

## THE ACTIVITY OF THE COURT OF ACCOUNTS. 1992-2010

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**Abstract:** *The history of the Court of Accounts is part of Romania's history. The Court of Accounts is representative among the state institutions, having a role of control and balance. Maintaining balance in the country's budget means great responsibility. Therefore, we consider it useful and necessary for the activity of the Court of Accounts to be known to the citizens it honorably represents. The institution's history begins with the consolidation process of the modern Romanian state. We could say that the Court of Accounts institution is older than the country's first Constitution. In a state where Alexandru Ioan Cuza, together with the elites of that period, started the construction process based on the Western model and the ideas of the 1848 revolution, the Court of Accounts could not be missing from this democratic system. The need to establish an institution to oversee the spending of public money was natural. We are talking about an institution established 158 years ago, during the reign of Alexandru Ioan Cuza, in 1864, on a symbolic day for all Romanians. The birth certificate of the Court of Accounts is dated January 24, 1864. Symbolically, the Court of Accounts is linked to this historic day, a long-awaited day, a day when the ideal of Romanians took shape.*

**Keywords:** Court of Accounts, Superior Court of Financial Control, Law No. 94/1992, INTOSAI, EUROSAI

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The Court of Accounts is a complex institution with a major role in the Romanian state. Its role is fundamental and aims to provide a guarantee regarding the correctness of public money spending. The Court of Accounts contributes to improving financial management and the transparency of public money spending in Romania to consolidate public finances. Our approach also aims to explain the role of the Court of Accounts, how it functions, and its attributes over the 30 years since its re-establishment.

Since its establishment, the Court of Accounts has had the mission to ensure that the executive power respects the will of the legislative power and has the obligation, following the received mandate, to inform the latter of the results arising from the performed control<sup>2</sup>.

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<sup>2</sup> Nicolae Șt. Noica, *The Court of Accounts and the Public Works controlled by it – at 155 years old*, Vremea Publishing House, Bucharest, 2019, p.10

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It is the institution that exercises control over the formation, administration, and use of the state's financial resources and the public sector. It operates autonomously, in accordance with the provisions of the Constitution and this law (94/1992, with subsequent amendments), and represents Romania in its capacity as the supreme audit institution in international organizations of these institutions. The decisions of the Chamber of Deputies or the Senate, requesting the Court of Accounts to perform controls within its competencies, are mandatory. No other public authority can oblige it<sup>3</sup>.

What is its role?

The Court of Accounts exercises control over the formation, administration, and use of the state's financial resources and the public sector, providing Parliament and local administrative units with reports on their use and administration, in accordance with the principles of legality, regularity, economy, efficiency, and effectiveness. The Court of Accounts can conduct performance audits on the management of the consolidated general budget and any public funds. The external audit activity carried out by the Court of Accounts is conducted in compliance with its own standards, adopted based on internationally accepted audit standards. Through its findings and recommendations, the performance audit aims to reduce costs, increase the efficiency of resource use, and achieve the proposed objectives.

The Court of Accounts conducts financial audits on the following execution accounts: a) the annual general account of the state budget execution; b) the annual execution account of the state social insurance budget; c) the annual execution accounts of special funds; d) the annual execution accounts of local budgets, of Bucharest municipality, counties, sectors of Bucharest municipality, municipalities, cities, and communes; e) the annual execution account of the State Treasury budget; f) the annual execution accounts of the budgets of autonomous public institutions; g) the annual execution accounts of the budgets of public institutions fully or partially funded from the state budget, the state social insurance budget, local budgets, and special funds budgets, as applicable; h) the annual execution accounts of the budgets of public institutions fully funded from their own revenues; i) the annual general account of the state's public debt; j) the annual execution accounts of the non-repayable external funds budget; k) other execution accounts of budgets provided by law<sup>4</sup>.

What is the activity of the Court of Accounts over these 30 years?

