

## RETROSPECTIVE AND TOPICALITY REGARDING THE INSTITUTIONAL ORGANIZATION AND THE ROLE OF THE EXTERNAL PUBLIC AUDIT IN ROMANIA

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### **Abstract**

*The research objectives aim at analyzing the institutional organization evolution of the public sector resources management supervising function, as well as the development and role of the external public audit in Romania. Although the external public audit has a quite short history in Romania, related to the country's accession to the European Union and the requirements that had to be met, our research horizon is much wider, being delimited by the institutional history, for over 150 years, of the supervising function of the public sector resources use. Thus, the research also addresses the financial control, as a precursor to the external public audit. The research methodology is qualitative and interpretive. Following the research horizon, the institutional history, the evolution and the role of the external public audit in Romania are addressed by reviewing the relevant literature, the normative (constitutional and regulatory) framework, as well as the publications portfolio of the Romanian Court of Accounts. The research is useful and relevant as it offers a panoramic image on this important activity in the public funds management and reveals the historical landmarks, which generated significant transformations in the field.*

**Key words:** *external public audit, financial control, Court of Accounts, supreme audit institution, Romania.*

**JEL Classification:** *H83, M42.*

### **I. INTRODUCTION**

In Romania, the financial control and, subsequently, the external public audit appeared, evolved and improved with the economic and political development of the country, in response to the societal challenges, as well as under the impact of the globally occurred changes.

The research of the institutional organization evolution, of the role and development of the external public audit in Romania is useful and relevant as it offers a panoramic image on this important activity in the public funds management and reveals the significant moments, which generated significant transformations in the field.

Adjacent to the introduction and conclusions, the paper is structured on the following sections: the research methodology, the age of the supreme institution for supervising the management of the public financial resources in Romania, the institutional organization evolution of the financial control/external public audit and the current role of the Court of Accounts.

### **II. THE RESEARCH METHODOLOGY**

In order to achieve the research objectives, we shall use the specific means of the scientific investigation. The research methodology is qualitative and interpretive, and the scientific approach focuses on a wide research horizon, of over 150 years, delimited from the establishment of the High Court of Accounts in 1864, until now.

Following the research horizon, the institutional history, the evolution and the role of the external public audit in Romania are addressed by reviewing the relevant literature, the normative (constitutional and regulatory) framework, as well as the publications portfolio of the Romanian Court of Accounts. The investigative approach is completed by an assessment regarding the age of the supreme institution for supervising the management of the public financial resources in Romania, by reporting to the age of the supreme audit institutions in the Member States of the European Union, based on the information disseminated by the European Court of Auditors.

The bibliographic sources considered for the research include not only books and articles published in prestigious journals, but also reports issued by the authorities in the field, as well as specialized sites consulted in order to consolidate the investigative demarche. In order to achieve the research objectives, we shall use tools such as the participatory and non-participatory observation, information collection and processing, analysis, synthesis, deductive reasoning and comparison.

### III. THE AGE OF THE SUPREME INSTITUTION FOR SUPERVISING THE MANAGEMENT OF THE PUBLIC FINANCIAL RESOURCES IN ROMANIA

The Court of Accounts is the supreme audit institution of Romania and has the mission to ensure the supervision of the management of the public sector entities financial resources.

The age of the supreme audit institutions can be assessed both in relation to *the year in which they have been established* and according to *the year since they are active* (in the case of the institutions re-established after their dissolution).

In Romania, the highest-ranking institution empowered to exercise control over the public funds administration was initially established in 1864, during the reign of Alexandru Ioan Cuza. Since then, the financial control institution has known a series of metamorphoses over time (Bostan, 2011), under the impact of the transformations and the society evolution, being also dissolved, in the context of the political changes related to the communist regime establishment and subsequently of its fall (the periods 1948 - 1973 and 1989 - 1992), so that the current Romanian Court of Accounts has been active since 1992.

In the described context, although in Romania, the external public audit has a quite short history, closely related to the country's accession to the European Union and the requirements that had to be met, the horizon of our research is much wider, being delimited by the institutional history, for over 150 years, of the function of supervising the public sector resources use.

