

THE CONSTITUTIONAL AND LEGAL STATUS OF THE ROMANIAN COURT OF ACCOUNTS

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Abstract

*In order to follow the way in which all incomes are charged and the expenses approved by the state budget are used, the Parliament has set up an independent and neutral specialised institution that is meant to exercise a detailed control over the formation, administration and use of all the financial resources of the state and of the public sector. This independent and neutral body is the Romanian Court of Accounts which represents an autonomous, central specialised authority, regulated by the IV Heading of the Romanian Constitution, revised and republished in 2003. Considering the necessity of strengthening the financial discipline in the formation, administration and use of public funds, the Court of Accounts (CoA) assumes its role of *watchdog* in upholding the law in all matters mentioned above. Such a role is even more important as besides national public funds there are also an important number of non-reimbursable credits granted to our country by the European Union. From this point of view, the CoA should reinforce its status of strong, fully independent institution with wide and complex responsibilities¹².*

Key words: Court of Accounts, constitution, independent and neutral body, central specialised authority, autonomous character, public funds, legality.

JEL classification: H83

I. Introductory remarks

The Court of Accounts (CoA) represents an autonomous, specialised central authority, regulated by IV Heading in the Romanian Constitution, revised and republished in 2003¹³. Placing this authority under the IV Heading, dealing with the economy of public finances, should be explained by referring to the task stipulated in Art. 140 paragraph (1) of the fundamental law, namely that of

¹² **Ioan Muraru, Elena Simina Tanasescu** (coordinators) – *The Constitution of Romania, comments on the articles*, C. H. Beck Publishing House, Bucharest, 2008, p. 1361

¹³ **The Constitution of Romania** has been altered and appended with the Law of revising the constitution No. 429/2003, published in the Official Monitor of Romania, Part I, No. 758/29 October 2003. The Constitution was republished in the Official Monitor of Romania, Part I, No. 767/31 October 2003

exercising a control on the formation, administration and use of the financial resources of the state and of the public sector. Such a role has also been stipulated in Article 1 of Law No. 94/1992, republished¹⁴.

Until the revision of the Constitution, in 2003, the CoA exercised two categories of functions: **control** and **jurisdictional**. Such competence has been set following the traditional concept regarding this public authority which was set up in Romania, according to the Law of January 1864¹⁵. Ever since its foundation, the CoA has exercised two functions, the *function of control* and the *function of jurisdiction*; the two functions are stipulated in the constitutional provision, however, following the modifications brought about by the revision legislation, *the litigations resulting from the activity of the Court of Accounts are being settled in specialised courts of law*.

As it is duly noted in literature, from a functional point of view, there has been a change in the option of the CoA with regard to the nature and the role of the institution of financial control over the financial resources of the state and of the public sector, which led to the elimination of all the jurisdictional roles from the responsibilities of the CoA and the *de facto* assignation of these tasks to specialised courts of law. Still, in order to achieve this objective, it would have required a rather lengthy period of transition. Consequently, to overcome this shortcoming, art. 155 par. (5)¹⁶, established as transitory norms, stipulate that until the formation of such specialised courts, the litigations resulting from the activity of the CoA will be settled in ordinary courts of law.

Enforcing the transfer of jurisdictional competence of the CoA to a court of law was carried out by the Emergency Government Order 117/24 October 2003 regarding the transfer of the jurisdictional activity and of the legal staff of the CoA by courts of law¹⁷. Through this normative act, the cases pending with the jurisdictional sections of the CoA were taken over by the sections of administrative proceedings of the law courts, of the Court of Appeal and the High Court of Cassation and Justice, according to the following rules:

- a) the files of the jurisdictional courts that operated near the Territorial Chambers of Accounts were transferred to the law court;
- b) the files of the jurisdictional college of the CoA were taken over by the Court of Appeal;
- c) the files of the Jurisdictional Section of the CoA were transferred to the High court of Cassation and Justice¹⁸.

¹⁴ **Law 94/1992** - on the organisation and functioning of the Court of Accounts, republished in the Official Monitor of Romania, Part I, No. 282/29 april 2009

¹⁵ The Law on setting up the High Court of Accounts, published in the Official Monitor of Romania, 16/24 January/5 February 1864.

¹⁶ **Ioan Condor in Ioan Muraru, Elena Simina Tănăsescu** (coordinators) – *The constitution of Romania, comments on the articles*, C. H. Beck Publishing House, Bucharest, 2008, p. 1479

¹⁷ Published in the Official Monitor of Romania, Part I, no. 752 /27 October 2003.

¹⁸ When the emergency decree was passed, it was the supreme court of Justice.

As far as the legal staff working in the Colleges and Jurisdictional Section of the CoA, they were either appointed as judges and prosecutors, by Presidential Decree, at the proposal of the High Magistrate Council, to various law courts, according to their options, or were taken over by the law courts, according to the hierarchy of the institution of origin, and according to their personal options (auxiliary staff, i.e. assistant magistrates, court clerks, archivists-documentalists).

The alterations brought to the constitutional status of the CoA have determined the modification of the organic law of the CoA nr. 94/1992 by Law 217/2008¹⁹, followed by the republishing of the law, and renumbering the articles²⁰.