As early as December 1989, a group of jurists and economists from the Superior Court of Financial Control requested the reorganization of the institution under the

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<sup>3</sup> <https://legislatie.just.ro/Public/DetaliiDocumentAfis/175177>

<sup>4</sup> <https://legislatie.just.ro/Public/DetaliiDocumentAfis/175177>

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old name of the Court of Accounts of Romania. The following month, January 1990, the proposal was adopted by the operational management of the Court. Several proposals were submitted to the Council of the National Salvation Front, the supreme body of state power in Romania at that time. The two governing bodies of the former Superior Court of Financial Control even drafted a decree-law for the establishment of the Court of Accounts of Romania and a statement of reasons as early as January 15, 1990<sup>5</sup>. Part of the specialized personnel of the former Superior Court of Financial Control was taken over by the Economic-Financial Control Corps of the Prime Minister through Decree No. 94 of February 7, 1990, a decree that sanctioned the dissolution of the Superior Court of Financial Control.

The activities of the Prime Minister's Control Corps were transformed starting from April 17, 1991, into the Government's Control Department, subordinate to the needs of the government. Moreover, at the request of the Prime Minister, the Control Corps participated in the elaboration of Law No. 12 of August 8, 1990, regarding the protection of the population against certain illicit commercial activities<sup>6</sup>. Although in the years 1990-1991 the economic-financial control bodies were restructured, due to the disorganization of economic-social activity and the weakening of state authority, irregularities developed. Thus, starting in 1991, the Ministry of Finance developed a draft law for the establishment of the Court of Accounts within its structure. This project would have aggravated elements of subordination and therefore did not develop. Thus, the Financial Guard was re-established.

The elaboration of the new Constitution brought back into discussion the need for an independent financial control institution. The old Constitutions stipulated the role of the Court of Accounts, one of the fundamental institutions in the Romanian state, as early as 1864. As the Constitutions of Romania and Europe fixed the role of the Court of Accounts, in Romania, the idea of re-establishing an independent financial control institution was necessary.

Following the adoption of the Constitution on November 21, 1991, approved by the referendum of December 8, 1991, Article 139 referred to the Court of Accounts with the following specifications:

"Art. 139 – (1) The Court of Accounts exercises control over the formation, administration, and use of the state's financial resources and those of the public sector. Under the law, the Court also exercises jurisdictional attributes.

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<sup>5</sup> Bogdan Murgescu (coord.) History of the Romanian Court of Accounts 1864 – 2004, pp. 240 – 241.

<sup>6</sup> Official Gazette, no. 97/8.08.1990

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(2) The Court of Accounts annually presents to Parliament a report on the management accounts of the national public budget from the expired budgetary year, including the irregularities found.

(3) At the request of the Chamber of Deputies or the Senate, the Court of Accounts controls the management of public resources and reports on the findings.

(4) The members of the Court of Accounts, appointed by Parliament, are independent and irremovable, according to the law. They are subject to the incompatibilities provided by law for judges."

From the adoption of the Constitution, in the final and transitional provisions, a term of establishment was set for the Court of Accounts of Romania, six months from the date of entry into force.

The Court of Accounts was organized and functions based on the provisions of Article 152 of the Constitution of Romania and Law No. 94/1992. According to this law, the Operating Regulations are approved in the Plenum of the Court and aim to create an internal framework for the fulfillment of the Court of Accounts' attributes and competencies, the organization and functioning of departments, with directorates, services, and specialized compartments, the county courts of accounts and those of Bucharest municipality, the Audit Authority, the organization and conduct of the activities of the General Secretariat, and the specific attributes of the institution's activity<sup>7</sup>. As early as the first article of Law 94/1992, the status of the supreme control body and the relations of the Court with other state institutions were established: *"The Court of Accounts is the supreme body of financial control and jurisdiction in the financial field and functions alongside the Parliament of Romania. It exercises its functions independently and in accordance with the provisions of the Constitution and the other laws of the country"*<sup>8</sup>. Law 94/1992 of the Court of Accounts was published in the Official Gazette on September 9, 1992<sup>9</sup>.

The Parliament of Romania, at the recommendation of the Budget, Finance, and Banks Committees of the Chambers, appointed by vote the 24 accounting counselors (with legal training) and the leadership of the Court of Accounts in February 1993. On March 1, they took the oath before the two presidents of the Parliamentary Chambers. After the oath, they were received by the President of Romania, Ion Iliescu. Their mandate was six years.

