that collegial body who is responsible for the final drafting of the jurisdictional decision;

- The registry or administrative department of the SAI responsible for the registration of all acts of the procedure.

291) This mechanism specific to the exercise of a jurisdictional function is often referred to as “integrated quality control”.

It is based on the following principle: each of the interveners in a given procedure,

- on the one hand, acts in accordance with the procedural rules applicable to the SAI under the control of all other interveners in the same procedure and under the control of the person accountable by law himself,
- on the other hand, ensures that the interveners who preceded it, during the same instance, have complied with the applicable procedural rules.

Finally, the person accountable by law or any stakeholder has an ultimate quality control by exercising means of appeal against the jurisdictional decision affecting him.

292) Where the procedure have been initiated (e.g., where, on the initiative of an act of the Public Prosecutor/Proceedings Service), the instruction or investigation that follows, entrusted to magistrates or investigators, makes it possible to determine whether the registry or misconducts, identified by the perpetrator of proceedings, are properly substantiated in fact and in law.

293) At the conclusion of the instruction or investigation, a unique judge or a jurisdictional collegial body, a separate authority from the magistrates or investigators who have completed the investigation, follow up the procedure in order to decide on the action to be taken:

294) The unique judge or jurisdictional collegial body ensures the quality of the instruction or investigation that has been conducted.

295) When the decision is given collegially, all members of the collegial body have access to the file established at the conclusion of the instruction or investigation; one of the members of the collegial body is particularly in charge of ensuring the quality of the instruction or investigation, the preparation of the case and the final jurisdictional decision.

296) The Public Prosecutor/Proceedings Service, where it exists, also intervenes in the procedure after the instruction or investigation phase,

- in certain hypothesis , in order to decide whether to discontinue or continue the procedure, at the end of the instruction or investigation;
- in all cases, by publicly expressing its analysis of the facts and the rule of law to be applied to them and on the decision to be taken by the jurisdiction and, if provided for, at the public hearing.

On this occasion, the Public Prosecutor ensures in depth the quality of the instruction or investigation that has been carried out.

Explanations

297) Any significant error or omission in the procedure may lead to the annulment of the jurisdictional decision: consequently, it is necessary to ensure, at each stage of the procedure,

that no procedural error (procedural defect), omission or insufficiency compromises the legal value and, consequently, the effectiveness of the final jurisdictional decision.

298) Conversely, when the jurisdictional decision has been rendered and has become final (if necessary after exhaustion of the means of appeal), it has the authority of *res judicata* and produces effects ("*res judicata*"): consequently, when quality control fails in the course of the procedure, it is too late to call into question its intrinsic quality, without prejudice to the merits of the decision.

Quality control covers the different stages of the procedure and instance, prior to the taking of a jurisdictional decision or at the time when it is rendered: however, the quality criteria are different at the stage of instruction or investigation and at the stage of the judgement itself.

Guidelines

299) The main elements relating to procedural acts, the observance of which guarantee the existence of effective quality control, are described in this Guide together with the Guidelines on Principles No. 1 (principle of legality), No. 4 (prescription of facts), No. 5 (means of appeal), No. 6 (right to fair trial) and No. 11 (reasonable time): they do not give rise to new descriptions in this chapter.

300) In the preliminary phase of the jurisdictional decision-making phase (instruction or investigation), quality control focuses on compliance with the rules of procedure which guarantee the impartiality and completeness of this initial phase of the procedure:

- Prior information to stakeholders on the initiation of the instruction or investigation; stakeholder information on their rights and access to file documents;
- Verification of the jurisdictional activity of the SAI and of the jurisdictional collegial body, in judging the facts prosecuted, and verification that they are not prescribed, in accordance with the rules and jurisprudence in force;
- Diligent completion of investigative measures, which advance the instruction or investigation, in such a way as to:
 - ensure the full and accurate identification of the facts and their correct interpretation in the light of the applicable rules;
 - avoid delays in the instruction or investigation;
- Objective achievement of investigative measures to guarantee that the investigation is conducted "both prosecution & defense";
- Systematic recording, if necessary by a specialised service of the SAI (register, administrative department...) of proof, testimonies and exchange of arguments.

301) Quality control, above all, provides assurance of the legal quality of the jurisdictional decision; The main elements that reinforce the quality of the decision taken are:

- Respect of the procedure laid down for decision-making, including the collegiality of the decision when it is provided for by law;
When the decision is given collegially, provisions specifically provide for the practical arrangements for decision-making (speaking and ordering of votes, mechanism to be followed in the event of the division of votes, the possibility or not of a casting vote,

etc.) and the drafting of the jurisdictional decision (appointment of a member of the collegiality to draft the decision, role of the president of the collegial body, possible role of the registry, etc.);

- The transparency of the decision-making mechanism and the possibility of holding a public hearing (publicity of the discussions), during which each of the stakeholders can inform and express their analysis of the facts and during which the unique judge or each of the members of the jurisdictional collegial body may question the stakeholders, including the representative of the Public Prosecutor/Proceedings Service;
- The possibility for relevant stakeholders to be assisted or represented by a lawyer;
- The possibility of appealing against the SAI's jurisdictional decision before another jurisdictional instance.

