



CORTE DEI CONTI

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**COURTS OF ACCOUNTS AND PUBLIC CONTROL**  
International Seminar

*The Judicial Function of the Corte dei conti*

Quito – February 21, 2019



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**“It is an absolute necessity to concentrate  
the *ex ante* and *ex post* audit in  
an irremovable judge”**

**Camillo Benso Earl of Cavour (Ministry of Finance), 1852**

## A Brief History of the *Corte dei conti*

In the newly established Kingdom of Italy, on August 14, 1862 the *Corte dei conti* was established with the aim of auditing State administrations in order to prevent and avoid waste of money and unsound management. It mainly had the power to audit the management of public funds and to audit public accountants who had to render accounts.

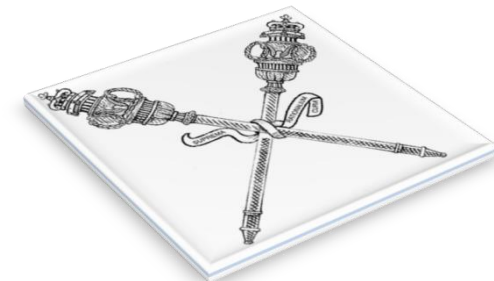
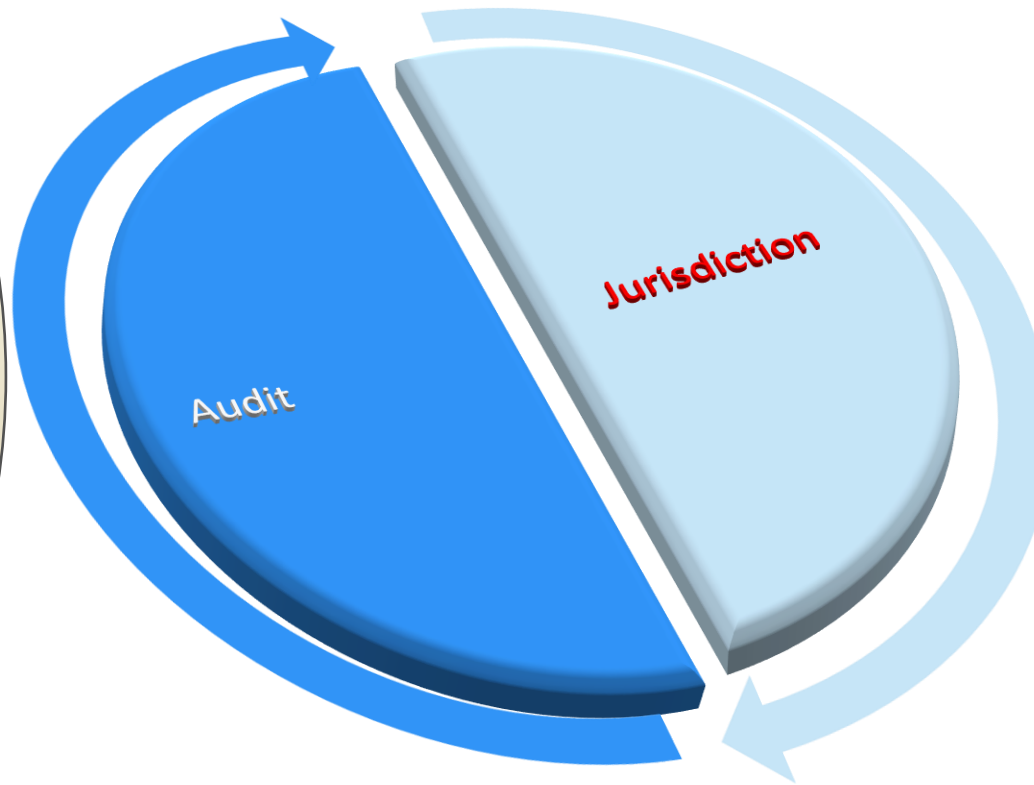
In 1948, the *Corte dei conti* was introduced into the constitutional system of the Italian Republic as an “**auxiliary body**” of the State.

The functions of the *Corte dei conti* have developed during these decades in order to follow the evolutions of the State: the creation of Regions; their increased legislative competences; several reforms of the budget of the State, Regions and other public bodies; the new fiscal governance of the European Union; etc.

The *Corte dei conti* continuously updates and adapts its functions in accordance with the growing request for carrying out both efficient audits and an accurate jurisdiction of liability in order to increase the transparency of the administration, guarantee the sound management of public resources, to improve the quality of services provided to citizens.