By reference to the age of the supreme audit institutions in the Member States of the European Union, determined on the basis of information disseminated by the European Court of Auditors ("Public Audit in the European Union", 2019), we note that Romania ranks 14<sup>th</sup> (after France, Portugal, Netherlands, Germany, Austria, Poland, Malta, Finland, Belgium, Greece, Luxembourg, Spain and Italy), if we consider *the year of initial establishment*, and 19<sup>th</sup> (after France, Netherlands, Finland, Belgium, Greece, Portugal, Poland, Ireland, Italy, Austria, Germany, Cyprus, Denmark, Spain, Hungary, Estonia, Lithuania and Latvia), if we consider *the year since the supreme audit institution is active*. Evaluating these results, we can consider that the supreme audit institution of Romania is one of medium age.

### IV. THE INSTITUTIONAL ORGANIZATION EVOLUTION OF THE FINANCIAL CONTROL/EXTERNAL PUBLIC AUDIT

The first historical landmark of our research is represented by the year **1864**, in which, in Bucharest, the institution of first rank in the public funds administration supervision was established, under the name of "The High Court of Accounts", for all Romania.

At that significant moment not only for consolidating the bases of the modern state, but also for the institutional history of Romania, the High Court of Accounts had competences in researching and deciding on the accounts concerning the treasury revenues, the general cashiers of the counties, of the utilities and of the indirect contributions administrations, as well as closing the accounts made by all the accounting officers (Romanian Court of Accounts, 2014a, p. 59).

The organic law assigned the High Court of Accounts with competencies regarding the exercise of subsequent control over all central and local public authorities and it also expressly provided their obligation to submit the documents for control (Romanian Court of Accounts, 2014b, p. 15). As at present, the mission of the institution was to exercise the function of control over the manner of setting up and managing the financial resources of the state and of the administrative-territorial units.

Practically, in the new state, a fundamental institution was established to ensure the transparency and the legality on the manner of spending public funds, in order to meet the social needs of general interest. As the Court of Accounts publications portfolio attests (Romanian Court of Accounts, 2014b, p. 6), for the establishment of the Romanian High Court of Accounts, the Belgian model was mainly approached (on the appointment of the Court leadership) and also the French regulations (regarding the financial control organization and functioning) as well as those of other states in the geographical area of Europe were consulted.

In addition to the control function of the public funds management, the High Court of Accounts also had judicial attributions over the state accounting officers, regarding the financial crimes found during the accounts verification, and its decisions could have been appealed to the High Court of Cassation and Justice. In terms of reporting, the High Court of Accounts was required to submit annual reports to the Chamber of Deputies, in order to close the financial year and vote on the budget.

Another historical landmark is marked by the year **1866**, in which, by adopting the new fundamental law (The Romanian Constitution of 1866), express provisions on the High Court of Accounts were included in the

constitutional framework, stipulating that *“for all Romania there is only one Court of Accounts”*, and *“the final settlement of accounts must be submitted to the Assembly no later than two years after the end of each financial year”*.

Subsequently, in the interwar period, as part of an extensive process of consolidating the rule of law, with an emphasis on the institutional modernization and on the control of the public resources efficient use, the Constitution of **1923** was promulgated, which provided as follows: *“the preventive and the management control of all the state revenues and expenditures will be exercised by the Court of Accounts, which yearly submits to the Assembly of Deputies, the general report summarizing the management accounts of the past budget, signaling, at the same time, the irregularities committed by the ministers in the budget application”*.

Analyzing the paradigms of Germany, England, Italy and the United States of America, the Romanian Parliament extended the High Court of Accounts area of competence, by establishing the preventive and the management control over all the state revenues and expenditures, and reduced the management accounts regularization period, by the Law of reorganization of the High Court of Accounts from **1929**. Under the new specific regulations, the High Court of Accounts of Romania became an independent institution, of the same rank as the High Court of Cassation and with the same rights, which maintained both its control and judicial attributions.

As the relevant literature attests (Romanian Court of Accounts, 2014c, p. 18), in the year 1929, the Romanian High Court of Accounts was considered one of the most modern profile institutions in Europe.