The reorganization of the institution continued with the recruitment of personnel. On July 15, 1993, the first financial judges and prosecutors appointed by the

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<sup>7</sup><https://www.curteadeconturi.ro/uploads/b156a118/901cdb1a/2f2f90b4/d65e5047/2ef97f43/2ca31386/a271ae62/bfa1d846/ROF.pdf>

<sup>8</sup> Bogdan Murgescu (coord.) History of the Court of Accounts of Romania 1864 – 2004), p 253

<sup>9</sup> Nicolae Șt. Noica, The Court of Accounts and the Public Works controlled by it – at 155 years old, Vremea Publishing House, Bucharest, 2019, p.162

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President of Romania through Decree No. 12 of July 1, 1993, took the oath before the Plenum of the Court of Accounts. While selecting personnel, the concerns of the new dignitaries were to put into operation the structures of the Court, both at the center and in the territory: the Financial Control Directorates, the Courts of Accounts, the Jurisdictional Colleges, the Local Prosecutor's Office of the Court, as well as the necessary logistics. The first control in the new period took place starting August 1, 1993<sup>10</sup>.

One of the rights of the citizen in a democracy is to know what happens with the public and private property of the state and how public money is used in all sectors of the state. In this primordial role, we consider that the Court of Accounts bears the responsibility and has the role of overseeing how public money is spent. According to Law No. 94/1992, the Court of Accounts exercises an external financial control function over the formation, administration, and use of the state's financial resources and the public sector, as well as over the management of the public and private property of the state and the local administrative units by verifying the annual execution account of the state budget, the annual execution accounts of the state social insurance budget, local budgets, special funds budgets, treasury funds accounts, and the annual account of the state's public debt<sup>11</sup>. It is clear from the law that the Court of Accounts is the only competent authority to decide, based on the verification of the accounts, the discharge of management. The Court of Accounts is a member of INTOSAI and EUROSAI, participates in the activities of international specialized bodies, elaborates with them, controls on their behalf the management of funds made available to Romania.

Law 94/1992 of the Court of Accounts was designed to last. However, from its adoption until 2004, it was amended six times by new laws or by emergency ordinance or by emergency ordinances of the Government or by decisions of the Constitutional Court. The changes were multiple, from details to necessary changes of vague or imprecise provisions, as well as essential changes regarding the role of the Court and its competencies.

For example, Law 59/1993 for the modification of the Code of Civil Procedure, the Family Code, Law No. 94/1992 regarding the organization of the Court of Accounts refers to the Court of Accounts only in Article 9, where some of the appeals against the Court that decreed that the decisions pronounced by the courts of the Court of Accounts are subject to appeal were changed. The functioning of the Court of Accounts was also influenced by the norms regarding the activities it controlled, correlated with changes in judicial procedures and various jurisprudential decisions

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<sup>10</sup> The Court of Accounts of Romania 130 years of history, Bucharest, 1994, p. 30

<sup>11</sup> Romanian Court of Accounts 1864 -2004, Collection of documents, Bucharest, 2004, p.6

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of the Constitutional Court, the High Court of Cassation and Justice, and even other courts such as the Courts of Appeal<sup>12</sup>.

All these changes determined changes in the practices of the Court of Accounts, tributary to the phenomenon of legislative instability in the period of the 1990s. For example, from the beginning, there were a significant number of divergences regarding the scope of the control competencies of the Court of Accounts, although Law 94/1992 was clear, many institutions or individuals opposed the exercise of the Court's control. Divergent arguments appeared regarding the control over commercial companies with private capital, the privatization process, and the control over the budgetary execution of Parliament.

Article 18 of Law 94/1992 of the Court of Accounts subjected the state and its administrative-territorial units, the National Bank of Romania, autonomous regimes, and commercial companies in which the state owned, in various forms, more than half of the share capital, as well as autonomous bodies of social insurance or other nature, to the Court of Accounts. The following article empowered the Court to carry out controls at other legal entities that benefited from government guarantees for loans, subsidies, or other forms of support from the state, administrative-territorial units, or public institutions, or that managed, based on a concession or lease contract, goods belonging to the public or private domain of the state or administrative-territorial units, or that, although carrying out an economic activity in which the state participated with less than 50% in the formation of the share capital, did not fulfill their financial obligations to the state, administrative-territorial units, and public institutions<sup>13</sup>.

