

Opinion

The role of courts of accounts in the fight against corruption

The exact delimitations of the role of the Federal Court of Accounts in fighting corruption are still under discussion. In its duty to carry out the external control of the Public Administration, the “network of Courts of Accounts”, hand in hand with the legislature, is the eyes of society for the sound management of public funds and policies. Because of its increasingly specialized role - in each part/context/situation of the complex state activity - the Courts translate for the citizens, in an analytical manner, the adequacy of the administrative freedom of managers regarding the respective suitability of the acts in the strict interest of society.

In the case of the eternal economic dilemma of scarce resources, it is compelling that the State acts economically, efficiently and effectively in a governance to produce the best possible results for society. The Courts of Accounts act, after all, to enhance the latter objectives: roughly, whether showing to the administrators the risks, opportunities and recommendations once the favorable conditions to amplify more efficient and effective action are identified; whether in a compliance bias, demonstrating (and punishing) behavior, processes and decisions made on the wrong side of the law and the principles governing public administration.

The corruption of public officials, in this sense, is an intrinsic factor of state inefficiency. While bleeding resources that otherwise would make the public policies and spending more efficient and effective, the State political legitimacy itself is compromised in an unrest that antagonizes “social peace”, idealized in the old days when the Republic was established. Thus, the Courts of Account, as institutions established to monitor broadly the adherence to these Republican interests, control the Public Administration in view of its improvement, being invariably entangled in this whole context of “fighting corruption”.

In fact, corruption is always the result of a failure in the State governance. If public managers must work for citizens - the golden rule of public governance - corruption is the classic management by self-interest or that of third parties.

The issues are: is the state apparatus enough to fight such corruption? Are the control structures efficient? Where are the main risks? Is the regulatory framework consistent with the control needs, without sacrificing efficiency? How to strengthen the control measures to make all this apparatus more efficient?

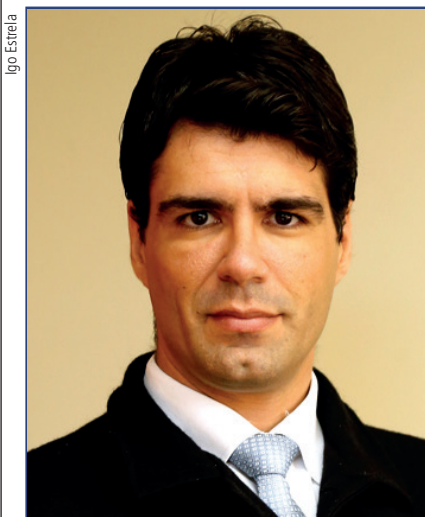
In the international literature on the subject, the fight against corruption can be summed up in the triad of **prevention**, **detection** (oversight) and **accountability** (punishment).

In compliance with the constitutional role of the Courts of Accounts and according to the time of its performance - in concurrent and ex post audits - it is paramount to meditate (and account for results) on the role of TCU in these variables.

Aware of the demands of society for those responses, in terms of strategic initiatives, TCU took two key steps:

- Established the Project Fighting Embezzlement and Irregularities (Projeto Combate a Desvios e Irregularidades);
- Established the Extraordinary Department of Special Operations in Infrastructure - (Secretaria Extraordinária de Operações Especiais em Infraestrutura-Setor de Operações).

The project **Fighting Embezzlement and Irregularities** - created in October 2015 - is headed by the Office of the Coordinator-General for Core Public Management Services and has the support of the Department of Methods and Support to External Control. This action intends to both provide answers to the Public Administration itself in setting a reference to fight fraud and corruption in the management and internal audit area, as well as identify opportunities for improvement of External Control in this area.



Rafael Jardim Cavalcante

Secretary
Extraordinary Department of
Special Operations in Infrastructure

More specifically, the reference aims to map and disseminate best practices in fighting fraud and corruption in the Public Administration. The purpose is to provide answers and optimal activity actions related to the management of ethics and top management position; transparency and accountability of its activities; to the complaints services and investigation procedures, implementation and review of preventive and detective controls; to the role of internal audit and risk management unit, to the punishment of those responsible for fraud and correction of damage; among other actions. In a second stage, the project intends to prepare, under the External Control, regulatory guidelines for conducting control actions focused on fighting fraud and corruption.

Seinfra Operations, likewise, came in a very specific context. Established in January 2016 with 20 admittedly experienced auditors, their first responsibility was to prioritize the inspections and instructions related to “Lava Jato” Operation, which already has more than 50 cases.