The historical context that followed in the period 1938-1948, characterized by territorial losses, war, Soviet occupation and the establishment of the communist regime, generated major transformations, which also significantly affected the activity of the High Court of Accounts, finally leading to its dissolution, by the Decree of the Grand National Assembly Presidium no. 352 from **1948**.

The financial control function was taken over by the Financial Control Department, established within the Ministry of Finance, by the Decree no. 30/1949. The new regulations imposed an approach specific to totalitarian communist regimes, so that the Ministry had the right to *“verify on the spot all the supporting documents related to the financial activity of the institutions and enterprises or economic organizations maintained from the budget or financed by the state budget; to interrupt, with the prior announcement of the head of the respective ministry, the financing of the institutions, enterprises and economic organizations that have not submitted in due time the execution accounts provided by law; to seek, on the basis of the laws in force, the persons, the institutions and the organizations that have not fulfilled, within the established deadlines, their obligations towards the state budget”*.

A quarter of a century later, in **1973**, the Superior Court of Financial Control was established, which operated under the Council of State. With regard to the new institution, the regulatory framework maintained provisions characteristic of the totalitarian state, such as *“the Superior Court of Financial Control seeks to the compliance with the party and state decisions in the financial field and the defense of the socialist property”*.

In order to carry out its mission, the Superior Court of Financial Control was empowered to exercise both financial control and jurisdictional attributions. In this sense, at the level of the institution, state financial controllers, financial judges and financial prosecutors were carrying out their activity.

The financial control competence of the Superior Court was extended in the whole economy, but the direct control, through its own structures, was carried out mainly at the level of the central institutions (Bostan, 2011, p. 35).

The supervisory attributions of the Superior Court aimed at exercising the financial control over the activity of the central state bodies, controlling the execution of the financial provisions in the single national economic and social development plan and the state budget, the use of the financial and credit levers, the state property single fund record and the fulfillment of the obligations provided in the state budget, the financial discipline compliance and the use of the funds received from the state by the central cooperative organizations and the other public central organizations.

The jurisdictional attributions of the Superior Court of Financial Control aimed at judging the cases in which fines or compensations were established, after the damages caused to the public budgets, by the persons responsible for their execution, the cases related to the damages brought to the economy by the general directors, those in the ministries and the managers of the similar units, as well as the appeals regarding the damages imputed to the socialist units leaders, if they had a value over 20,000 lei, according to the Labor Code.

The fall of the communist regime in Romania, after the revolution of December **1989**, marked the dissolution of the Superior Court of Financial Control (by the Decree no. 94/1990 issued by the Council of the National Salvation Front), its attributions being taken over by The Economic-Financial Control Body of the Prime Minister of the Romanian Government, later transformed into the General Directorate of State Financial Control of the Ministry of Finance.

The Court of Accounts was reintroduced into the administrative system of the democratic Romania

through the **1991** Constitution, which provided as follows: “*The Court of Accounts exercises control over the formation, administration and use of the state and public sector financial resources. Under the law, the Court exercises jurisdictional attributions*”.

Subsequently, in **1992**, the Parliament adopted the organic law of the Court of Accounts (Law no. 94/1992 on the organization and functioning of the Court of Accounts). The institution started its activity on March 1<sup>st</sup> **1993**, being independent from the organizational, financial, functional and operational point of view.

In its original form, the mentioned law described the Court of Accounts as “*the supreme body of financial control and jurisdiction in the financial domain*”. The Court of Accounts was going to decide on the payment of the compensations for damages caused by accountants, managers, administrators and other persons under its jurisdiction.

From the organizational point of view, the Court of Accounts was structured in two dimensions, in order to ensure the accomplishment of its mission both at central and territorial level, being established 42 Chambers of Accounts (the one in Bucharest and 41 County Chambers of Accounts).

Thus, the organizational structure of the Court of Accounts included at that time the Preventive Control Section, the Subsequent Control Section, the Jurisdictional Section, the Jurisdictional College, the Chambers of Accounts and the General Secretariat, and the financial prosecutors were functioning near the Court. The Chamber of Accounts included the financial control department (within which the financial controllers were carrying out their activity) and the jurisdictional college (which was composed of financial judges, being headed by a president). The Plenum of the Court consisted of 24, and subsequently of 25 counsellors of accounts.