**Article 100, para 2**

The Court of Accounts exercises preventive control over the legitimacy of Government measures, and also ex post auditing of the administration of the State Budget. It participates, in the cases and ways established by law, in auditing the financial management of the entities receiving regular budgetary support from the State. It reports directly to Parliament on the results of audits performed.

**Article 103, para 2**

It holds the jurisdiction in matters of public accounts and in specific matters laid down by law.

## The Functions of the Corte dei conti

The *Corte dei conti* is an Institution which is autonomous and independent from all the other powers of the State.

Its components are **judges** and are autonomous and independent from the Government (Article 100, para. 3).

The Constitution assigned **audit and judicial functions** to the *Corte dei conti* (Articles 100, para. 2 and 103).

In addition, the *Corte dei conti* carries out:

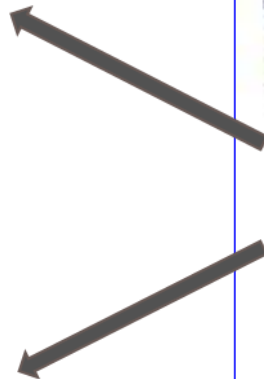
- advisory functions:** opinions to the Government and Ministers regarding laws, project of laws, administrative acts and regulations; opinions concerning public accounting required by Regions, Municipalities, Provinces and Metropolitan cities; and
- administrative functions:** provisions concerning its organization and the status of its employees.



AUDIT FUNCTIONS

JUDICIAL FUNCTIONS

PUBLIC PROSECUTOR'S OFFICE



## The Structure of the Judicial Function of the Corte dei conti

The *Corte dei conti* has its seat in Rome and has nation-wide jurisdiction. There are:

- ❑ - In each Region and in the 2 Autonomous Provinces, the **Regional Jurisdictional Chambers**, acting as Courts of First Instance (21 Chambers);
- ❑ - **3 Central Chambers of Appeal and a Chamber of Appeal for Sicily**;
- ❑ - The **United Chambers for Jurisdiction**, acting on conflicts of competence or *questioni di massima* (e.g. matters of law to be clarified in order to grant uniformity in the application of the law);
- ❑ the **United Chambers in Special Composition**.



## The Structure of the Judicial Function of the Corte dei conti

Next to the Chambers there is the General Prosecution Office.

Under this Office there is the General Prosecutor of the Corte dei conti in Rome and the Regional Prosecutors before the Regional Jurisdictional Chambers, having territorial competence for the specific Region. The Corte dei conti has approximately 90 deputy and assistant prosecutors. Public prosecutors are independent of other prosecutors.

Between the various Prosecution Offices at regional level and the General Prosecution Office in Rome there is not a hierarchical link but the latter is the top institution of the prosecuting as well as the Chambers of Appeal and the United Chambers are the top institution of the judiciary.





## The Judicial Functions

The *Corte dei conti* holds a special position within Italy's judicial system.

**As said, pursuant to the Italian Constitution, the *Corte dei conti* holds its own jurisdiction.**

It is separate from administrative courts and civil courts with regard to its functions, as it does not rule on civil and criminal law matters (not even as appellate court), but has specific responsibilities in the public law field.

**The *Corte dei conti* is the final court of appeal in the matters under its jurisdiction.**

When hearing a case at first instance the *Corte dei conti* sits in a chamber of 3 judges (except in pension matters where there is a single judge).

When hearing a case at second instance the *Corte dei conti* sits in a chamber of 5 judges.

Against the judgments issued by the *Corte dei conti*, the Supreme Court – *Corte di Cassazione* –, which is the final court of appeal for civil and criminal cases, is entrusted with the power to settle the **conflicts of jurisdiction** arising between other courts (civil and administrative) and the *Corte dei conti*, pursuant to article 111, para.8 of the Constitution.

In 2016, there has been a codification. Accordingly, it has been delivered the Code of the *Corte dei conti's* Judicial Procedure (Legislative Decree no. 174/2016).