Quality control assessment or "quality assurance"

Guidelines

302) Quality assurance, applied to the activity of a jurisdiction, can be defined by all procedural acts, prescribed by legal dispositions, regulatory or normative provisions, systematically implemented in order to guarantee that the quality control of the procedure functions properly. The traceability of all procedural acts is intended to give or strengthen appropriate confidence in decisions rendered at the end of the jurisdictional procedure.

303) Quality assurance can be obtained through the analysis and/or publication of the results of the jurisdictional activity (quantitative and qualitative information on case law) and the main data relating to procedural acts (delay of procedures, stock of un adjudicated cases, rates of appeal or annulment after appeal, etc.). The publication of an annual report incorporating the results and data relating to jurisdictional activity, intended for Parliament or public authorities and citizens, contributes to quality assurance.

Explanations

304) It is recommended that the SAI's annual activity report contains specific information on the exercise of its jurisdictional functions, otherwise it will be ignored or depreciated by public authorities and citizens.

305) The publication of indicators on jurisdictional procedure and their evolution contributes to the measurement of the performance of the SAI. It may make it possible to highlight whether reforms to existing legislation, procedures or means made available to the jurisdictional function appear necessary. However, information may not be used alone for assessing the quality assurance of jurisdictional activities. For example, the information based on the high rate of appeals is not sufficient to assess the quality of the judgments or the quality of the jurisdictional process as a whole since an appeal is a legally recognized right and can be used freely by anyone who is entitled by law. On the other hand, the high share of appeals filed on the grounds of non-compliance with the jurisdictional procedures in the appeal rates can be an important indicator.

Guideline:

306) Several general mechanisms may be adopted by the SAI to contribute to the effective evaluation of measures relating to the quality control of jurisdictional activity:

- **The SAI management may establish an independent internal audit or inspection service located with it;**
- **The SAI may invite another independent entity, such as another SAI, to conduct a review of all or part of its organisation, procedures and methods in the jurisdictional function (including quality control and evaluation of this last one);**
- **The SAI may freely engage in a voluntary “quality approach”, if necessary sanctioned by a certification mechanism by an external authority, concerning the operation of one of its administrative services contributing to the smooth conduct of the jurisdictional activity (e.g. the Public Prosecutor/Proceedings Service, the Registry or the administrative department responsible for the registration of the acts of the procedure).**

Explanations

307) The internal audit or inspection department (sometimes) located with the SAI management is independent of the persons of the SAI responsible for the jurisdictional function. It may conduct its verifications periodically or exceptionally, by referring to existing rules of procedure and by taking a significant sample of cases. It may propose amendments or improvements to the rules of procedure. Its reports are generally not public.

308) The conduct of a peer review on the jurisdictional function is entrusted to a jurisdictional SAI. A SAI without jurisdictional activity would have to make a prior investment too high to discover and understand the jurisdictional function before being able to monitor the quality of its procedures.

309) Quality approaches with external certification may be entrusted to an institution specialising in quality standards, such as the ISO 9000 series. In order to be certified, jurisdictional procedures must first comply with such benchmarks, such as a quality manual, a quality control device, a risk analysis, documented processes and procedures, relevant and informed indicators, and user satisfaction surveys. Certification is granted for a fixed period of time and may be renewed following external audits. A quality certification of a jurisdictional function is an essential guarantee of the credibility and professionalism of the SAI which is useful to the persons accountable by law and to all citizens.

310) The evaluation may then focus on jurisdictional procedures but essentially from a formal, methodological or organisational perspective (regularity of procedures, reasonable delay, etc.).

311) On the other hand, the assessment cannot concern the "fundament" of the decisions, nor the quality of the case law, which would undermine the authority of *res judicata* (" *res judicata* ").

312) The quality of decisions rendered by a SAI cannot be reduced to the extent of the rate of annulment of those same decisions, as a result of the means of appeal (appeal etc.) exercised by the stakeholders and/or the Public Prosecutor.

Explanations

313) A jurisdictional decision is always rendered in a unique de facto and legal environment.

314) It is re-examined, at least once on the basis of an appeal before another jurisdiction or other jurisdictional collegial body (see Principle n°5). It may, on the other hand, be called into question, following the discovery of new facts, as a result of a change in the rule of law or an evolution of its interpretation, or for a purely formal reason, retaining the same relevance to the substance: these circumstances do not suggest that the decision rescinded or amended was of lesser quality than the decision substituted for it.

Guidelines:

315) Where available, the Public Prosecutor/Proceedings Service may establish a proper mechanism for assessing the quality of its decisions and interventions in the course of the procedure.

316) The Public Prosecutor/Proceedings Service may assess the quality of its decisions to prosecute (at the beginning of the procedure) or the quality of its appeals against jurisdictional decisions (at the end of the procedure),

- **either in light of the final decision made by the SAI or the decision on appeals it has raised (e.g. appeals),**
- **or in the light of criteria specific to the public Prosecutor's Office, such as compliance with the general prosecution policy that it has itself defined or contributes to defining.**

Explanations

317) The Public Prosecutor/Proceedings Service occupies a separate, largely autonomous place within or without the jurisdictional SAI. It is up to it to determine its own control or quality assurance system in accordance with the applicable legal framework. As in the case of the SAI, the latter may relate to its organisation, methods and compliance with the rules of procedure.