The works in the department currently cover Petrobras contracts in the refineries of Comperj, Abreu e Lima and Paraná Refinery (Repar); in addition to the public works, purchases and services of Eletronuclear in the mega project of Angra III. Also included in the scope of Seinfra Operations are investments in thermal companies, probes, international platforms and contracts directly involved with “Lava Jato” Operation.

The audits in these ventures differ from the others not only due to the peculiar social appeal of the matters discussed, but mainly because of the type of information that is the facts to be tried in the proceedings. The different context is reflected in the fact that the judge responsible for conducting the “Lava Jato” Operation shared with TCU information from the investigations. In this background, it is necessary to evaluate how to extract the most out of these processes aimed at the triad of fighting corruption: **prevention, detection and accountability**.

Also, in view of the natural experience in the handling of “unconventional” documents (largely secret), Seinfra Operations is responsible for all the follow up in the infrastructure

area, the Leniency Agreements that might be in negotiation with the Office of the Comptroller General, pursuant to Law No. 12846 / 2013 (Anticorruption Law).

Naturally, before this immersion of information applied to external control, it is urgent to build solid mechanisms, in possession of such data, to perform in a predictive and preventive manner, maximizing the efficiency of control resource allocation based on previously identified risks, in close synergy with the performance of other core business departments of TCU.

For this purpose, the Department was divided into three subunits: a typical Division for analyzing and conducting audits; an information Service for collecting and handling such information; and a Work Group for the specific application of selected information in external control processes.

From the perspective of performance, if in a “traditional” action of control –where there is access to the usual administrative documentation - specialized auditors can eventually identify overpricing and overbillings that can constitute “fuel” for illicit payments, “privileged” documents that both leverage the possibility of identifying such “excess” and enable recognition of those accountable and other irregularities that, otherwise, would be missed.

The establishment of knowhow - and a legal framework to collect and treat such information - extends the bias of “detection” and accountability of fraud. It leverages a broader view (fairer and more effective) of “governance of corruption” where possibly certain public officials are deliberately appointed to produce disastrous results.

With “special” information, sometimes produced by “four hands” with other control institutions - in a sum of expertise – we aim to achieve a gray mass of responsibilities that was formerly impossible. The wide accountability of this network, of course, is far more effective for the Republic, for it catalyzes the extraction of the true roots of governance (corruption or governance) built to produce spurious results.

An example of the potential of such information was demonstrated by the TCU in Judgment 1,990/2015-Plenary, reported by the Hon. Minister Benjamin Zymler in the trial of the Delayed Cracking Unit (UCR)

from the Abreu e Lima refinery of Petrobras in Pernambuco. In that case, a loss which at the time was of around R\$ 150 million, given the treatment of tax information obtained with authorization from the court responsible for conducting the “Lava Jato” Operation, became (still perfunctorily!) an overpricing of almost R\$ 700 million in just one contract.

Similarly, in Judgment 2960/2015-Plenary, the Atmospheric Distillation and Diesel Hydrotreating Units, both from the Abreu e Lima Refinery, a latent loss of R\$ 1.07 billion would be impossible to be meticulously designed without the information collection so authorized by law.

In the Paraná Refinery (Repar), the hon. Substitute Minister André Luís de Carvalho announced to the Plenary of the TCU, in Judgment 2163/2015-Plenary, R\$ 1.3 billion in losses, after re-examining the facts in the face of the “new” procedural context verified with new elements from the processes shared by the “Lava Jato” Operation.

Understanding the need for obtaining and processing information associated with the massive investment in information technology also enabled the production of Judgment 3089/2015-Plenary, reported by the Hon. Minister Benjamin Zymler. With statistical and computerized handling of all contracts from Petrobras involving more than R\$ 100 million, in the Supply Department, the Court warned the agencies responsible for conducting the Leniency Agreements in “Lava Jato” Operation that “the most likely amount” from the loss of cartels in Petrobras was of 17%; or R\$ 8.8 billion in the Supply Department; or, extrapolating to the other contracts, a potential R\$ 29 billion in total losses.

The expectation, with these strategic initiatives, is to offer society measures that have been taken in external control in view of the social and political moment in the country. It is known that it is necessary to account for the possible “reinvention” of control, which is capable of making it more in line with the demand to take action against the pillars of corruption. This issue must be studied and offered to citizens without prejudice of learning from the results presented. Not so much in view of the structural measures already taken, as demonstrated, but mainly in terms of the learning obtained from the results already achieved.