## The Jurisdiction of the *Corte dei conti*

The *Corte dei conti* holds jurisdiction on the following matters:

- Administrative and accounting liability of fonctionnaires, public agents or private persons or undertakings managing public “funds” (money, goods and services, assets, etc.) in the public general interest for any damage they caused to the State and the European Union or to any public entity by fraud or gross negligence (*infra*).**
- Management and reports of accountants and other public agents managing public money who are liable to render accounts.**
  - i.e., accounts made by public, management, and government or local bodies accountants. The *Corte dei conti* has authority to audit persons acting but not certified as a public accountant.
- Further litigations in accounting matters established by law (Article 172 of the Code).**
- Litigation arising from acts bestowing or modifying pensions.**

## The Administrative and Accounting Liability Jurisdiction – Bringing an Action Before the *Corte dei conti*

Only the Public Prosecutors at the Regional Chambers of the *Corte dei conti* can bring liabilities' actions before the *Corte dei conti*'s Chambers. **Complaints** are the basis for their activities. In this regard:

- ❑ Competent authorities are subject to several specific obligations to report losses of public funds to the Regional Prosecutor's Office, in cases where public officials are involved;
- ❑ Reports of investigations held by the Italian Financial Police or other Police Corps;
- ❑ Complaints submitted by public bodies and accounting bodies, such as accountants and internal auditors;
- ❑ Complaint from any other sources: politicians, citizens, anonymous, whistle-blowers, press articles, etc.
- ❑ Notices from the Criminal Prosecution Office. The Criminal Prosecutor has the duty to report to the Regional Prosecution Office of the *Corte dei conti* of any investigation or case which allegedly caused a loss to public funds.

On the other side, in cases of alleged corruption or other criminal infringements, the Public Prosecutor at the *Corte dei conti* has to report the notice to the Criminal Prosecutor Office while maintaining the respective independence of their investigations, investigative secret and powers to bring an action.

## Administrative and Accounting Liability Jurisdiction – Conditions and Burden of Proof

**Final scope of an action: ensuring the proper management of public money.**

In an application for damages brought by one of the Public Prosecutor at the *Corte dei conti* (an indictment contained in a writ of summons), at the end of its investigation proceedings, the accused person can be held liable only if **all the following conditions** are satisfied as regards the illegality/unlawfulness of the allegedly wrongful conduct or omission:

- I. **The actual harm suffered by the budgets/resources of the State or of a public body (including European Union's funds);**
- II. **The causal link between the act and the damage alleged to have been suffered;**
- III. **The fraud or gross negligence of the accused person. Negligence is not enough;**
- IV. **A “qualified relationship” – an employment relationship, an empowerment, an affiliation or an *ad hoc* connection – between the damaged public body and the alleged responsible of the damage. Private persons and undertakings can be accused if they enter into this “qualified relationship.” They operate in the public interest using public resources.**

The conditions giving rise to the accounting liability are cumulative, which means that, if one of them is not met, the liability of the accused person does not arise.

**The burden of proving that all those conditions have been met falls to the public prosecutor.**

## The Administrative and Accounting Liability Jurisdiction – The Main Topics

It has to be underlined that all losses caused by an unlawful conduct or omission can be taken into account (e.g. absenteeism; corruption; fraud in the management of public funds – European, national, regional and/or local –; infringements or unlawful conducts or omissions in directing and/or monitoring the performance of works, supply and service agreements causing breach of contracts, unlawful additional payments, unlawful variant solutions; damages to the treasury, etc.).

**The harm could take into account damages to properties, goods/asset loss and/or financial damages, but also non-material damages.**

The case law of the *Corte dei conti* includes, in particular **damages to reputation** (loss of reputation of the public body involved as a consequence of the unlawful conduct of one of its agent), **damages to competition, damages to the environment, damages deriving from bribes**; costs incurred to ascertain the violation; damage to the public resources caused by inefficiencies in managing a service of general interest or a public office;; subsequent losses from illegitimate use of public funds allocated for works, which includes the costs of rectifying quality or quantity and the project.



## The Administrative and Accounting Liability Jurisdiction – The Main Topics

- ❑ There is not a legal classification of the possible offences to public funds and goods: what really matters is the harm to public funds and/or goods.
- ❑ In specific cases laid down by law, the *Corte dei conti* has also the power to impose fines to the accused persons.

## The Public Prosecutor Office of the *Corte dei conti* – The Investigation Stage

The Public Prosecutor can manage all the investigation proceedings by himself or he has the power to delegate it to the Financial Police, other police corps, territorial Offices of the Government and, in "exceptional" and specific cases to managers and agents of Public Bodies according to their expertise and territorial criteria.

The Public Prosecutor can:

- Request documents and information held by administrative or judicial bodies;
- Order (through its decrees):
  - Exhibition of documents;
  - Hearings of informed persons, complainants, etc.;
  - Inspections and direct assessments;
  - Seizure of documents;
  - Technical advice.

The Public Prosecutor has the duty to collect incriminatory and exculpatory evidence regarding the suspects, in order to bringing to an end the pre-trial stage of the investigative proceedings either by halting the prosecution or by bringing the case for trial.