318) If he wishes to subject the substance of his decisions and his proceedings policy to rigorous quality control, he has the choice between exogenous criteria, appreciated *ex-post* and linked to the outcome of the procedures he initiated, and endogenous criteria, appreciated *ex-ante* and which he himself has defined.

XI. Judgement in a reasonable period

Reminder of INTOSAI-P 50 (Principle 11):

The SAI must complete the jurisdictional procedure within a reasonable time.

An excessively long jurisdictional proceedings is harmful to legal security and to the accountable persons involved, especially if they are exempt from any sanction at the end of the first instance or appeal proceedings. *The completion requirement of the proceedings within a reasonable time implies that the length of proceedings is proportional to the complexity of the case in question: a complex case may justify longer proceedings.*

An excessive time may be invoked by the person accountable by law and sanctioned by an external authority, which would undermine the interests of the parties, the legitimacy of the jurisdictional decision and the reputation of the SAI.

Guideline:

319) The SAI provides appropriate means to ensure that all persons accountable by law are given justice within a reasonable time at the service of its jurisdictional activity. The reasonableness nature, or on the contrary, excessive, of a time of procedure is not fixed once and for all: it necessarily depends on the number of persons accountable by law/parties in the instance, their behaviour during the instance and the complexity of the case.

320) This principle is a decisive element of the right to a fair trial, all other elements of which have been clarified (chapter 6 –" right to a fair trial "). It helps to define the proper temporality of proceedings before a jurisdictional SAI, in the same way as the prescription guidelines (chapter 4 –" prescription period ").

Explanations

321) Jurisdictional SAI justice, like any justice, is done within a reasonable time. However, it does not necessarily require the rapid conclusion of the jurisdictional process. This principle simply means that the duration of the procedure is not attributable to deficiencies of the SAI, its members or its staff: on the other hand, the complexity of a case, the exercise by the person accountable by law of means of appeal and the conduct of the same person accountable by law can help to protract the procedures, without the SAI being blamed for failing to meet the requirement of "reasonable time".

322) This principle is a very important element of the "right to a fair trial", the other elements of which are discussed separately (see Chapter 6). With the existence of "prescription" devices (cf. Chapter 4), it constitutes the framework of optimal temporality for the exercise, by a SAI, of its jurisdictional functions. Compliance with prescription rules prohibits the prosecution or trial of facts, when they are too old, and the requirement for judgment within a reasonable time is to prevent them from being tried, when it is too late: both principles contribute to bringing the wrongful or harmful behaviour closer to its sanction over time. The following four factors are taken into account in assessing whether the reasonable time limit has been exceeded in a case:

1. The nature of the case,
2. Applicant's attitude,
3. Attitude of judicial or administrative authorities,
4. Rights that the applicant has lost or may lose.

323) This objective is traditionally justified in the light of:

- A requirement for legal security, which is based on the stability of legal situations and the predictability of the interpretation of the applied standard (good information for public management actors on what is permitted and what is prohibited and can lead to a sanction);
- The rights of the person accountable by law, questioned in the proceedings, who is placed in a situation of uncertainty that may prejudice him for, as long as the final decision is not known;
- The interest of the public administration, which expects a prompt response to the loss that may have been inflicted on it.

Guidelines

324) The reasonable duration, or on the contrary, excessive duration of the jurisdictional proceedings is assessed on the basis of the effective referral to the jurisdictional SAI.

This starting point directly influences the calculation of the procedure time, which depends on the legal arrangements for referral:

- **According to the author of the act of undertaking the jurisdictional action**
 - **Referral by a specialised prosecution service/public prosecutor,**
 - **Direct referral by another authority or external person,**
 - **Direct referral by another authority or external person, with the possibility of categorising the referral by the specialised prosecution service,**
 - **Self-referral by the SAI;**
- **Depending on whether an investigation or instruction takes place before or after the action (referral) that initiates the jurisdictional action; the preliminary or prior investigation is then not used for the calculation of the time for jurisdictional proceedings before the SAI.**

325) As to the point of arrival of the procedure, two can be distinguished:

- **The end of the proceedings before the jurisdictional SAI, following the issuance of the jurisdictional decision (regardless of the exercise of any means of appeal);**
- **The final term of the proceedings, including the exercise of means of appeal before another jurisdiction or authority (see chapter 'Appeal and annulment of the judgement), which gives notice of the final outcome of a jurisdictional procedure; this fraction of the overall time limit is not directly attributable to the jurisdictional SAI.**

326) In the case where the applicable procedural rules provide for a period of time for processing all or part of the jurisdictional proceedings, the members of the SAI and all the staff of the SAI concerned are aware of the procedural time limits whose overrun is

considered to be an infringement of rights or interests of the the person accountable by law and the consequences that may result from this on the success of the procedure (e.g. risk of annulment of the proceedings).

327) In the event that there is no prefix period to its procedural acts, the assessment of the procedural time will depend on the case-law of the instances, outside the SAI, responsible for punishing any exceeding the reasonable time of procedure.

