Deviations from legality practiced by the budget authorising officers at the territorial administrative level, as found by the Romanian Court of Auditors

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Abstract: *Through the following proceedings we aim to focus on some milestones regarding the exercise of public audit and the deviations from legality practiced by the budget authorising officers at the territorial administrative level, that were found by the Romanian Court of Auditors in the most recent times. For this purpose, we will make reference to the legal framework that is applicable to the Court of Auditors' activity, and afterwards we will be presenting the types of auditing missions carried out by the aforementioned institution. The reader will be able to take into account that Romanian Court of Auditors tracks the way in which the economic, financial, fiscal, and accounting regulations are met, in order to identify possible violations of legality/regularity regarding the elaboration of the financial statement, in the management of the private and public assets of the territorial-administrative units, in the appropriate and efficient use of public funding. The findings of the audit missions are, most of the times, deviations and irregularities which result in either not receiving some additional income that is meant for the public budget, or affects the quality of the financial-economical management, and also in damages.*

Keywords: External Public Audit, county court of auditors, financial deviations, territorial administrative units, local budgets.

1. The legal framework applicable to the Romanian Court of Auditors' activity

Similar to the models found in other EU states (Boulescu & Ispir, 2009; Ghiță & Mareș, 2002; Hurjui & Bostan, 2015; Bostan 2010ab), the Court of Auditors works based on the provisions from the Romanian Constitution and Law 94/1992 regarding the organisation and operation of the Court of Auditors (PR, 1992). According to art. 140 from the Constitution, "The Court of Auditors exercises control over the ways in which the state's and public sector's financial resources are formed, administered and used", and "disputes that come from the Court of Auditors' activity, are too be settled in specialized courts" (PR, 2003). Law number 217/2008 for the amendment and completion of Law 94/1992 regarding the organisation and operation of the Court of Auditors (PR, 2008), brings important transformations to the existing way of carrying out the activities of the institution upon which we focus our attention in our writing. The most important of these, make reference to the fact that now it is clearly stipulated, that the Romanian Court of Auditors as the supreme audit institution represents Romania in INTOSAI and EUROSAI.

Furthermore it is also mentioned that "the control function of the Court of Auditors is fulfilled with the use of external audit procedures, referred to in the internal audit standards that are in conformity with the general accepted international audit standards", and on the other hand more concepts, associated with the specialised activities of the Court of Auditors are defined, such as: control, external public audit, financial audit, performance audit. The institution carries out it's specific activities autonomously, performing financial audit, performance audit, conformity audit (targeted inspection) and other activities based on the

competences given by the law, but also external public audit of community funds (**Figure 1**) (PR, 2008).

Figure 1. The components of the Court of Auditors' specific activity

Source: The White Chart of The Romanian Court of Auditors

http://www.curteadeconturi.ro/Publicatii/Cartea_Alba.pdf

2. Types of audit operations carried out by the Court of Auditors

The operations carried out by the Court of Auditors materialise in financial audit of the execution accounts of all the components of the consolidated state budget, respectively: "the state budget; the social security budget; the unemployment budget; the Common National Fund of Social and Health Insurance budget; the State Treasury Budget; the general account of state public debt; budgets of authorities and public institutions; budgets of some territorial-administrative units".

The mapping of the territorial budgetary components accounts that enter under the incidence of the Court's activity is shown in **Figure 2**.

Figure 2. Budgetary territorial components that enter under the incidence of the Court of Auditors' activity

(Source: http://www.curteadeconturi.ro/Publicatii_locale.aspx?1=10/30/2013 11:17:57 AM)

In the territorial structure, the institution consists of 42 courts of auditors that, under the coordination and guidance of the departments, verify the national funds of the central public administration, and most of all, the public funds of territorial-administrative units and 8 regional general directorates for verifying European funds. The Court of Auditors carries out missions in order to verify national companies, autonomous administration of local and national interest, companies where territorial-administrative units or the state are the major stake-holder, entities with powers in banking or capital markets and entities with powers in privatisation.

