

# Considerations on the Institutional Independence Statute of the Romanian Court of Accounts

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## *Abstract*

*The article is an analysis of the way the principle of independence works at the level of the Romanian Court of Accounts, the institution habilitated by legal provisions to conduct the financial control/audit activity, in order to obtain an assurance that the financial resources required to cover common needs, their distribution in relation to the priorities set by the competent bodies, as well as the use of public funds are unfold in conditions of economical and social efficiency, involving harmonization of interests, sizing of financial resources and, last but not least, their channeling towards various programmed destinations.*

**Keywords:** *financial control, financial audit, public budget, supreme audit institution, counselor of accounts, guidelines, control and audit methodologies*

## **JEL classification: M42**

The institutional independence statute of the Romanian Court of Accounts is one of the conditions required to implement its main objective, consisting in the control of the establishment, management and use of the financial resources of the state and of the public sector.

The Lima Declaration, adopted in 1977, at the IX Congress of INTOSAI<sup>1</sup>, based on the Guidelines of public financial control and audit, sets the organization framework that would ensure the independence of supreme audit institutions, of its members and officers, as well as the financial independence according to the following norms:

- The independence of the Supreme Audit Institution (SAI) and of its staff is guaranteed by the national fundamental law, and the results of the activity are included in the report to the legislative;
- The SAI establishes an own budget which is included in the national public budget.

In the same respect, the Treaty on the Functioning of the European Union, the consolidated version, in Section 7, the European Court of Auditors, under art. 285 provides that “*The Members of the Court of Accounts shall be completely independent in the performance of their duties, in the Union’s general interest.*”<sup>2</sup>”

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In the same sense of strengthening of the independence statute of the members of the Court of Accounts, the Treaty on the Functioning of the European Union also provides, under art. 286 paragraphs (3) and (4), that *“In the performance of these duties, the Members of the Court of Accounts shall neither seek nor take instructions from any government or from any other body. The Members of the Court of Accounts shall refrain from any action incompatible with their duties.*

*(4) The Members of the Court of Accounts may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising the reform and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.”*

These provisions were implemented based on Decision 26/2010 laying down the norms for the enforcement of the Procedure rule of the European Court of Auditors, which under art. 5 provides that *“The Members shall refrain from any external activity that is incompatible with the principles of independence and availability in the conduct of duties”* as they have been established based on the Treaty on the Functioning of the European Union.

These norms represented as many negotiation points of the community acquis, the conditions for the accession of Romania to the European Union.

Starting from these requirements, the institutional independence of the Romanian Court of Accounts was formally ensured both by the fundamental law, the Constitution of Romania of 2003 and by its Law<sup>3</sup> on the organization and operation.

Thus, art. 140 paragraph (1) of the Romanian Constitution of 2003 establishes the prerogatives of the Romanian Court of Accounts, explicitly mentioning the fact that *“... it conducts the control of the establishment, administration and use of the financial resources of the state and of the public sector...”* while paragraph (4) of the main article provides that *“... the Members of the Court of Accounts are independent in the conduct of their mandate and irremovable on the whole duration of such”*.

Furthermore, the Law on the organization and operation of the Romanian Court of Accounts<sup>4</sup>, provides that *“The Court of Accounts shall draft and approve its own budget, which it shall submit to the Government, for it to be included in the state budget draft which the Parliament shall approve.”* under art. 6. Though from the above there results that the provisions of the Lima Declaration have been implemented, in fact there are several elements that impact on the independence status of the Court.

Mention shall be made that, though established by the above mentioned provisions, as long as the proposals on the appointment of the members are not exclusively at the charge of the permanent Commissions for budget, finances and banks of the two Chambers of the Parliament – the Senate and the Chamber of the

Deputies – but at the charge the ruling political parties, the independence statute of the Romanian Court of Accounts' members is still debatable.

Currently, the representation degree of the counselors of accounts within the number set for the plenum of the Court is based on the political algorithm of the parliamentary political parties, as of the date they are appointed. Thus, each political party, represented in the Parliament, is allotted a number of mandates for counselors of accounts, the selection of this persons being at the discretion of the political structures.

This limitation of the access of all citizens fulfilling the conditions to candidate to the position of a counselor of accounts is a serious infringement of the constitutional right to work, provided by the fundamental law, the Constitution of Romanian of 2003<sup>5</sup> which, under art. 41 (1), provides *“The selection of the profession, trade or occupation, as well as of the work place is free”*.

Nevertheless, as provided above, only a very restricted segment of the ones fulfilling the conditions to candidate to the position as a counselor of accounts benefit from the possibility to apply for the position with the two permanent parliamentary commissions of the Senate and of the Chamber of Deputies.

Voting, in the plenum of the Parliament, assembled in the joint session of the two Chambers, of the candidates declared admitted by the two mentioned parliamentary Chambers, is made according to a common list, limiting this way the right of each MP to opt for one or another of the candidates. This situation is aggravated by the fact that, since candidates are proposed by a political structure approved by the Parliament, it is possible that a certain partisan attitude affects, one way or another, the activity provided by law.

Moreover, the fact that among the counselors of accounts appointed by the Parliament as mentioned before are the persons elected to manage the Romanian Court of Accounts, the president and the vice presidents, as well as the ones in charge of programming and coordinating the control actions, emphasizes the idea that the appointment of the counselors of accounts based on the political algorithm affects their independence statute.

Given that the proposal for these functions was made by a political structure, it is possible that a certain attitude, at least at the level of tendency, emerges in the activity involving programming and unfolding of the control/audit of entities the managers of which belong to the political structures which promoted the proposal.

In the same sense, though the Law<sup>6</sup> also provides under art. 49. paragraph (2) that *“The members of the Court of Accounts may not be members of political parties or unfold public political activities”*, reality demonstrated that subjectivism could have intervened in the unfold of the competences, under various forms, both in activities planning and especially in the follow up of the control results.

To put it briefly, as far as the counselors of accounts' appointment is decided by political structures, it is obvious that their activity could be governed and unfold under the sign of politics, while there exists a permanent and genuine

risk that the aim and objectives of the Court of Accounts be subordinated to certain influences.

Yet another condition of the institutional independence of the Court of Accounts is the observance of the provisions on the establishment and approval of the own budget which, in keeping with the same provisions, after establishment, is submitted to the Government so as to be included in the draft of the national public budget to be approved by the Parliament.

In reality, in point of financing, the Romanian Court of Accounts is considered a user of budgetary funds and consequently the principle of independence established based on the Lima Declaration is affected, since the institution obtains its financial means like any other public institutions, which does not fully grant it the financial independence statute. It is a known fact that during a financial year, the budget of the Romanian Court of Accounts, like that of any other public institution of Romania, is not immune to the interventions of the Ministry of Public Finances.

Currently, the budget draft of the Romanian Court of Accounts, after establishment, is discussed and submitted to its plenum, after which it is forwarded to the Ministry of Public Finances, though the examination of the Romanian Court of Accounts' budget annual implementation is the attribute of the Parliament, respectively of the Commissions for budget, finances and banks of both Chambers.

On the other hand, based on the current legal provisions, the Ministry of Finances is in charge of the establishment and implementation of the public budget, of the establishment of financial statements as well as of their communication to the Parliament. At the same time, the Ministry of Finances is the main "auditee" of the Romanian Court of Accounts in point of the public budget general execution examination, but also in point of its competences as *treasurer* and *accountant* of the state, these aspects also affecting the financial independence statute.

Certain constraints emerge this way, obviously affecting the institutional independence statute; these should be settled by the observance of the provisions according to which the budget draft shall be analyzed at Parliament level, which could have the sole competence to *arbitrate* possible differences in this respect between the Romanian Court of Accounts and the Ministry of Public Finances.

## Conclusions

Given the above, to grant the genuine independence statute of the Romanian Court of Accounts, so as it integrates in the system of similar institutions of the European Union, the implementation of at least two conditions is required, by the modification of the current provisions, respectively:

- a) *the provision of the right of all citizens who are willing and fulfill the education and seniority conditions, to enroll so as to be heard by the members of the Commissions for budget, finances and banks of the two Chambers of the Parliament. The decision to receive the candidature is*

*made public in the media six months before the appointment of the new counselors of accounts;*

- b) *the approval by the Parliament of Romania of the budget of the Romanian Court of Accounts, totally and according to the structure endorsed by the latter's plenum, without other interventions of the Government structures, observing this way the provisions of Lima Declaration on public financial control and audit guidelines, in point of the requirement on independence of Supreme Audit Institutions.*

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12. \*\*\* Commission Regulation (EC, Euratom) No. 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No. 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, Official Journal of the European Union L 357 by 31 December 2002

13. \*\*\* The Constitution of Romania, published in the Official Bulletin of Romania, part I, no. 233 of November 21, 1991, coming into force subsequent to approval by referendum of December 8, 1991.
14. \*\*\*The Lima Declaration on public finances audit guidelines, a the IX INTOSAI Congress INTOSAI Financial Audit Magazine no. 1/2000, Editor – the Romanian Court of Accounts
15. \*\*\* Law no. 94/1992 on the organization and operation of the Court of Accounts, re-issued in the Official Bulletin no. 282, of April 29, 2009

## Notes

- (1) The Treaty on the Functioning of the European Union, the consolidated version, published in the Official Journal of the European Union C 83/47 on 30.3.2010
- (2) INTOSAI – The International Organization of Supreme Audit Institutions (INTOSAI) operates like an organization for the external public audit community, offering an institutionalized framework for supreme audit institutions, to promote development and transfer of knowledge and skills, the improvement of legal audit in the whole world.
- (3) Law no. 94 of September 8, 1992, on the organization and operation of the Court of Accounts, published in the Official Bulletin no. 244 of September 9, 1992
- (4) Law no. 94/1992 on the organization and operation of the Court of Accounts re-issued in the Official Bulletin no. 282, of April 29, 2009.
- (5) *The Constitution of Romania of 2003*, the re-issued form of the Constitution of 1991, reviewed based on Law no. 429/2003, approved based on national Referendum, confirmed by Resolution no. 3 of October 22, 2003 of the Constitutional Court, published in the Official Bulletin no. 787 of October 31, 2003.
- (6) Law no. 94/1992 on the organization and operation of the Court of Accounts re-issued in the Official Bulletin no. 282, of April 29, 2009.