328) In order to ensure that jurisdictional procedures are conducted within a reasonable time , the SAI management is putting in place an effective and shared information system on the conduct of all jurisdictional proceedings conducted by the SAI . This device, which uses all the appropriate technologies to guarantee its performance, allows to trace (date and identify) all the steps of each procedure, to measure the duration between each steps of the procedure, to calculate the overall duration of the procedure and to trigger alerts in the event of an excessive period of one step.

329) This information is available to the management of the SAI, as well as to all members and staff of the SAI involved in the proceedings and, where available, the prosecution service/Public prosecutor.

Explanations

330) In the absence of complexity of the case, the rule that prevails is rapidity. A simple case with no element of complexity is able of giving rise to a judgment rendered within a short period of time.

331) The assessment of the procedural period is always relative. It depends on several factors, some of which depend on jurisdictional SAI, while others are inevitable. Consequently, only the former are to be taken into account by the SAI or by the independent authority or jurisdiction responsible for assessing whether the time for the procedures has been reasonable or excessive.

332) The complex nature of a case stems from both the complexity of the facts and the complexity of the determination of the applicable rule of law. The complex nature of a case is manifested both during the possible investigation or instruction phase as well as in the final phase of the judgement of the proceedings (public hearing, deliberation, drafting and delivery of the jurisdictional decision).

333) The complexity may be characterized by the difficulty of conducting investigations, in particular because of a multiplicity of facts and perpetrators, a large extent of the period in question, the availability of evidence or the difficulty in detecting and assessing the responsibilities and/or the loss caused. It also depends on the behaviour of the person accountable by law and the persons involved and their level of cooperation with the SAI during the procedure, in particular in the case of concealment or falsification of evidence. The latter may require interlocutory proceedings that impact the duration of the proceedings.

334) As for the legal complexity, it may arise, for example, from the applicable case-law, such as the lack of clarity or predictability of the applicable rule of law, making it more difficult to consider the case.

335) In all cases, the jurisdictional SAI is equipped with an effective information system that allows the different steps of a procedure to be traced from its point of departure at any time (see *above*).

The proceeding is based on appropriate and sufficiently modern means to reduce its duration.

Guidelines

336) The SAI is responsible for the proper functioning and rapidity of the procedure. The management of the SAI, therefore, ensures that sufficient and appropriate means are provided to ensure the proper functioning of its jurisdictional activity. Unless otherwise prescribed by law, any mechanism or method favouring the handling of cases, which is referred to the jurisdictional SAI, within a reasonable time, is sought and implemented, provided that the jurisdiction can legally dispose of them.

337) The management of the SAI optimises the allocation of the human resources necessary for the diligent completion of the jurisdictional proceedings before it. To this end, it ensures that:

- the appropriate level of professional competence of all staff in charge of hearing cases, as well as judges or members of the jurisdictional collegial body , in charge of judging them;
- the availability of personnel, in charge of investigating cases, and members of the jurisdictional collegial body , in charge of judging them;
- the balanced distribution of the workload among the various staff members, in charge of investigating or instructing cases, as well as between judges and members of the jurisdictional collegial body.

338) The management of the SAI optimises the allocation of the material resources necessary for the diligent completion of the jurisdictional proceedings before it. To this end, it ensures that:

- making available the legal, financial, economic and general documentation necessary for the proper performance of the jurisdictional mission entrusted to the SAI;
- the provision of appropriate material means for carrying out the investigation or instruction required by the procedure;
- the quality and reliability of the computer systems and/or applications used to serve the jurisdictional activity;

- the provision of premises enabling, where appropriate, hearings, public hearings or meetings of deliberation, in appropriate conditions, including security, to be held;
- the safety of the personnel in charge of investigating cases and of the judges or members of the SAI in charge of judging them.

339) The management of the SAI organises itself in order to make available to persons, who carry out the jurisdictional missions of the SAI, a specialised service, or a registry, responsible for:

- registration and monitoring of the various steps of jurisdictional proceedings;
- the keeping of registers listing the bodies, accounts or public officials over which the SAI may exercise its jurisdiction, where appropriate;
- the recording and exchange of documents, notes, briefs or submissions that document the jurisdictional proceedings;
- ensure the reliability of oral testimony;
- the updating of all the data relating to the progress of the proceedings and necessary for the holding of dashboards documenting the SAI's jurisdictional activity (the dashboards are in particular, but not exclusively, intended for the proper information of the jurisdictional SAI's management).

340) Where the management of the SAI is legally responsible for providing the resources available to the prosecution service/Public prosecutor, it ensures under the same conditions that it is provided with the human and material resources necessary for the diligent performance of the procedural acts expected from it.

341) In return, the Public Prosecution Service/Public prosecutor diligently carries out the acts required by the proceedings which depend on its initiative and has a dashboard enabling it to ensure that the steps of the jurisdictional procedure, in particular those which fall under its jurisdiction, are kept within a reasonable time.

342) The means are adapted to each particular case. In the interests of a good economy of justice and a logic for the rationalisation of costs, the means used in each case are proportionate and relevant to ensure the shortest time between the beginning of the instruction and the delivery of the final judgement. Therefore, a complex case will justify mobilising more members of the SAI, using more tools and resources, and thus require a longer procedure.

