

Auditor General or Court of Accounts



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CONTEXT

Every nation has its own governmental organization, which results from its historical process and the struggle of forces that define the division of power. This division also reflects, to some extent, the cultural characteristics and prevailing values in the society, since these aspects are vectors of great influence in the direction and the formation of a country. However, even in the face of the idiosyncratic diversity that characterizes the universe of nations that currently exist and play a role on the global stage, it is possible to identify governmental arrangements, which seek to answer questions relevant to the stability of public institutions and retain similarity in their function, although, sometimes, they take on different forms.

The classic tripartite division of powers (executive, legislative, and judiciary) has been widely adopted by many countries today, in which legislative and executive powers are typically elected directly by the population. In this arrangement, it is up to the legislature to approve the public budget and up to the executive to comply with the approved budget. It is true that both the legislative and the judiciary also execute their budget quotas, but, in general, the most representative amount of public expenditure is the responsibility of the executive branch.

An issue of extreme importance in this context concerns the control and transparency of public spending. The managers of the *res publica* have the power to decide how public resources will be used and the duty to do so always for the benefit of society, in a transparent and responsible manner. To ensure that these ends are achieved, two predominant models of external control have been observed. One based on the Anglo-Saxon tradition (Westminster Model), often identified as Auditor General, adopted in countries such as the United Kingdom, Canada, the United States, and another one rooted in the Latin tradition, such as Italy, France, Portugal, and Brazil, called the Court of Accounts.

I have been an external auditor at the Federal Court of Accounts for over 26 years. I also had the opportunity to know well the Auditor General system, mainly on the exchanges I attended in the UK (National Audit Office - NAO, London) and in Canada (Office of the Auditor General of Canada - OAG, Ottawa), as well as frequent participation in IDI (Intosai Development Initiative) activities and events. A very interesting question arises: which one of the two models is the best? Perhaps even more important is the debate about which model is the best for our country. I would like to offer my contribution to this discussion, from a comparison between the operation of the Auditor General of Canada (OAG) and the TCU.

IN CANADA

The position of Auditor General of Canada is held by a professional chosen by the Parliament for a ten-year non-renewable mandate. The occupant enjoys broad independence of action, translated into the freedom to choose areas or subjects that will be audited, to recruit his/her team, besides the guarantee of access to all documents and information in the scope of the federal government of Canada. The result of his/her work is the audit reports covering two types of audit: financial audit, which also examines aspects of legality; and performance audit, following the traditional concept embodied in the three elements of economy, efficiency, and effectiveness.

How does this model contribute to the external control of expenditure, transparency, and accountability? The reports are sent to the parliament on predetermined dates and are widely publicized in the press. The Auditor General of Canada may disclose his/her reports from the date he/she formally submits them to the parliament, regardless of the congressional action on its content. At the congress, there is a Public Accounts Committee, led by the largest opposition party, which receives the reports from the Auditor General and promotes public sessions in which the Prime Minister and his ministerial team are scrutinized as to the findings of the audits.

The media and social control put great pressure on the holders of the executive branch, given the high credibility attributed to the Auditor General. Although there is no mechanism that makes it mandatory for managers to adopt the recommendations of the Auditor General, the culture of respect for society and transparency, supported by the strong reputation of the Auditor General, lead most of them to be implemented by the managers.

Thus, the pillars of this mechanism are independence and credibility of the Auditor General, effective functioning of the Public Accounts Committee, wide dissemination in the media and social control. If a single one of these pillars collapses, the entire accountability chain will be disrupted. It is clear that the efficiency of the Auditor General's performance heavily depends on external actors, especially the Public Accounts Committee, the media, and social pressure, associated with the dominant culture of seriousness with public spending and respect for society.

Among the factors determining the effectiveness of the model, the only one that depends exclusively on the Auditor General is the maintenance of his/her untouchable reputation and his/her high credibility, derived from a high level of professional competence and party-political exemption in his/her work.