The organic law of the Court of Accounts, adopted in 1992, subsequently knew a series of amendments and completions, as well as three republishings (in 2000, 2009 and 2014).

Through the amendments and completions brought to the organic law in **1999**, the Court of Accounts was defined in full accordance with the constitutional provisions as “*the supreme institution of financial control over the formation, administration and use of the financial resources of the state and public sector*”, its prerogatives of preventive control, privatization process control and control of the economic agents with private capital being removed.

In **2002**, the Court of Accounts regained its privatization process control attributions and, additionally, acquired the control attribution of the external funds received from the European Union (PHARE, SAPARD and ISPA).

A particularly important historical landmark of the research is related to Romania's accession, on the occasion of the enlargement stage in 2007, to the European Union, a process that imposed and determined significant reforms in several fields, including the activity of the Court of Accounts.

In the pre-accession stage of Romania to the European Union, the revision of the Constitution in **2003** established the annulment of the jurisdictional attributions of the Court of Accounts. Also, in order to ensure the control of the non-reimbursable external funds provided to Romania by the European Union, the Audit Authority was established, as an independent operational authority organized within the Romanian Court of Accounts.

After the accession, the organic law of the Court of Accounts was amended and supplemented in **2008**. In essence, the new regulations reformed the mission, the status and the activity of the Court of Accounts, bringing important paradigm and terminology changes, on the model of the supreme audit institutions of the countries with seniority in the European Union.

On this occasion, the constitutional provisions were transposed into the organic law so that the mission of the Court of Accounts was no longer two-dimensional, its jurisdictional attributions being taken over by specialized courts. However, the control function of the Court of Accounts was maintained, but, as an innovative approach, this function would be performed through *external public audit* procedures, provided in the own audit standards, elaborated according to the generally accepted international auditing standards.

The statute of the Court of Accounts was reformed as the old supreme financial control institution acquired the quality of *supreme audit institution*, which represents Romania in the international organizations of these institutions. The independence of the Court has been strengthened, with new regulations containing express provisions not only on the financial autonomy, but also in carrying out the activity.

Regarding the activity of the Court of Accounts, the new regulations made distinction between the concept of *control*, as the activity of verification and monitoring the compliance with the law regarding the establishment, administration and use of the public funds, and the concept of *external public audit*, which aimed at the audit activity carried out by the Court, including, mainly, the financial audit and the performance audit.

Thus, starting with 2008, the activity of the Court of Accounts was divided into three levels, specific to the supreme audit institutions, respectively control, financial audit and performance audit (Bostan & Dascălu, 2016, p. 391). *The financial audit* seeks to determine whether the financial statements of the audited entities are complete, real and in accordance with the laws and regulations in force, providing in this sense an opinion, while *the performance audit* independently assesses how an entity/a program/an activity/an operation works in terms

of efficiency, effectiveness and economy. From the point of view of the moment when the external audit is initiated, the Court of Accounts performs *ex post audit missions* (Marcu, 2018, p. 188).

These important reforms have also impacted on the staff of the Court of Accounts, in the sense that the former financial controllers have acquired the status of *external public auditors*. Also, on the same occasion, the specific activity of the Court was organized in 12 departments, each of them led by a counsellor of accounts, the Plenum being composed of 18 counsellors of accounts with a mandate of 9 years.

The new regulations have clearly established the entities subject to control and audit, respectively the public authorities, the national companies, the autonomous utilities, the companies in which the state or an administrative-territorial unit holds, individually or together, all or more than half of the share capital.

In the context of the European integration, the controls no longer end with discharges because, under the organic law of the Court of Accounts, republished in **2009**, the finding of the accounts regularity is equivalent to the issuance of a certificate of conformity to the audited entity. Diametrically opposed, if there are any deviations from legality and regularity that caused financial damages, they are communicated to the audited entity, its management being obliged to establish the extent of the damage and to order the measures for its recovering (Bostan, 2011, p. 37).