Explanations

343) The share of liability for the reasonable duration of jurisdictional proceedings, conducted under satisfactory quality conditions, is based above all on an objective criterion: sufficient allocation of means.

344) An optimal distribution of resources requires that the management of the SAI allocate to all the services/departments concerned, by the jurisdictional activity, the human, financial

and technological resources, assessed from a quantitative and qualitative point of view, both necessary and sufficient for the proper performance of all the acts required by jurisdictional procedure, from the instruction or the pre-trial of a case to the delivery of the jurisdictional decision.

345) From the point of view of the human resource, the fundamental points lie in the competence or professional experience and the availability of the persons involved in the instruction and judgment of the case. These are two powerful engines that help speed up the procedure.

346) Among the material resources, the quality of the documentary resource and the reliability of the computer applications mobilised are two priorities.

347) Finally, it is essential for the diligent performance of procedural acts that the security of the natural persons in charge of the instruction and judgment is guaranteed: the authorities responsible for the prosecution, persons in charge of an investigation or instruction, judges or members of the jurisdictional collegial body must be protected from threats and pressures of any kind.

348) The technical means, particularly in the area of communication of the SAI, must be functional. The information of the parties, the communication of the findings and the procedure must be carried out by means of modern, if possible electronic means. It is the SAI's responsibility to provide such means.

The reasonable time of the proceedings extends to the judgment which concludes that the persons in question have no responsibility or liability, and by the enforcement of the corresponding sanctions.

Guideline

349) The time to be taken into consideration, in order to assess whether the length of the proceedings was reasonable or excessive, ends (at first instance) by the time when the persons accountable by law receive the communication of the decision rendered by the SAI. The judge or the jurisdictional collegial body in charge of the drafting, finalisation and delivery of the jurisdictional decision ensures that the decision is clear, legible and unambiguous, in order to enable its implementation or the enforcement, by the various parties involved, of a means of appeal.

Explanations

350) In return for the engagement of his or her responsibility, the person held responsible, the public body, for which the decision is rendered, and the prosecution service/public prosecutor, if he is a party to the proceedings, cannot remain in a situation of uncertainty at the end of the jurisdictional proceedings.

351) These different persons are fully informed about the meaning of the decision taken, including the extent of the responsibilities retained, the obligations or sanctions that have been decided by the jurisdiction, as well as the reasons for the decision.

Accountable persons have the right to compensation for damages caused by an excessively lengthy judgement process, if provided for by national legislation.

Guideline

352) Where a SAI's person accountable by law considers that the duration of the procedure to which he or she was a party has been excessive and that responsibility lies with the SAI, he may refer the matter to an authority, jurisdictional or administrative, and independent of the SAI, which may examine the time of the proceedings on the basis of specific criteria relating to the complexity of the case and determine, impartially and objectively, whether the loss suffered by the person accountable by law concerned justifies compensation.

353) Where such a claim for compensation is filed, the jurisdictional SAI gathers evidence to demonstrate that it is not the length of proceedings, if considered as not reasonable. If it does not have convincing arguments to present before the jurisdiction or authority responsible for deciding the claim for compensation, the SAI learns from it and take measures to eliminate the cause or causes of the excessive time which it is accused of, and to avoid the replication of such malfunctions.

Explanations

354) An excessively long procedure reflects a malfunction in the functioning of the SAI that may cause harm to the persons involved and, more generally, to the parties. They may then be granted a right to restitution or compensation, which may take various forms, depending on the laws applicable in each country. The SAI's information system enables it to accurately document the causes of the actual excessive time alleged by a person accountable by law and, where appropriate, to provide evidence that the SAI is not the cause.

355) In practice, the application of the accountable person in question is examined by a jurisdiction, which may be national or supranational, an administrative or regulatory authority with real autonomy, whose independence and impartiality will be recognised. In some legislation the decisions of this instance may themselves be subject to means of appeal. Finally, in some laws, it is possible to prosecute for disciplinary misconduct, or in the context of a liability action, the staff of the jurisdictional SAI, whose personal conduct would have been directly responsible for the excessive length of the proceedings, with the exception of any other cause. Under the applicable legislation, compensation for loss caused by an unreasonable period of time may be partially charged to the operating budget of the jurisdictional SAI where the complexity of the rules of procedure and the behaviour of the person accountable by law are not the only reasons for that period. Although the practical application of such an orientation can be complicated, it has at least the merit of leading the way and brandishing a scarecrow that can be effective.

XII. Communication to the public

Reminder of INTOSAI-P 50 (Principle 12):

The SAI must ensure that judgments, as any judicial decision, are made publicly, respecting the secrecy and restrictions linked to confidentiality that are legally mandatory , as well as the protection of personal data.

Justice is done in the name of a sovereign principle and therefore every citizen must be able to be informed of its daily exercise directly or via media.

Guidelines

356) As far as possible and except in specific cases provided for by applicable law (especially technical litigation or the need to provide for a closed-door hearing), the jurisdictional decisions of the SAI is made at the end of a public hearing (see guidelines in Chapter 6 – Fair Trial).