IN BRAZIL

Our constitutional model has conferred upon the National Congress the function of external control, with the assistance of the Federal Court of Accounts. In terms of mandates, the TCU can develop a broad spectrum of different external control actions, including all types of auditing characteristic of an auditor general. The result of TCU's performance materializes in the delivery of judgments, which may be binding, in cases that contain determinations aimed at correcting noncompliance with the law, or a recommendation, when evaluating operational (performance) audit reports. The differences do not stop there. The TCU may declare managers unfit to hold public office, declare the incapacity of companies to participate in bidding processes with the Federal Government. In the event managers refuse to provide the required information, the TCU has the power to impose a fine, for example.

In case it judges the accounts of a public manager as irregular, he/she may become ineligible, with a decision taken by the electoral court based on the TCU Judgment. When the public manager is convicted of debt, this renders the debt to the treasury certain and causes the issuance of a judicial process of executive collection.

The effectiveness of the TCU's performance does not depend directly on the National Congress

nor the media, despite the relevance of these two players. TCU's decisions are meaningful on their own, due to their legal powers. The accountability chain in our model does not require Congressional action, although a more active participation of the legislature in the exercise of external control is highly desirable, nor does it depend essentially on the action of the media or social control, although these stakeholders have a strong influence over public administrators.

COMPARISON

The auditor general model depends on the existence of a strong and active parliament, in particular a public accounts committee or commission that demands improvements and corrections in management from public managers, from the reports received from the auditor general. Such a committee will only be successful if it actually assumes the role of defender of the society's interests, above partisan interests.

I do not see this scenario in Brazil. The work of our parliamentarians is still very marked by the fierce electoral dispute between parties, which often results in the prioritization of the conquest of political positions of power above the search for the common good. In countries with a cultural matrix such as Canada's there is a culture of care with public affairs and respect for the citizen, which are fundamental requirements for the proper functioning of the model of external control adopted by them. However, this is not the case in countries with a Latin cultural background, in which there is an overvaluation of the legal culture in the sense that someone can only be considered incapable for public service after a final court judgment.

If a Canadian minister of state has his action questioned or image tarnished by some public complaint, or by obtaining an opinion with reservations from the auditor general about his/her financial statements, the most frequent measure is that that person voluntarily moves away from the government, thus avoiding embarrassment to society or prevention of any investigation procedures. In this, we can perceive the cultural basis that supports the control model of auditor general, which assumes the seriousness of dealing with public affairs and respect for citizenship. They understand that the citizen has the right to efficient and reputable public managers above any suspicion, regardless of legal processes.

Clearly, this is not the culture that prevails in our government. I could mention many recent cases in which strong evidence of embezzlement of public resources has surfaced without those involved taking any steps to move away from the positions they occupy. They prefer to misuse the good principles of due legal process and presumption of innocence.

Another relevant difference is the nature of the output of each of the two models. The outcome of the Auditor General's work falls into two categories. In the financial audit reports, an opinion is given on the statements, accompanied by notes and recommendations for improvement. In performance audits, no opinion is given, but recommendations are made for efficiency, effectiveness or cost-effectiveness improvements for the government. Neither the opinion nor the recommendations impose mandatory compliance by the managers, nor do they serve to apply any type of sanction.

In the political and cultural environment that dominates the Brazilian public administration, a model



of external control devoid of any binding or sanctioning power would tend to have its performance completely disregarded by the managers. In turn, the Court of Accounts model has a strong legal and sanctioning authority, so that the manager cannot ignore the results of the decisions made.

It is true that the Court of Accounts demands a more complex and costly structure, since it requires professionals from several areas other than those associated with audit work, particularly the disciplines of Law. However, the worst cost to society is the one that brings no benefit at all.

CONCLUSION

I rely on the constitutional principle of efficiency and the axiological structure proposed in ISSAI 12 to formulate my conclusions. ISSAI 12 prescribes that the purpose of a supreme audit institution is to add value and benefit to citizens through the performance of its activities. Associating with the caput of Art. 37 of our Constitution, which establishes that the government must provide services to citizens efficiently, that is, at minimum costs or with optimized results, I believe that the best external control model is the one that has the greatest potential to induce improvement in quality and in the results of public spending, and consequent benefits for society. For the previously mentioned reasons, the auditor general model would be impotent to induce these results in a society with the characteristics of Brazilian society. In turn, the Court of Accounts model, although a little more complex, certainly incorporates a greater potential to induce behavior change in public managers and improve the lives of citizens, considering the political and cultural matrix of our country.