As part of the extensive process of amending the specific legislation, in the period 2009-2011, the first version of the Regulation on the organization and conduct of the Court of Accounts specific activities and capitalizing the documents resulting from these activities (abbreviated RODAS) was in force. In **2011**, this regulation was significantly improved, by capitalizing on the issues found during 2009-2011.

The year **2014** marked 150 years since the establishment of the Court and also a reform moment, in the sense of improvement, by capitalizing on the accumulated experience. In essence, the reforms took place under the auspices of the republishing of the organic law of the Court of Accounts and RODAS.

RODAS was further amended and supplemented later, in **2017**. The changes concerned, among others, the nature of the damages found by the external public auditors during the undertaken missions, moving from estimating the damages to determining certain damages, of which extent, including the related interest and late payment penalties, will be determined by the management of the audited entities. Also, the new regulations emphasized the attributions of the Court of Accounts to ascertain the contraventions and to apply the sanctions provided in normative acts, through the external public auditors who carry out the missions at the level of the public entities.

## V. THE CURRENT ROLE OF THE COURT OF ACCOUNTS

The Court of Accounts is, through its role, a fundamental institution of the Romanian state. This role is presented, in a synthetic manner, by the free encyclopedia Wikipedia, as being to control the use of the financial resources of the state and of the public sector.

From a wider perspective, the Court of Accounts has an important role in the process of validating the formation, management and use of the public sector financial resources (Calu et al, 2011, p. 220).

From the normative point of view, the Court of Accounts' role can be approached two-dimensionally: from the perspective of *the constitutional framework* and from the perspective of *the regulatory framework*.

The constitutional framework refers to the fundamental law of Romania (adopted in 1991 and revised in 2003), which at the Title IV, Article 140, regulates a series of aspects related to the activity of the Court of Accounts, as an institution with an essential role in the field of economy and public finance.

Thus, under the Romanian Constitution, "*the Court of Accounts exercises control over the formation, administration and use of the financial resources of the state and the public sector. Under the conditions of the organic law, the litigations resulting from the activity of the Court of Accounts are solved by the specialized courts*". Every year, as a result of the carried out activity, the Court is responsible for presenting to the Parliament a report on the management accounts of the national public budget (the consolidated general budget) for the previous budget year, including the identified irregularities. Also, the constitutional framework regulates that "*at the request of the Chamber of Deputies or the Senate, the Court of Accounts controls the way of managing the public resources and reports on the findings*".

As we can notice, the current role of the Court of Accounts derives from the perspective provided by the constitutional framework, being defined by the control function over the financial management of the resources of the state and the public sector, in the context in which the institution has no longer jurisdictional attributions since 2003.

On the other hand, the national regulatory framework is provided by the organic law of the Court of Accounts (Law no. 94/1992 on the organization and functioning of the Court of Accounts, republished, with the subsequent amendments and completions) and is supplemented by the Regulation on the organization and

conduct of the Court of Accounts specific activities and capitalizing the documents resulting from these activities (abbreviated RODAS).

The role of the Court of Accounts is regulated by its specific law of organization and functioning in full accordance with the constitutional provisions. However, the regulatory framework provides additional provisions, according to which *“the control function of the Court of Accounts is performed through external public audit procedures provided in its own audit standards, developed in accordance with the generally accepted international audit standards”*. Thus, ***the regulatory framework complements the role of the Court of Accounts with the perspective of the external public audit.***

More precisely, the control function of the Court of Accounts, provided by the Constitution and the regulations in the field, is currently performed through the specific demarches of the external public audit, respectively: financial audit, performance audit and compliance audit (control).

Moreover, RODAS offers a wider perspective on the role of the Court of Accounts, which it complements with a series of provisions regarding the reporting activity, as follows: *“The Court of Accounts exercises the function of control over the formation, management and use of the financial resources of the state and the public sector, providing to the Parliament and, respectively, to the deliberative public authorities of the administrative-territorial units reports on their use and administration, in accordance with the principles of legality, regularity, economy, efficiency and effectiveness”*.