357) Public hearings are posted on-line and/or at the entrance of the SAI seat, indicating at least the date and time of the hearing and the subject of the case.

358) In order for a jurisdictional decision to be enforceable, it is communicated by the competent service of the SAI to all persons accountable by law and stakeholders in the proceedings.

**359) The SAI also communicates its jurisdictional decisions to public authorities, whom the law designates as binding addressees of its decisions.
All decisions made by a jurisdiction constitute its case law.**

360) However, because judgement are made, on behalf of a higher order and in order to render service to society as a whole, those made by a jurisdictional SAI are also accessible to all persons who wish to have access to its case law.

361) At a minimum, copies of judgement made by the SAI is made available, upon request, to a competent department as a result of the law, or designated by the SAI management.

362) In addition, the jurisdictional SAI make its case law available to the widest public by any means it deems appropriate: official publication, online publication (Internet access), publication of a collection of case law, or even communication to the press, if not prohibited by applicable law.

363) The SAI communicates the results and outlines of its jurisdictional activity in a periodic report on its activities which is made public. The rate of publication of this report is, in principle, at least, annual.

364) In the interests of respect for individuals, and in accordance with the applicable rules of law, the SAI anonymizes all or part of the decisions of its case law that it puts online, communicates to third parties or publishes in an official collection, journal or bulletin.

365) The anonymization of decisions made public must not impair their clarity or legibility.

Explanations

366) Before considering a specific communication policy, dealing with knowledge of the SAI's jurisdictional activity and the dissemination of its case-law, it is important that the SAI renders its justice transparently: According to a principle that is now universally widespread, not only must justice be done ("*justice has to be done* "), but it must also be visible to all that it is done ("*justice has to be seen to be done* ").

367) Second, knowledge of the jurisdictional production of the SAI is part of the patrimony of all citizens : it is made available to them. However, precautions are taken to ensure that the dissemination of caselaw does not loss the reputation of individuals beyond what is required or permitted by law.

The jurisdictional decision must be brought to the attention not only of the parties directly concerned, but also of all public management actors and all citizens. The principle of free access by the public to the judgments that have been rendered is the result of the nature of the jurisdictional activity, which requires more than simple disclosure of an audit report.

Guidelines

368) The management of the jurisdictional SAI establishes an appropriate communication in order to make known its case-law and give it the widest hearing. This communication is addressed to:

- to the community of managers, administrators and decision-makers responsible for managing the public funds subject to the judgment, with the aim of disseminating regular practices, making non-compliant and risk-based practices widely known;
- public authorities, ministerial authorities, independent administrative authorities, other jurisdictions, more generally all institutions concerned with the regularity and probity of public management;
- To all citizens, directly or through the media;
- where appropriate, foreign SAIs, in particular with jurisdictional powers, for comparative purposes.

369) The purpose of this communication policy is both informative, deterrent and pedagogical.

370) In order to make its jurisdictional activity and case-law known to the public as wide as possible, the management of the jurisdictional SAI puts in place the appropriate arrangements for the persons, institutions and the media most capable of relaying them.

371) The jurisdictional SAI increases the reach of its action and contributes to the dissemination of good practices by establishing regular relationships:

- with specialised academic circles, as well as specialised media and journals in the fields of law and public management, as well as the fight against fraud and probity breaches;
- with professional organisations of officials, managers or administrators potentially involved in the SAI's jurisdictional activity;
- with general media and social networks, ensuring respect for all the principles that guarantee the right to a fair trial and the rights of the defense (see Chapter 6).

372) The creation, by the SAI, of a specialised communication service and a documentary service, run by competent staff, contributes to the professionalisation of the dissemination of its jurisdictional activity and its case-law.

373) The creation of a case-law committee within the jurisdictional SAI facilitates the knowledge, analysis, selection and dissemination of its case-law.

374) The management of the SAI, with the assistance of all the personnel in charge of the jurisdictional activity, contributes to the dissemination of knowledge of this activity and of the case-law to all the staff of the SAI.

Explanations

375) It is essential that the cas-law of all jurisdictional decisions issued by the SAI be well known:

- On the one hand, of all persons directly involved in the management of public funds;
- on the other hand, of the widest public: indeed, SAIs that exercise jurisdictional powers respond to the concern that the sanctioning powers, with which they are given, guarantee, to all citizens and taxpayers, the regular use of public funds. The regular and fair exercise of this function must be known to citizens and strengthen their confidence and the legitimacy of the SAI. The latter is liable to the citizens for the judgments it renders on their behalf.

376) Beyond the compensatory/repairing purpose (repairing damage caused by mismanagement) or repressive/disciplinary (sanctioning a misconduct committed by a public manager) of its jurisdictional activity, the exercise of this function by the SAI has an informative virtue, both deterrent and pedagogical.

377) Through the dissemination of its caselaw and the comments it generates, the SAI contributes to a better understanding of regular management practices.

378) The caselaw presents itself as a collection of practical cases: the more it is known to public managers, officials of public administrations and bodies, but also citizens, users of public services, the more it prevents the repetition of irregularities, by deterring the former from renewing critical administrative practices and by making known to the wider public, by all means usable, those that are recommended.