II. The Status of the Romanian Court of Accounts

1. Constitutional status

Article 140 of the Romanian constitution, which deals with the statute of the CoA, stipulates that in the Romanian legal system the CoA represents an autonomous specialised central authority, whose mission is to control the legality of public expenses. The control function of the CoA is carried out through external public auditing procedures that are regulated by specific auditing standards drawn up according to international auditing standards.

As any other autonomous central authority, the CoA falls under parliamentary control, which is realized in several ways:

- a) By submitting reports to the Parliament, either annually or on request or willingly;
- b) By conducting controls, at the request of the Chamber of Deputies or of the Senate, the Parliament being the sole authority that can request the CoA to conduct controls over the way in which public funds are used, or can discontinue certain ongoing control activities.
- c) By appointing the members of the CoA, who are called *account counselors*, and are appointed for a nine-year term which cannot be prolonged or renewed. There is a legal principle according to which the person who appoints someone also has the right to revoke the appointee if the latter, through their actions, become incompatible with their status; the appointer also has the right to cancel or alter the job report, whether of public service or work. Based on this principle, account counselors can be revoked by the Parliament, at the proposal of the specialised committees of the two chambers.

¹⁹ Law no. 217/2008 for the alteration and completion of Lawnr 94/1992 on the organisation and functioning of the Court of Accounts, published in the Official Monitor of Romania, Part I, no. 724 / 24 October 2008.

²⁰ Law no. 94/ 1992 was last republished in the Official Monitor of Romania, Part I, no. 724 /24 October 2008. The Law has also been republished in the Official Monitor of Romania, Part I, no. 116 / 16 March 2000.

The right to appoint and revoke members of the CoA by the Parliament are prerogatives that are explicitly stipulated in Art. 140 pars. (4) and (6) of the Constitution.

2. The legal status of the Court of Accounts

The organic law of the Constitutional Court, No. 94/1992, published in 2009, develops the constitutional provisions referring to the Romanian CoA and makes reference to regulations passed in the Plenary of the CoA, regulating the organisation and internal functioning of the institution, as well as the organisation and specific activities of the CoA, and the quantification of the documents resulting from these activities (Art. 11 par. (2) of Law 94/1992)²¹. It should be specified that the law requires that the specific activities should be published in the Official Monitor, Part I, due to the normative character of its provisions, and in order to be known by all the legal subjects that fall under its incidence.

Synthesizing the provisions that define the obligations of the CoA, we consider that the legal status of the CoA could be defined by the following elements:

- a) the law warrants the functional autonomy of the CoA, on the one hand, article 3 stating that it **autonomously decides on its schedule**. Autonomy is warranted by the prohibitive norm stipulated by article 3 (3), second thesis, according to which **no other authority can coerce the Court of Accounts**, with the exception of the Parliament.
- b) the law ascertains the **function of representation of the Court of Accounts on international level**, as it represents **the supreme auditing authority** in the international organisations of these institutions (art. 11 par. (3) of the law).
- c) The Court of Accounts is legally empowered with the competence to control the financial resources of the state and of the public sector as far as their legal administration, formation and use is concerned, exercising several types of activities, as follows:
 - internal auditing, which takes place with observing specific regulations adopted on the basis of generally accepted international auditing standards;
 - exercising performance auditing on the management of the general budget and of any public funds;
 - certification of accounts, activity which consists in certifying the accuracy and authenticity of the data included in the controlled accounts;
 - reporting activity, materialized in the annual public Report which is forwarded to the Parliament and is published in the Official Monitor, as well as

²¹ In establishing this norm of referral, the Regulation on the organisation and functioning of specific activities of the Court of Accounts was adopted, together with the quantification of these results following these activities, approved by Plenary Decision, no. 1 / 4 February 2009, published in the Official Monitor of Romania, Part I, no. 78 /10 February 2009

other reports required by the legislator or submitted to the legislator by the CoA, referring to specific domains that fall within the competence of the latter.

- the activity of endorsement, which has two components: **endorsement, at the request of the Parliament**, of the project of the state budget and of the law projects in the field of public finances and public accountancy or those legislative acts which, if applied, would lead to a reduction of the income or an increase of the expenses approved by the budget law, and the setting up by the Government or ministries of certain specialised bodies under their authority.

In order to carry out its mission, as stipulated in the provisions of the Constitution, the CoA has established several measures:

- to cancel activities that contravene the legal provisions in the financial, accounting and fiscal area;
- to block budgetary or special funds when their use has been proven ineffective or when they have been used for illegal purposes;
- to eliminate wrongs found in the financial-accounting or controlled fiscal activity.

All these measures have been adopted according to the Rules and regulations of the specific activity of the CoA. When some of the mistakes have been made by breaking the criminal law, the CoA may inform the bodies in charge with criminal investigations. For the sake of effectiveness, the law classifies as criminal activities the failure of the institution to recover damages as a consequence of the failure to investigate and implement the measures established by the CoA, the offense being sanctioned with 3 to 6 months of prison.

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