The European Court of Auditors (2019, p. 182) took over, in the paper “Public audit in the European Union”, the RODAS perspective on the role of the Romanian Court of Accounts, with the difference that “exercising the control function” was replaced with the mission of “auditing”.

Regarding the Court of Accounts role approach in the legal regulations in force, Ispir (2008, p. 131) was emphasizing the importance of its precise wording, proposing as follows: *“the role of the Court of Accounts is to contribute to the good financial management of the public funds and the public patrimony, to provide Parliament and, respectively, to the deliberative public authorities of the administrative-territorial units, reports on their use and administration, in accordance with the principles of legality, regularity, economy, efficiency and effectiveness”*.

The current role of the Court of Accounts is related to the role of the external public audit exercised by the supreme audit institutions.

Regarding this role, Bonollo (2019, p. 468) emphasizes the importance of the supreme audit institutions for the public sector reform, in the context in which they supervise the public resources use and ensure the accountability. Practically, as Kontogeorga shows (2019, p. 86), the supreme audit institutions decisively contribute to the quality and efficiency of the financial management in each country.

In their turn, Matiș, Gherai and Vladu (2014, p. 23) highlighted the important role of the external public audit in promoting the accountability, the efficiency and the transparency of the public administration regarding the public resources management.

Through an empirical study, Tara, Gherai, Droj and Matica (2016, p. 238) analyzed the social role of the external public audit in reducing corruption, and the results of their research revealed that the advanced recommendations, after the carried out missions, contributed to improving the government activity efficiency and significantly influenced the perceived level of corruption.

From our point of view, the role of the external public audit institution in Romania is that of “independent guarantor” of the financial interests of the state and the citizens and a significant contributor to improving the financial management at national level, by promoting fairness, accountability and best practices in the operations involving public funds (Trincu-Drăgușin, 2018, p. 200).

## VI. CONCLUSIONS

The research highlighted that, over time, the exercise of the control function over the management of the public funds has been ensured by various institutions, as is synthetically presented in Table 1.

**Table 1 – The institutions that exercised, over time, the function of control over the management of public funds in Romania**

1864 – 1948	<b>The Romanian High Court of Accounts</b>
1948 – 1973*	* <i>The Ministry of Finance, through the Financial Control Department</i>
1973 – 1989	<b>The Superior Court of Financial Control</b>
1989 – 1992*	* <i>The Economic-Financial Control Body of the Prime Minister of the Romanian Government,</i> * <i>The General Directorate of State Financial Control of the Ministry of Finance</i>
1992 – present	<b>The Romanian Court of Accounts</b>

Source: Author's processing, 2020.

Also, the institution of supreme rank in the supervision of the public resources management has known, over time, several names, from the High Court of Accounts, to the Superior Court of Financial Control and, currently, the Romanian Court of Accounts. In other words, throughout its history, the Court of Accounts has undergone numerous changes both in terms of institutional organization and its functioning, mainly determined by the changes that have taken place in terms of political, economic and financial.

At the same time, the investigative approach highlighted the fact that the (external public) audit has been regulated in Romania since 2008, so it has a quite short history, of just over a decade, while the institutional history of the public resources management control function is much wider, dating back over a century and a half. By reference to the age of the supreme audit institutions in the Member States of the European Union, we consider that the Romanian Court of Accounts is one of medium age.

The current role of the Court of Accounts is determined by the constitutional and the regulatory framework and derives from its mission of sole public authority of the state, which exercises the function of control over the financial management of the state and public sector resources.

Currently, the Court of Accounts has no longer jurisdictional attributions, and its control function is performed through the specific demarches of the external public audit, respectively: financial audit, performance audit and compliance audit (control). Romania's supreme audit institution performs only ex post audit missions.

In conclusion, the current Romanian Court of Accounts is the result of an evolutionary historical process, but characterized by a winding path through time until becoming today's modern supreme audit institution, which has the mission to supervise and strengthen the financial management of the entities that manage public resources, with the primary purpose of their orientation towards responsibility, fairness and performance. The Court of Accounts stands out as one of the oldest, most credible and most important structures of the rule of law in Romania, with an essential role in combating squandering, abuse and corruption in the management of public funds.

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