379) Finally, the exercise, by a SAI, of a jurisdictional activity, makes it no longer a simple observer of critical practices which denounces them following a compliance audit report, but

rather an authority which also becomes a source of legal norms. Its interpretation of the rule of law in its area of competence is a case law and is gradually incorporated into the “corpus” of the standards of regular management that are binding on all those responsible for the management of public funds.

380) The analysis of this caselaw, as it arises, can be entrusted to an ad hoc committee established by the SAI within it. This committee, which may be composed of staff of the SAI involved in the investigation, instruction and judgement functions, is notified of all jurisdictional decisions made by the SAI, as appropriate with the advice of the Public prosecutor/Proceedings Service. It analyses decisions, classifies them, highlights their consistency – or where appropriate their differences – and comments on them to facilitate their understanding and interpretation. This committee regularly communicates the results of its work within the SAI for internal training purposes, and can communicate it to the outside world.

381) The collaboration of professional organisations, academic circles and, more generally, the media may also be sought. The case-law committee may act as a focal point for this purpose. Moreover, the use by the SAI of its documentary service and its internal and external communication service contributes to this objective.

382) Members of the SAI in charge of the jurisdictional function may, in their personal capacity or as representatives of the SAI, contribute to the knowledge and understanding of the case-law of the SAI through articles of analysis and commentary in generalist or specialised journals, online publications, or colloquium or seminars open to the public. However, staff of an SAI who have followed a jurisdictional case at the investigation, instruction or judgement stage avoid publicly commenting on the case.

Jurisdictional SAIs can share their decisions and exchange their case law in a specialised instance within INTOSAI.

Moreover, the jurisdictional proceedings is compatible with the rules governing the confidentiality or restriction of public information and the protection of personal data unless the public interest justifies its limitation.

Guidelines

383) The communication from the SAI on the exercise of its jurisdictional mission concerns the results of its activity, whether quantitative or qualitative, as well as the case law it produces. The SAI’s communication does not relate to the part of the proceedings that corresponds to an investigation, instruction or “pre-trial” of the file before its judgment.

384) This phase of the proceedings is protected by the secrecy of the instruction, which guarantees its confidentiality, both in the interests of the persons concerned and in the interests of the proper administration of justice.

385) As a result, all staff of the SAI involved in the jurisdictional proceedings, in charge of prosecution, investigation or instruction, pre-trial and drafting of the final decision, takes

all necessary measures to preserve the evidence and to protect the data necessary for the manifestation of the truth and the security of the proceedings.

386) In any event, the SAI makes every provision, in its communication policy, in order to preserve its impartiality (cf. Chapter 6 “Impartiality of Judgment”).

Explanations

387) It is essential that the investigation or instruction phase, the exchange of arguments on the charge and the defense, which precede the judgement phase, be surrounded by confidentiality and protected by secrecy, all the more so.

- that, at the end of this preliminary phase, justice will be done transparently, at the end of a public trial, to the extent that it is not prohibited by law,
- and that the decisions of the jurisdiction will necessarily be made known to the public.

388) This rule of secrecy of instruction and confidentiality of proceedings up to any public trial is intended to guarantee:

- on the one hand, the right to privacy and the preservation of the reputation of the persons in question, during the whole phase of the jurisdictional decision. This rule does not preclude the right of the accused to freely express their analysis of the facts, but under their single responsibility;
- on the other hand, the preservation of evidence and data relevant to the manifestation of the truth and the quality of the investigation or instruction, enabling an indisputable jurisdictional decision to be taken.

389) Furthermore, it is recalled that the communication from the jurisdictional SAI ensures its impartiality. Those who have taken part in a judgement are either held in secrecy of proceedings or express themselves within the framework strictly provided for by law (cf. Chapter 7 “Impartiality of Judgment”).

ANNEX :

1. Glossary:

Guidelines	INTOSAI Definition
Collection of case law	Publication of jurisdictional decisions rendered by a court; this publication may be exhaustive or selective (i.e. limited to the main decisions considered to be of interest from the point of view of their exemplary nature or the interpretation of the rules given by the judges), with or without comments.
Legal Framework	All the legal and normative provisions concerning a situation, an organization or a procedure.
Jurisdictional	<p>All that relates to a jurisdiction or the act of judging.</p> <p>In this guide the term is used, in four closely related cases, to characterize :</p> <ul style="list-style-type: none"> - The jurisdictional SAI (The SAI that has been given the mandate or competence to make jurisdictional decisions, as or like a court). - The jurisdictional decision (the decision of a court and, specifically, the final decision rendered by the jurisdictional SAI that has the "res judicata") - The jurisdictional procedure [The set of rules legally or by regulation provided for the proper conduct of the trial leading the court to render a jurisdictional decision; also referred to as an inquiry or investigation for jurisdictional purposes]. - Jurisdictional competence, missions or activity (The fulfilment by the SAI of the mandate it has received from the law to act as or like a court)
Criminal jurisdiction	A jurisdiction in charge of pronouncing sanctions against natural or legal persons suspected of having committed infringements of a legally defined rule (as opposed, in principle, to the notion of "civil jurisdiction" in charge of deciding disputes concerning rights or obligations of a "civil" nature, for example, compensation for damage.
Legality of the proceedings	Conformity of a procedure followed with the law and legal texts that govern it
Liability regimes	A set of rules applicable to the liability of a person before a court
Litigant (to the jurisdictional procedure)	A natural or legal person who has a direct interest in the jurisdictional procedure: in particular the person or entity whose management or acts have been the subject of presumed irregularities; it may also be the legal person for whom the jurisdictional decision is rendered.
Single judge	The authority in charge of rendering and pronouncing the jurisdictional decision is composed of a single natural person (as opposed to a "collegiate" formation, i.e. composed of several natural persons (generally at least three).
Jurisdictional collegial body	A group of several natural persons constituted to judge a case and render a jurisdictional decision. Some panels may consist of a single judge.
Non-removability	The impossibility of terminating the functions of a person without his or her consent, except in the case of serious misconduct recognized at the end of a legal procedure. This princip is the most important guarantee of the independy of Justice and judges.

