



CORTE DEI CONTI

Procura generale

Forum of Jurisdictional SAIs

Istanbul, 24 - 25 January 2019

*The judicial activity
of the Corte dei conti
against
fraud and corruption*

V.P.G. Alessandra Pomponio

V.P.G. Arturo Iadecola

Guarantees of independence of the magistrates of the Corte dei conti

The independence of the judiciary is a fundamental principle of the Italian Constitution:

- art. 100 establishes the independence of the Corte dei conti and its members from the Government;
- art. 101: “the judges are subject only to the law”;

- art. 104: “the magistracy is autonomous and independent of other powers”;
 - art. 107: irremovability of the magistrates.
-
- the Corte dei conti manages its budget with financial and accounting autonomy.

- The magistrates of the Corte dei conti are normally appointed after an open public competition.
- The **Council of Presidency (CoP)** is the self-governing body of the Institution, since 1988.
- The CoP is responsible for all matters related to the career of the magistrates: functions, transfers, promotions as well as disciplinary proceedings.

- The **President** is appointed by the Government among the Presidents of Sections of the Corte dei conti. The CoP gives a qualified advice to the Government.
- The **General Prosecutor** is chosen by the CoP after an internal competition among the Presidents of Sections of the Corte dei conti.

The Corte dei conti, under the Italian Constitution, has **jurisdiction** on:

- public accounting (administrative liability included);
- other matters determined by specific acts of the Parliament.

Administrative liability

- Administrative liability is not governed by the ordinary civil law, but by specific rules.
- It covers behaviours of individuals, associations or companies.
- It has a predominantly compensatory purpose.
- It pursues the further objective of ensuring the sound management of public funds.
- It covers not only the intention to harm but also gross negligence (unlike, in most cases, criminal liability).

- The **damage** caused by unlawful acts can include:
 - illegal expenses or waste of money;
 - illegal loss or reduction of incomes;
 - costs incurred to ascertain the irregularity;
 - detriment caused by inefficiency of the public service;
 - loss of reputation of the entity involved;
 - costs of rectifying quality or quantity of public works.

The Financial Public Prosecutor (FPP)

- When there is a damage to public funds, direct actions can only be brought by the FPP set up within the Corte itself.
- He carries investigations about damages and sues in front of the Corte dei conti people found liable of them.
- The FPP takes into consideration also the behaviour of people responsible for supervision.

Powers available to the FPP
(according to the Code of Accounting
Justice issued in 2016)

The FPP has the power to:

- request documents held by the judiciary and administrative authorities;
- make direct inspections and verifications;
- hire technical consultants;
- delegate investigation functions to civil servants;

- order the production and even the confiscation of documents;
- delegate investigations or specific inspections to the Guardia di Finanza and other police forces (Carabinieri, State Police, ecc.);
- ask the judge to issue precautionary measures, in any phase of the procedure, even at the end of the investigations, before the trial.

...in particular: precautionary measures

- The aim of precautionary measures is to guarantee the **recovery** of public funds once the offender has been convicted.
- Otherwise, before the conviction, the offender could dispose of real property and liquid assets, and companies eventually involved might disappear.
- The FPP can freeze all the assets of the offender.
- Precautionary measures are particularly used in case of offences committed by public servants against public authorities (corruption included).

- For example, in cases of corruption in relation to public works, they are used to guarantee the amount correspondent to the whole loss to be compensated (it consists not only of the bribe or the firm's illicit profits, but also of losses resulting from defects in the works, and/or harm to public image).
- Therefore, precautionary warrants requested by the FPP can overlap to the ones disposed by the Criminal Public Prosecutor.

Duty to report

- Administrative authorities: administrative and accounting bodies (accountants and internal auditors).
- All kinds of magistrates.
- In particular, the Criminal Prosecution Office.
- National police bodies.

Other sources

- Whistle-blowers.
- Press articles.

Links between criminal Court and the FPP

- The FPP's activities are independent of Criminal Prosecutor's investigations.
- There are, however, important procedural links between Criminal and Financial Public Prosecutors which guarantee adequate protection to public resources.
- In particular, the Criminal Prosecution Office is obliged to supply information to the FPP when public funds are involved.

- This happens particularly in two moments:
 - 1) at the stage where the Criminal Public Prosecutor decides to proceed;
 - 2) when he adopts personal precautionary measures.
- This ensures:
 - 1) that the FPP's action takes place in a timely manner;
 - 2) that financial precautionary measures can be put in place.

The results of the activity of the FPP

- **2016:** total claims were 1,507, for the amount of 632,945,063 euro; until 117,914,752 euro were frozen by 63 precautional measures.
- **2017:** total claims were 1,192, for the amount of 4,771,053,131 euro (included about 4 bln referred only to Latium region for a specific case involving an “interest rate swap” operation); until 207,428,917 euro were frozen by 85 precautional measures.

- in **2016**, 938 judgments have been issued, condemning offenders to compensation for the amount of 187,588,815 euro;
- in **2017**, 930 judgments have been issued, condemning offenders to compensation for the amount of 200,801,092 euro;

In particular for damages related to crimes (corruption included):

- in **2016**: 118 judgments for about 15 million euro;
- in **2017**: 65 judgments for about 120 million euro.

The organizational structure of judicial functions

- First step of the trial (at regional level).
- Second step of the trial (Appeal) only in Rome.
- Joint Sections guarantee the uniform interpretation of the law.
- The Supreme Court of cassation, in this field, can only state about the competence of each judiciary body (ordinary judges or financial judges).

Conclusion

The jurisdictional activity related to administrative liability is an effective deterrent because it allows to recover assets or money ungainfully obtained through illegal activities.

In this way, it can prevent illegal activities, because the offenders should know that they won't get any advantages from their illegal behaviour.

So, the action of the Italian FPP is an instrument which could easily be considered as an efficient tool available to protect the national and European financial interests against corruption and other economic crimes.

Thank you for your attention