## The Public Prosecutor Office of the *Corte dei conti* – The Investigation Stage – The Possible Scenarios

- ❑ **Closure of the proceedings without informing the suspects or potential suspects of the investigation as**
  - ❑ The complaint does not meet the criteria established by law;
  - ❑ It is clear that there is not a damage to public funds;
  - ❑ There is not gross negligence or fraud;
  - ❑ The evidence collected is not sufficient to bring an action.
  - ❑ No evaluation in terms of cost/benefits is done → there is the duty to pursue also damages of small amounts. Each prosecutor can prioritize his case load.
- ❑ **The Public Prosecutor opens an investigation proceedings.**
  - ❑ The Public Prosecutor draws up the charges against the suspects in a document setting out the main facts of the offence/misconduct or omission; the unlawfulness of the facts; the causal link between the offence/misconduct or omission and the damage; the qualified relationship between the offended public body and the suspect; the qualification and the amount of the alleged damages.
  - ❑ The Public Prosecutor fixes a time-limit for the suspects' defences (at least 45 days).
- ❑ **On te basis of the defences, the Public Prosecutor could deem appropriate to close the proceedings.**
- ❑ When the Public Prosecutor draws the charges, he could ask for **precautionary seizure (or other measures)** aimed to prevent a suspect from enjoying its assets in prejudice of the damaged public body's rights.



## The Indictment and the Judgment

- ❑ If the Public Prosecutor deems not appropriate to close the proceedings and the case is set down for trial, he has a period of 120 days to file the indictment (*atto di citazione*).
- ❑ The indictment closes the pre-trial stage of the proceedings and opens the trial stage of the proceedings. It constitutes the final detailed statement of charges setting out in detail the facts, the accused persons, the existence of the cumulative conditions to bring the action before the Court and the qualification and amount of damages.
- ❑ The *Corte dei conti* sets the date for the first hearing. Then the accused person and his lawyer are to receive a copy of that indictment together with a summons to that hearing.
- ❑ The lawyer then has a period to prepare the defence.
- ❑ After the trial, the *Corte dei conti* issues its first instance judgment.
- ❑ The parties could appeal it before the Central Chambers of Appeal.

## The Rights of the Suspects and Accused Persons

The suspects should be given all the information on the accusation necessary to enable them to prepare their defence and to safeguard the fairness of the proceedings and the effective exercise of the right of defence.

- The Code grants that the suspects:
  - Have the right to be assisted by a lawyer;
  - Can request for a hearing before the Public Prosecutor;
  - Have the right of access to the investigative file. Access is granted at least at all material evidence in the possession of the Prosecutor (except for secrets or other parties' defences), whether for or against suspects.

The accused persons have:

- The right to a fair trial;
- The right to a trial in a reasonable time.



## The Results of the Activity of the *Corte dei conti* Regarding Administrative and Accounting Liability Cases

**2017:** Litigation were 1,192, amounting to Euro 4,771,053,131;  
Euro 207,428,917 were frozen by 85 precautionary seizures.

**2018:** Litigation were 1,311, amounting to Euro 746,907,519.44;  
Euro 223,189,070 were frozen by 86 precautionary seizures.

**2017:** the Corte dei conti issued 930 judgements, amounting to Euro 200,801,032.

## Final Remarks

- ❑ **The judicial activity of the *Corte dei conti* is an effective deterrent.**
- ❑ The Public Prosecutor of the *Corte dei conti* is deemed as the guardian fighting against the illegitimate and irregular losses of public resources and is perceived as an efficient tool to protect national and European financial interests against corruption and other economic crimes.

On the basis of the *Corte dei conti*'s judgments, the offended public bodies have title to recover any good, asset and money equivalent to the ascertained damage from the person found guilty.

- ❑ The *Corte dei conti* takes advantage from a situation of **crossed collaboration or cross subsidization: judicial functions stimulate auditing functions and auditing functions stimulate judicial functions.**



The system facilitates a mutual exchange and use of data and information to achieve the goals which law ascribes to each of the two functions.

Upon completing his verification of the results of the action of public agents and officials, the judge responsible for auditing informs the Prosecutor General Office on facts and behaviors which had led to damages to the public funds.

Furthermore, the Prosecutor General Office informs the judges responsible for auditing of any suspicions of the existence of damaging facts, which cannot be clearly identified on the basis of the documentation acquired during the investigation.

Consequently, the auditing judges could plan to make any ascertainment needed.



I warmly thank you for your attention

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