To be more specific, under the competence of the Romanian Court of Auditors is a number of 15.564 entities as follows (CCR, 2017): (i) 3.294 – Main authorising officers; (ii) 199 – Secondary authorising officers; (iii) 10.117 – Tertiary authorising officers; (iv) 80 – National Companies (including subsidies); (v) 62 – Companies of national interest; (vi) 97 – Autonomous administrations; (vii) 1.009 – Companies of local interest; (x) 416 – Other public institutions. Mainly, the financial auditing operations represents 63%, conformity auditing operations 25%, performance auditing operations 9% and documentation 3%, from the total actions. In the previous period, through the activities of the institution, “cases of failure to comply with legal provisions were found, consisting of deviations that led to the failure to track and cash in of some budgetary income or damages, but also deviations that did not have any direct financial impact, but distorted the financial situations which as consequence disrupted the function of internal systems (accounting, IT, etc.), or procedures that were accepted at a entity level” (CCR, 2017).

3. Typical findings of budgetary authorising officers form territorial-administrative units, from the 2015 budget exercise

Through the inspections carried out by the rooms of auditors at different public entities of local interest, the following objectives were followed: “(i) the elaboration of the own budget project, but also the authorization, legality and necessity of the changes that were brought to the initial public budget provisions; (ii) the accuracy and reality of the data shown by the financial situation; (iii) way of establishing, highlighting and tracking of the cash in of budgetary income, in the sums and at the dates provided by the law, and also the identification of the problems that determined their unfulfillment; (iv) the evaluation of the management and control/internal audit systems of the verified entities, the way in which they are implemented, and the link of causality between the results of the evaluation and the deficiencies found by the Court of Auditors in the entity’s activity; (v) the quality of the economical financial management in relationship with the aim, objectives and powers stated in the constitution papers of the given entity, highlighting: (vi) keeping stock and evaluating all available properties, and recording the results in accounting; (vii) the constitution and usage of funds in order to carry out the activities according to the aims, objectives and powers of the entity; (viii) legality of hiring, liquidation and expense payments from public funds; (ix) organizing and deploying the procedures to assign contracts for public acquisitions, their management and finalization” (CCR, 2016).

The shown objectives aim, mainly, towards the elimination of errors any irregularities in order to improve the activities of the verified entities and to examine the managerial responsibilities in respecting the fiscal and financial discipline and the administration of public funds.

But here is how the income and expense components of the general centralized budget of territorial administrative units for the year 2015, accord to the data provided by the consolidated financial situations provided by the MFP and from the MFP web-site, Budgetary Exercise section (**Table 1**).

Table 1. The summary of income and expense components of the general centralized budget of territorial administrative units (2015)

No.	Budgets	2013	2014	2015
1	Local Budgets of municipalities, cities, counties			
	- Cashed Income	48.093	53.666	61.463
	- Paid expenses	47.380	52.101	59.048
	- Surplus/Deficit	713	1.565	2.415
2	Budgets of institutions and public activities financed partially or fully from own income			
	- Cashed Income	10.661	11.036	11.461
	- Paid expenses	10.549	10.872	11.330
	- Surplus/Deficit	112	164	131
3	Budgets of internal and external loans			
	- Cashed Income	-	-	-
	- Paid expenses	2.337	1.413	4.750
	- Surplus/Deficit	-2.337	-1.413	-4.750
4	Budgets of external non-repayable funds			
	- Cashed Income	116	84	73
	- Paid expenses	129	64	49
	- Surplus/Deficit	-13	20	24
5	General centralized budgets of territorial-administrative units			
	- Cashed Income	56.941	62.371	71.713
	- Paid expenses	58.159	61.932	72.447
	- Surplus/Deficit	-1.218	439	-764

(Source: http://www.curteadeconturi.ro/Publicatii/Rapoarte_Locale_2015/SintezaLocale2015.pdf)

At the territorial-administrative unit level, according to the Operational Plan of the Court of Auditors for the year 2016, a number of 1.657 operations were realized (CCR, 2016), of which 1.318 were financial audit actions over the financial situations closed at the end of the year 2015 (79,5%), 59 performance audit actions (3,6%) and 280 conformity audit actions (16,9%). As a follow-up of the audit/control actions, the following audit/control papers were compiled: (i) 1.304 audit reports, (ii) 253 control reports, (iii) 58 performance audit reports, (iv) 1.298 finding reports, (v) 1.948 finding notes, (vi) 134 finding reports of contraventions, breach of obligations and applying of civil fine.

The actions of territorial rooms of auditors "made at authorizing officers of local budgets, as well as autonomous administrations and companies of local interest that showed instances of failure to comply with the legal provisions, finding deviations and irregularities that generated either the failure to cash in the supplementary income towards the public budget, or prejudices, or they influenced the quality of the economical-financial management of the checked entity" (CCR, 2016) (Table 2).

Table 2. The quantification of deviations and irregularities found at authorizing officers of local budgets, as well as autonomous administrations and companies of local interest

	m.u.	Financial Audit	Conformity Audit	Total Actions
1. Income	Mil. Lei	303,18	71,60	374,78
	Mil. Euro*	67,52	15,95	83,47
2. Prejudices	Mil. Lei	853,31	44,80	898,11
	Mil. Euro*	190,05	9,97	200,02
Total Sums	Mil.Lei	1.156,49	116,40	1.272,89
	Mil.Euro*	257,57	25,92	283,49

*the mean exchange rate leu/euro for the year 2016 of 4,49 was used.

(Source: National Prognosis Commission – Autumn prognosis, November 2016)

To the points presented above it should be added that according to Law nr.94/1992 (art.33 alin. (4)), "in situations in which in the audit reports there are findings of the existence of acts that contain clues that they were committed by breaking the penal law, the qualified authorities shall be informed in order to ensure the value of the findings". In the analyzed year (2016): "the prosecution authorities were informed in 124 cases, following the recorded findings in the audit report of: acts that contain clues that they were committed by breaking the penal law (96 cases); the act of not recovering the prejudice, caused by not imposing and not following the measures given by the rooms of auditors, by the management of the entities (28 cases)" (CCR, 2016).

4. Conclusion

During of the actions deployed at public entities of local interest, the Court of Auditors, follows the way in which the economic, financial, bookkeeping and fiscal regulations are met, in order to identify possible deviations from legality/ regularity regarding the drafting of the financial situations, the management of private and public estate of territorial-administrative units, in the correct and efficient use of public funds. The documents made as a result of these actions often highlight the violation of "the 3 E" principle (economy, efficiency, efficacy) in the management of public financial resources or inconsistent operations with the applicable legal/decisional framework.

Strictly from a fiscal perspective, the main violations identified were: (i) the false calculation of taxes; (ii) not establishing, not highlighting and not cashing in of taxes in at the times or in the sums stated by the law; (iii) not following the income from taxes in the legal prescription time which led to losses in the estate (iv) not calculating accessory obligations and not communicating these to the debtors according to the procedure from the Code of Fiscal Procedure, although in the fiscal register there are sums that are meant to be received; (v) illegal authorization of fiscal facilities regarding the payment of taxes; (vi) legal provisions were not fully applied in the process of foreclosure of fiscal debt, meaning that the authorities that were meant to follow the foreclosure procedures did not act upon all foreclosing measures provided by law; (vii) fiscal inspections are not organized as provided by the Code of Fiscal Procedure.

On the other hand, there is no system of indicators that would measure the performance of collecting local taxes, and no analysis is made regarding the cashing in of own income in order to create systems to improve tax collection activities.

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ВІДХИЛЕННЯ ВІД ЗАКОННОСТІ, ЩО ЗАСТОСОВУЮТЬСЯ ПОСАДОВИМИ ОСОБАМИ БЮДЖЕТУ НА АДМІНІСТРАТИВНО-ТЕРИТОРІАЛЬНОМУ РІВНІ, ЯК ЦЕ ВИЗНАЧЕНО РУМУНСЬКИМ СУДОМ АУДИТОРІВ

Завдяки такому підходу ми хочемо зупинитися на текстах, пов'язаних із здійсненням державного аудиту та відхилення від законності, вчинені бюджетними розпорядниками кредитів на рівні адміністративно-територіальних установ, що Палата Рахунків Румунії виявила останнім часом. Щоб зробити це, спочатку ми робимо деякі посилання на нормативно-правову базу, яка стосується Рахункової Палати Румунії, а потім представимо види аудиторських місій, що виконуються відповідним закладом. Читач помітить, що Рахункова Палата Румунії слідкує за дотриманням економічних, фінансових, фіскальних та бухгалтерських правил, з метою виявлення можливих порушень законності / регулярністю з підготовки фінансової звітності, управління державним і приватним адміністративно-територіальних установ для належного та ефективного використання державних коштів. Після дій аудиту часто виявляються відхилення та нерівності, які приводять до втрати додаткових доходів, які не входять до державного бюджету, або збиток бюджету, що впливає на якість економічного і фінансового управління.

Ключові слова: *зовнішній державний аудит, повітовий суд аудиторів, фінансові відхилення, територіальні адміністративні одиниці, місцеві бюджети.*