	Protection of judges from arbitrary decisions.
Act of referral	A legal act that submits a presumption of irregularity to the jurisdictional review of an SAI
Triggering/initiating jurisdictional proceedings	An act that initiates legal proceedings before the SAI (see Action).
Audit phase (non contentious phase)	A process of compliance audit, investigation or inquiry which precedes the initiation of the actual proceedings (see Proceedings).
Pre-trial phase	A non-contentious phase that can be entrusted to one or more specially qualified individuals in order to gather the elements that will make it possible to define the scope of a dispute or a grievance. Compliance audit process which is a priori oriented towards the detection of facts likely to allow the engagement of responsibility of one or several persons before the jurisdictional SAI.
Investigation phase	Synonymous with the preliminary inquiry phase, when the person(s) in charge of gathering the elements that will enable the definition of the scope of a dispute or grievance, is not necessarily a judge. A compliance audit process that is not necessarily oriented a priori towards the detection of facts that could lead to the liability of one or more persons before the jurisdictional SAI.
Admissibility	Character of a request to the court (Cf. action) whose author (the one who made the request) is indeed entitled and able to act before the court: examples, admissibility of an appeal, admissibility of an argument etc.
Remedies	Generally speaking, an appeal is the act of asking authority or jurisdiction different or not from the one which made the decision to modify it in favour of the applicant's interests.
Appeals	An appeal against a court decision to another court, in order to have the same case retried or to have the regularity of the procedure before the first judges examined by the second court. In many legal systems, the procedure of appeal to a supreme court, which is mainly focused on the review of the correctness of the procedure followed, is called appeal in/cassation.
Cassation	Appeal to a supreme court to challenge the correctness of proceedings before another court (cassation may follow an appeal)
Void the decision	The annulment of the court decision restores the situation as if the decision had never existed.
Means of appeal	Procedure for an action to challenge a judgment
Means of enforcement	Procedure for the implementation of decisions contained in a final judgment.
Compelling elements / elements of proof	Physical or digital documents and testimony to support a claim of fact or law.

Secrecy of the investigation	Protection that covers all or part of the proceedings, in its non-contentious phase, as well as the proceedings in its contentious phase, in order to guarantee the strict confidentiality of the exchanges of the parties or their lawyers, with the persons in charge of the investigation or the inquiry and the judges. The secrecy of the investigation constitutes a protected professional secret.
Dismissal of the case	Jurisdictional decision that the proceedings against a person subject to the law are not justified or that he or she is not responsible for the alleged irregularity or damage.
Enforceable force / enforceable decision	An enforceable court decision or a court decision that is enforceable is a court decision that obliges the execution of the court decision.
Postponement of execution	Provisional suspension of the implementation of a court decision
Precautionary measures	Any measure taken, e.g. in court proceedings, in emergency proceedings, to ensure the preservation of a right or of a thing.
	In court proceedings, a precautionary measure may be taken (by the court or even by another authority during the investigation or inquiry) before the final court decision is given.
Final or enforceable judgment	A decision that no longer contains provisional provisions.
Prejudgment	Acquire an opinion on a case in a phase prior to the jurisdictional procedure, (synonym: form an a priori opinion)
Acts of jurisdictional procedure	Successive legal acts that make up the course of the jurisdictional procedure
Limitations regime	Rules determining the maximum period of time during which an irregularity can be pursued
Proceedings	The course of the jurisdictional proceedings from the beginning (see "action") to the delivery of the jurisdictional decision.
	Some legal systems make a subtle distinction between the jurisdictional proceedings (the investigation or inquiry phase to define the scope of the dispute or grievance) and the contentious proceedings (once the dispute or grievance has been defined), but this distinction is not general.
Action (public action)	The act of initiating the jurisdictional procedure, of bringing the matter before the court. The action may be brought, for example, by the public legal entity that has suffered damage, but more often, in the case of jurisdictional SAIs, by public authorities in charge of good financial order.
	In general, the term "public action" characterizes the power of action available to the legally established body to initiate proceedings before the SAI (public prosecutor's office, public prosecutor's office or public prosecutor's office, etc.).

2. Chronological scheme:

