



CORTE DEI CONTI

**Strengthening collaboration between Anti-Corruption Authority (ACAs) and Supreme Audit Institutions (SAIs) towards effective prevention and detection of corruption offences**

Abu Dhabi, 14-15 December 2019

*Panel on Public sector procurement / privatization*

- 1. The key role of the Court of auditors' jurisdiction in the prevention and fight against corruption: damages that can be restored and recent case-law.**

Many cases of corruption fall under investigation by the Public Prosecutor of the Court of Audit.

In 2017, **four hundred eighty three** actions related to crimes have been pursued by the prosecution offices, for a total of damages to public funds approximately amounting to **four billion and three hundred sixty million** euro.

**Fifty** of them concerned cases of corruption.

In 2018, total crime-related actions were **three hundred thirty three, forty five** of which concerning corruption, for a total amount of about **two hundred seventy** million euro.

Such cases of “multi-layered” maladministration often occur in the field of public procurement.

In this area, administrative liability is typically connected to the following type of damages:

- compensations paid to the enterprises who have been unlawfully excluded from the procurement procedure;
- higher costs or lower quality of works caused by the reduction of competition, which doesn't allow the contracting authority to make the choice that best fulfils the public interest;
- expenses derived from the wrongful design of works, which may result in unexpected variant solutions;
- unduly payments to the contractor.

When the illicit conduct of a public servant constitutes a criminal offence, the Public Prosecutor is also entitled to claim damages caused to the reputation of the entity involved. The law provides that the amount of the damage is presumed to be equal to twice the amount illicitly received by the offender, *e.g.* as a bribe.

An example from the Court's case law regards the construction of the protection system of the lagoon of Venice from extraordinary tides and consequent flooding (MOSE).

The Court ascertained, on the basis of the results of the criminal trial concerning the same facts, that the President and the Regional Minister for infrastructures of the Veneto Region had received bribes for years from the consortium of enterprises that was carrying out the project, in exchange for their intervention in its favour.

The defendants have been, consequently, condemned to pay compensation for the damage to the reputation of the Veneto Region, and one of them has also been ordered to restore the damage caused by the inefficiency of his service.

More specifically, the Court stated that he had exercised his functions not in the public interest, but with the purpose of providing an undue advantage to the private contractor. Therefore, it has condemned him to pay the Veneto Region an amount equal to a part of the salary received during the time when he had been accepting bribes.

Another action, which is still ongoing, has been brought to the Court of Audit against the managers of the consortium, and the consortium itself,

for the damage caused by billing works that hadn't been done, estimated at about **twenty** million euro.

It's interesting to see that the MOSE has also been the subject of the audit activity of the Court. In 2009, in particular, the findings of the performance audit showed the Italian Parliament that the works to be done and their cost were actually decided not by the public Administration, but by the contractor. Therefore, the audit report was submitted to the Public Prosecutor.

For the records, the MOSE is expected to be completed in 2021, for a total cost of about six billion euro, so it couldn't prevent the flooding that affected Venice some weeks ago.

## **2. Intersections and synergies of Audit and Judicial Functions: cross-support, mutual exchanges between Audit Chambers and the Public Prosecutor.**

In general terms, the collaboration between the Public Prosecutor and Audit Chambers, through a mutual exchange and coordinated use of data and information, allows to add effectiveness in the strive for achieving the goals laid down by law.

The judge responsible for auditing informs the Public Prosecutor on facts and behaviours which, in his understanding, might be seen as having been the source for damages to the public funds.

Exactly the other way round, the Prosecutor informs the judges responsible for auditing of those irregularities which cannot yet be brought to Court, because the criteria for judicially affirming a damage (such as we have seen) are not clearly met.

Consequently, the auditing judges could plan to make any further inquiry which may be deemed of interest within their remit.

The judicial functions stimulate auditing functions and auditing functions stimulate judicial functions. This, in the system of the Italian SAI, is the key to safeguard the public resources as well as to prevent and combat corruption in its wide contemporary sense.

Thank you for your attention.

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