

REGIONAL PUBLIC SECTOR AUDIT IN PORTUGAL

Introduction

The Constitution of the Portuguese Republic (CPR) integrates the Court of Audit (*Tribunal de Contas*) in the system of courts and tribunals, which it describes as organs of supreme authority, thereby placing the Court of Audit on a par with the President of the Republic, the National Assembly and the Government.

Under the terms of the Constitution, the purpose of the Court of Audit is above all to verify the legality of public expenditure and to examine any accounts the law specifies must be submitted to it, without prejudice to the legislator's right to define other powers, such as the assessment of performance according to value-for-money criteria.

Following the 1989 constitutional reform, substantial alterations were made to the regulatory framework that had governed the organization, operation and activity of the Court of Audit by the Act known as the Reform of the Court of Audit Act, which was adopted by Law n° 86/89 of 8 September. Law n° 86/89 was repealed on 26 August 1997, when the Law concerning the organisation and procedure of the Court of Audit (LOPTC), Law n° 98/97, was promulgated. At present, the Constitution and this Organisational and Procedural Law describe the Court of Audit in the following terms:

- a) *It is defined as a genuine court:* it is considered an independent body and the decisions it takes in matters within its competence are binding on all public and private entities and prevail over those of all other authorities.
- b) *As a guarantee of its independence,* it is self-governing. The Court enjoys administrative autonomy (as do its regional sections). It has the right to approve its own annual budget draft, submit the legislative proposals necessary for its own operation and for that of its support services to the legislature and to define in broad outline how those services will be organised and operate. The President of the Court has the same administrative and financial powers necessary for the administration and management of the Court and its support services as ministers have in the fields of management of public funds, human resources and equipment.
- c) *As a corollary of its independence,* the President of the Court is appointed by the President of the Republic following nomination by the Government and can only be removed from office by the President of the Republic. He takes office and is also bound in honour before that sovereign body. The Vice-President is elected by his peers by secret ballot in general plenary session and its Members (who have the status of judges) are recruited by competitive selection. The Court of Audit has three specialised sections located at its headquarters and two regional sections, one in each autonomous region (the Azores and Madeira). The regional sections exercise the Court's statutory powers in each region.

Created by Law n° 23/81 of 19 August, the regional sections of the Azores and Madeira, located in the towns of Ponta Delgada and Funchal, were enshrined in the constitution with the constitutional reform of 1989 and continued in existence under

the constitutional reform of 1997, which confirmed their decentralized operation within a single financial jurisdiction in which the Court of Audit is Portugal's only body exercising independent external public sector financial control.

General legal framework

The Law concerning the organisation and procedure of the Court of Audit, Law n° 98/97 of 26 August, which changed the basic legal framework within which the Court of Audit operates, was approved by the Assembly of the Republic. To all intents and purposes, the Court of Audit is now governed by the Constitution of the Portuguese Republic and by this Organisational and Procedural Law, which also lay down the organization, operation and powers of the regional sections of the Azores and Madeira.

Each regional section has a judge of the same status and category as the Court's other judges. This judge exercises the Court's powers of jurisdiction and financial control within the autonomous region's geographical area. To carry out their functions the regional sections have their own support services with administrative and financial autonomy. Each regional section's internal rules of procedure and triennial and annual audit programmes are submitted to the approval of the Court meeting in plenary session on a proposal from the judge concerned.

As a general rule, each regional section's powers of financial control are exercised by its judge at an ordinary weekly session at which the Public Prosecutor's office must be represented and in which also participate two assistant judges.

For *a priori* audits, the regional sections also hold a daily session with their judge and one of the assistant judges when there are no grounds to refuse approval and no doubts that these will be performed.

For *a posteriori* audits, the judge may also exercise his powers on a daily basis unless it is a matter of approving audit reports sought by the regional assemblies or governments or audit reports not included in the corresponding annual plan. In the same way the judge may exercise his powers on a daily basis unless it concerns examining reports revealing financial liabilities requiring penalties and the possible commencement of judicial proceedings.

When it comes to the exercise of judicial powers for the purpose of prosecuting financial liabilities, the applicable procedures are proposed by the Public Prosecutor's Office or, alternatively, by monitoring, supervision or internal control bodies. The procedures are conducted by the judge of the regional section concerned before the matter is passed to the judge of the other regional section for judgement.

In this institutional context, we will now look at the Court of Audit's regional sections, focusing in turn on the scope of their control activity, the types of control they perform, the relationships with other audit bodies, the control procedures in force, the addressees of their reports, the publication of reports and finally, financial and human resources.

Scope of the control activity

The powers of the Court of Audit and its regional sections fall into two main fields: financial jurisdiction (the purpose of which is to judge and punish those the Court finds guilty of violations of financial regulations) and financial control; these are exercised through the Portuguese legal system, both on the national territory and abroad.

The following entities are subject to each regional section's powers of jurisdiction and financial control:

- a) Central government public services with administrative and financial autonomy or simple administrative autonomy, located in the geographical area of the autonomous region concerned, and those services with administrative and financial autonomy with activities in that area;
- b) Regional social security institutions;
- c) The autonomous regions and their services;
- d) The local authorities of the region concerned, municipal council associations or federations and their services;
- e) Regional public institutes;
- f) Public associations, associations of public entities or associations of public and private entities whose headquarters are located in the region and which take most of their funding from public entities subject to the regional section's management control;
- g) Regional public enterprises;
- h) Enterprises holding a concession to manage public enterprises and enterprises managing public services or providing public services under a concession;
- i) Private law foundations regularly receiving annual funding from the regional budget or from the regions' local authorities. The control covers the use of such funds.

The regional sections' powers of jurisdiction and financial control also extend to entities of any kind in which there is a public capital holding or to entities which in some way benefit from public money or other public financial resources, in so far as it is necessary to verify the legality, regularity and sound economic and financial handling of that money and those public financial resources.

On the material level, the regional sections are required to:

- a) Give an opinion on the annual accounts of the corresponding autonomous regions¹;

¹ The opinion on the accounts of each autonomous region is approved by a college comprising the President of the Court and the judges of the two regional sections.

- b) Give an opinion on the accounts of the different regional legislative assemblies;
- c) Perform the *a priori* audit of the legality and budget relevance of acts and contracts of any kind resulting in an expenditure or which represent any direct or indirect charges or liabilities on the entities subject to the regional sections' powers of control;
- d) Audit the accounts of the bodies, services or entities required to submit these to the corresponding regional sections;
- e) Assess the judgement of the financial liabilities of those entities subject to the jurisdiction of the corresponding regional sections;
- f) Assess, by making use of technical criteria, the legality, economy and efficiency of the financial management of the entities subject to the regional sections' audit and the organisation, operation and reliability of the internal control systems;
- g) Carry out audits of the entities subject to the regional sections' control on their own initiative or at the request of the relevant regional assembly or government;
- h) Check the collection of own resources at regional level and the handling of financial resources received from the European Union; in this field they may act in cooperation with the competent EU authorities;
- i) Exercise the other powers conferred upon them by law.

With the exception of the opinion on the accounts of the autonomous region, appeals may be brought against the regional sections' final decisions to the plenary session of the Court of Audit headquarters' first or third specialised sections, depending on whether the decisions relate to the *a priori* financial control or to the prosecution of financial liabilities.

Types of control

Each regional section may exercise three types of control, depending on when they are performed:

- Prior or *a priori* financial control;
- Concomitant financial control;
- Subsequent or *a posteriori* financial control.

Prior or *a priori* financial control is a legality audit and results in either approval of or refusal to approve the legal acts submitted to this procedure. It is the material and essential power to verify, in advance, the legality and budget relevance of acts and contracts of any kind of a value in excess of that laid down each year by law and which

generate expenditure or represent direct or indirect financial charges and liabilities for the entities subject to this kind of audit.

Concomitant control is a verification of legality and financial regularity. It may be made in one of two ways: by a detailed appraisal, during the course of their implementation, of acts and contracts giving rise to expenditure that need not be subject to the *a priori* control; or by appraisal of the financial activity before the end of the management period in question.

Subsequent financial control is an *a posteriori* audit of the accounts of the entities that are required to submit them and is done by evaluating the various internal control systems, by assessing the legality, economy and efficiency of their financial management and by checking the national co-funding to the own resources of the European Union and the use of financial resources received from the EU.

Concomitant control and subsequent or *a posteriori* control are carried out using auditing methods and techniques.

The regional sections may at any time conduct audits of any kind of certain acts, procedures or aspects of the financial management of one or more entities subject to their powers of financial control, either on their own initiative or at the request of the various regional assemblies or regional governments.

Relationships with other audit bodies

The regional sections are decentralised decision-making bodies of the Court of Audit.

Appeals against decisions in matters of *a priori* financial control and judicial decisions by the regional sections may be brought before the corresponding specialised section of the Court of Audit headquarters.

The Court of Audit is Portugal's only supreme authority exercising external public sector financial control and there are, therefore, no relationships between the regional sections and other bodies of this nature. However, this does not call into question the legality of the regional sections' participation in EURORAI as associate members.

Control procedures

The judge of each regional section must give the instructions necessary for the exercise of its powers and these instructions must be followed by the entities subject to its control. The Court's general plenary session must therefore approve the rules of procedure and the prior and subsequent control programmes of each regional section.

Furthermore, concomitant and subsequent control must also be exercised by the regional sections in compliance with the procedures laid down by law for the first and second specialised sections of the Court's headquarters.

Approval of procedures, in particular audit manuals and control procedures, are the responsibility of the corresponding relevant specialised section. As the present Law governing organisation and procedure was adopted only recently, new editions of these manuals are being prepared.

Addressees of reports

Judicial decisions handed down by the regional sections are binding on the public and private entities within their remit.

Audit reports are presented to the entities that were the subject of the audit and to the bodies having hierarchical and tutelary powers of control over them.

Audit reports are also passed to the Public Prosecutor's Office for the purpose of instituting any judicial proceedings within the framework of the prosecution of financial liabilities if evidence of violations of financial regulations has been found.

The annual report on the activities of the Court of Audit, including the reports of the regional sections, is submitted to the President of the Republic, the National Assembly, the Government and the governing bodies of the autonomous regions.

The regional sections may distribute their reports by any means of communication after informing the entities concerned.

Publication of reports

Reports and opinions on the accounts of the autonomous regions and audit reports and judicial decisions that the regional sections believe should be published² appear in the Official Gazette of the autonomous region concerned.

Audit reports may be distributed by any means of communication following a decision by the regional sections and after informing the entities concerned.

Financial resources

The financial resources of the Court of Audit and its regional sections are derived from two sources of funding: allocations from the State Budget and the private Coffers (self-financing).

The allocations from the State Budget are provided solely to meet the fitting out and running costs of the headquarters and regional sections.

² Reports and opinions on the accounts of the autonomous regions are also published in the Official Gazette of the Republic.

Each regional section has a Coffers with legal personality, administrative and financial autonomy and own assets, operating under the supervision of the President of the Court.

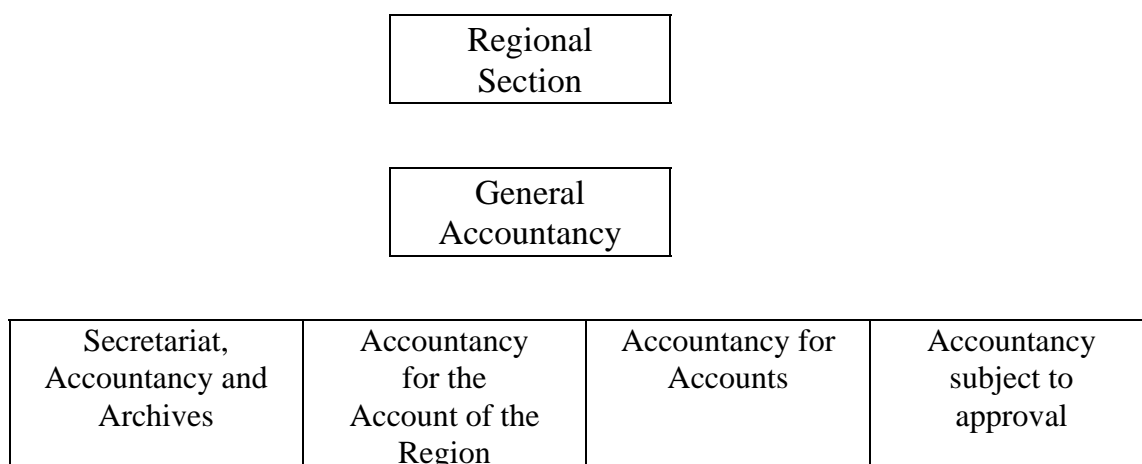
The receipts into these coffers are provided by: fees collected by the services of the regional sections, proceeds from the sale of books or journals published by the regional sections, payments for services provided by the various support services, inheritances, legacies and donations.

Human resources

As mentioned before, the regional sections have technical and administrative support services attached to the Court of Audit’s General Directorate.

In future, these support services will be overseen by an assistant director-general appointed by the President of the Court of Audit.

The staff regulations, organisation and structure of these services will be the subject of a specific law that is currently being drafted. In the meantime, these services are organised as follows.



Until the legislation referred to be promulgated, staff will be administered according to general civil service rules.

Consequently, in addition to a pay supplement for permanent availability equal to 20% of the basic salary, regional section personnel will benefit from an incentive scheme composed of travel and settling-in allowances. The latter may be considered a kind of subsidy for island living.