

THE COURT OF AUDITORS: A EUROPEAN COMPARISON

EXECUTIVE SUMMARY

One of the few positive things that we, the Spanish, can take from the economic and institutional crisis of the last few years, is a growing concern over how our institutions are run, and, as a consequence, a civil society more demanding in terms of the quality of our democracy. Against this background, the foundation *¿Hay Derecho?* launched a series of comparative studies concerning some key institutions, the first of which was the “Analysis of the Operation of the Spanish Court of Auditors: a European Comparison”.

The so-called Supreme Audit Institutions (SAI), one of which is our Court of Auditors, are public organizations responsible for the overseeing of public accounts and for the financial management of the public sector, that is, those entrusted with ensuring that public funds are run efficiently and in keeping with the law. They are an essential counterbalance to executive power, which must be subject to independent monitoring.

The foundation asked us if our Court of Auditors was in a position to ensure financial control and guarantee the legality of public governance, to evaluate the effectiveness and efficiency of expenditure, and outline the responsibilities which arise within the field of accounting. In other words: if we have an institution of external control prepared to uncover and tackle poor management, profligacy and corruption.

Experts in the field have long stressed the importance of improving the transparency and accountability of the Court of Auditors, in order to reestablish its legitimacy in the eyes of the public, to whom it has become known more for its internal organizational problems, including accusations of nepotism and politicization, than for the impact of its reports and the relevance of the sanctions it imposes. In spite of certain efforts made by the Court of Auditors, such as submitting itself for peer review in 2015, or the reduction of auditing times, we believe that it is necessary to examine the organization of this institution further and, above all, to increase public awareness of it, in order that our citizens may become more demanding.

With this in mind, we carried out a study comparing the Court of Auditors with similar institutions from neighbouring countries: the United Kingdom, Italy, France, Germany and Finland, as well as the European Court of Auditors. The study was based upon the analysis of sources of information open to the public and available to all citizens, and principally the websites of the institutions themselves.

Traditionally, two types of SAIs have existed in Europe: the continental French model, and the anglosaxon model. One of the main differences is that the first has a prosecutorial or judicial function as well as an oversight role, whilst the second works solely to monitor public spending and provide information to Parliament. The prosecutorial role exists in the authority to prosecute the accounting liability of those responsible for public spending. Three of the SAIs examined had a prosecutorial function – Spain, France and Italy – and four organizations did not carry out this kind of process – Germany, the United Kingdom, Finland and the European Court of Auditors. The second major difference is the institutional model, where the continental systems are collegiate and the anglosaxon systems single bodies.

But let us look at the principal conclusions of the study in relation to the questions most relevant to effectiveness and efficiency of our Court of Auditors. The first notable point is the Court's strange institutional design. The Court is a collegiate body formed of twelve auditory advisors selected by Parliament; four elected by the Senate, and six by the Congress of Deputies. Their mandate lasts nine years, with the possibility of reelection. The twelve advisors, together with the Public Prosecutor of the Court (a member of the legal profession appointed by the government), form the Full Court. The Full Court is the body responsible for all of the fiscal proceedings and decisions, the oversight, and the prosecution, and for this reason we talk about a collegiate body. The advisors cannot be dismissed and hold a status similar to judges, protected by the Constitution. The advisors must be recognized experts with more than fifteen years of professional experience. The Full Court nominates a President from amongst its members, who is appointed for a renewable period of three years. The President is concerned solely with issues relating to the management of members, and the internal coordination and administration of the Court.

Of the rest of the SAIs examined, only two were individuals – the United Kingdom and Finland – where the Auditor General holds the ultimate power of decision. The rest were collegiate bodies, like our own. These collegiate bodies are formed by a number of magistrates (in Spain these are the advisors) who make the decisions, sign the audit reports, and hold a special status similar to that of judges, in order to ensure their independence.

The peculiarity of the Spanish Court, relative to the other collegiate bodies, exists in three fundamental elements: 1) there are only very few magistrates or advisors within the institution, who hold fixed positions, and 2) they are selected exclusively by the legislative authority (the Spanish Parliament) and 3) they have, gathered together in Full Court, not only the capacity to decide technical matters but also to manage and organize internal institutional matters. Only the European Court of Auditors has a similar internal design, where there reside 28 magistrates elected by the European Council after consulting Parliament.

In France there are 219 magistrates, in Italy 417 and in Germany 63. In these countries the magistrates are civil servants with a special status and fixed positions for life, and they are responsible for tasks which we could label technical. Decisions are made collectively by means of panels or departments, which usually consist of at least three of these magistrates. The difference, aside from the number, is that not all the magistrates are politically appointed, but usually the President only, and a small number of magistrates, although there may be other members selected by Parliament (as is the case in Italy). These committees are normally responsible for the administration and management of the SAI, including Human Resources, but they are separate from the panels which make decisions of a technical nature, that is, from those who sign the audit reports.

The fixed nature of the magistrate's position in the continental system is one of the main ways of guaranteeing independence, and so their number and role within the structure of the organization holds enormous relevance.

In the Spanish Court the only members who enjoy this guarantee are the advisors themselves, who make up 12 of a total of 750 employees. The advisors are responsible for all of the work of the Court, but, as is logical, they do not do any auditory work nor do they write reports, but

instead simply revise, approve or reject them. Those who do the “hands-on” work not only do not hold the status of a magistrate, but also answer directly to the Full Court in relation to promotions, disciplinary action, assignment of roles and potentially even dismissals. In the last decade, 38% of all employment positions in the Court of Auditors have been filled by a system of free appointment, and in 2014 alone this process was used for 86% of all assignments. That year only two employees were recruited to the Court of Auditors through a public application process, out of a total of 29.

In other words, all external auditing in Spain is in the hands of 12 advisors appointed by Parliament, which until recently has meant “agreement between the two leading political parties”, who do not hold positions for life, but are replaced every 9 years. And all the members and staff both temporary and contracted – and there are many, as we have seen – entrusted with carrying out auditory and prosecutorial work answer to these advisors. We believe it is from this that the enormous risk of politicization of the Court of Auditors in Spain arises.

In the rest of the countries studied, with this same continental model, this (guarantee of immovability) extends much further than just to those entrusted with political affairs, and those responsible for technical work are also considered magistrates, even though they were not appointed by the executive or legislative authority.

Furthermore, we see that in other countries there exists a desire to separate technical decisions from administrative or managerial decisions, and to include in the organization magistrates who were not appointed for political reasons. Even in the European Court of Auditors, which has an institutional model similar to the Spanish Court, the Full Court is only responsible for the selection of managerial staff, and all other HR matters (promotions, disciplinary proceedings, etc.) are dealt with by the management committee or the general secretary.

Another aspect examined in the study was the quota or number of employees, as well as various elements such as the average cost per employee, the budget according to the GDP of each country and the number of employees per citizen. One of the most interesting elements was the average cost per employee (the rest of the figures are available in the full report).

In general, the Spanish Court of Auditors falls below average amongst the countries studied in terms of its relative size and average cost. We could say it is a reasonably large organisation, and we did not detect any relevant anomalies. However, our Court does not compare well if we analyze its efficiency; that is, if we evaluate its budget and its staff in relation to the work carried out.

From an auditing point of view, the analysis of the average cost, according to the auditory report published by each Court studied, revealed that our Court’s costs are the second highest, behind the European Court, where particular costs significantly increase their average expenditure, such as those associated with translation work (all reports are translated into all the languages of the EU). The average cost of reports in Spain is more than double that of the next ranked Court, the French *Cour des Comptes*.

(We must bear in mind) that it is difficult to make quantitative comparisons between the work carried out by the various SAIs, since that which the audits concern varies from country to country. This is a “ratio” which we have calculated by looking at the data from all the reports issued (without considering the type of report), but the information collected is certainly interesting since all of the SAIs carry out reports of all these types (compliance, operations etc). If we consider, for example, that in 2014 Spain carried out 15 management and performance audits, whilst the UK carried out 49 and Finland 22, the comparisons become even more relevant, since this kind of audit is much more complex than others and the costs are much higher.

Our audit reports are not only far more costly than those of other countries, but there are also far less useful. They are less useful because it is more difficult for our citizens, and even for our politicians, to understand their conclusions. They are also less useful because their content comprises far less information relevant to auditory work, which is their *raison d'être*. Secondly, there is no comprehensive further investigation into whether the recommendations made are being observed, as is done in other countries, which clearly affects their true impact. And finally, they tend to be carried out late, which significantly reduces their usefulness. An example of this last point is the publication date of the annual report on the General State Account, a year later than those of other similar countries, or the reports on political parties and their foundations which are currently being carried out two years late – which is a serious improvement as it used to be 5 years' delay – whilst in Finland they are published 5 months after the year end.

In the realm of prosecutorial work, which has historical origins dating back to the Ancient Regime and which many now consider to be anachronistic, it seems that the Court is similarly ineffective. For example, the total money repaid through reimbursement proceedings carried out by the Spanish Court in 2014 was €14.69m, whilst in that same year, Italy collected €208m through sentencing alone, and a total of €627m through prosecutorial proceedings as a whole.

Other aspects considered in our study were the transparency of the SAIs, and their relationships with the public and the media. In these areas, it is the Italian Court which comes out comparatively worst, following our Court. The UK and Finland, both individual bodies, come out much better. It seems clear that these organizations, in which there does not exist any immovable figure such as the magistrate, make a conscious effort to communicate their activity and demonstrate their efficiency and effectiveness, since their legitimacy is derived in large part from the success of their performance and less from the (origins of their appointment) or their legal status.

Finally, we also examined what kinds of controls the auditory bodies themselves are subjected to, and it seems that, whilst there have been improvements in our Court such as the (incidence of the) first peer review in 2015, there remains vast room for improvement, especially in terms of quality control.

As a result of this comparative study carried out by the Foundation, we have compiled a series of recommendations for our Court, which are detailed fully in the report, but which can be summarized as follows:

- Strengthen its governance and institutional design, reinforcing the neutrality and independence of technical staff, and improving the transparency of the decision making process
- Boost the importance and impact of the institution, particularly by improving the legibility of the audit reports, and strengthen operational audits, reducing processing times and reviewing the actual usefulness of accounting liability proceedings
- Improve quality control and internal management, developing internal indicators of effectiveness and efficiency and submitting them to external controls of a higher quality, as well as strengthen accountability mechanisms.
- Make an effort to explain its activities to citizens, improving the clarity of the information provided, developing indicators of efficiency and effectiveness and improving external communication.

The importance of the work of the TCU to the proper functioning of our Civil Service is such that it urges us to be very demanding with their work. It is time for citizens, and Parliament itself, to place importance upon it and for the necessary reforms to be made, so that it can be a true guarantor of the proper use of public money.