Interestingly, the constitutionality of the control of the Court of Accounts over commercial companies with private capital that did not fulfill their financial obligations to the state, administrative-territorial units, or public institutions was challenged in court, and the Constitutional Court, through Decision No. 90 of October 12, 1994, admitted the exception of unconstitutionality invoked in that case and found that the provisions of Article 19, letter d) of Law 94/1992 were unconstitutional. The court's decision had effects. Even though the decision of the Constitutional Court was sovereign, in practice, it was positively received by the debtors who did not respect their financial obligations to the state. Even though other ways were tried to justify the controls by the Court, a new decision of the Constitutional Court, adopted in the plenary of the nine judges, admitted the same exception of unconstitutionality accompanied by the reasoning that it cannot be sustained that the financial obligations, which are not only fiscal, can be contractual or of another nature, fall within the sphere of the public sector, and on the other

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<sup>12</sup> Coord. Bogdan Murgescu, *History of the Court of Accounts of Romania (1864 – 2004)*, p.265

<sup>13</sup> *Ibidem*, p.266

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hand, the controls of the Court interfere with the attributions of other public authorities. On this basis, Law 99/1999 eliminated these provisions from Law 94/1992<sup>14</sup>.

In 2002, a new modification followed, reintroducing the right of control of the Court with the specification that these controls were to be carried out together with representatives of the component institutions in the field subject to control. The major problem was that these institutions called to participate in the control could themselves be involved in the non-fulfillment by the legal entity subject to control of financial obligations. This problem was amended in January 2004 when, through Decision No. 463 of December 4, 2003, of the Constitutional Court, according to which, invoking Decision No. 28 of February 23, 1999, of the same Court, it was decided that the provisions of Article 19, letter c) of Law 94/1992, introduced by Law No. 77/2002, were unconstitutional<sup>15</sup>.

Another controversial issue in the recent history of the Court was the field of privatization. This field became essential in the process of transition from the centralized economy to the market economy. The reports of the Court of Accounts from that period demonstrated numerous illegalities that harmed public property. Essentially, privatization, by definition, means the transfer of part of the state's property to physical or legal persons. The period of the 1990s can be characterized by commercial companies, many quasi-bankrupt, which were subjected to the privatization process, as well as the conception of privatization as a means to boost the relaunch of the economy through restructuring and adaptation to the market economy. Another method was to attract private capital and technical and economic expertise.

Through the Law of the Court of Accounts, Article 31(2), it was provided that the institution had the attribute to verify the formation, administration, and use of the financial resources of the State Property Fund, the institution that coordinated the privatization process. During the period 1993-1997, the Court of Accounts carried out a series of controls regarding the way in which some operations were carried out regarding the privatization process of commercial companies and the sale of assets. Many of these resulted in notifications to the general financial prosecutor of the Public Ministry<sup>16</sup>.

This type of control disturbed many interest groups who argued their discontent, stating that the exercise of control by the Court, in addition to the right of control of legality by the criminal prosecution, intimidated the decision-makers in charge of carrying out the privatization, discouraged some investors, slowed down the

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<sup>14</sup> Ibidem, p.267

<sup>15</sup> Ibidem, p.267

<sup>16</sup> Ibidem, p.268

privatization process, etc. In other words, the Court of Accounts undermined the effort to transition to the market economy and relaunch the economic development of Romania. All these arguments were used by the Victor Ciorbea government, which, through Government Ordinance No. 15/1997 and Article 10 of Emergency Ordinance No. 88 of December 23, 1997, regarding the privatization of commercial companies, established that the application by the State Property Fund of the privatization procedures was not subject to the control of the Court of Accounts<sup>17</sup>. The Court was only responsible for exercising subsequent legality control over the financial resources that became revenue to the state and local budgets, as well as over the resources from the State Property Fund's budget. The Victor Ciorbea government did not take into account the recommendation of the O.E.C.D. (even though Romania was not a member), which recommended that privatizations should not be left without strict control. Thus, through Law No. 99/1999, the Court of Accounts was excluded from the privatization process. Title I, Article 1, paragraph 18:

"(1) The control of the compliance by the involved public institution with the applicable legal framework in the matter of privatization, the finding of contraventions, and the establishment of sanctions are carried out by the Ministry of Finance, under the conditions established by the methodological norms issued in the application of this emergency ordinance.

(2) The determination of the privatization method and the choice of the privatization agent and/or the buyer, the operations provided in Article 43 paragraph (2) letter A, as well as the legality of the clauses in the contracts concluded by the State Property Fund, including, among others, the clauses regarding the sale price, are not subject to the control of the Court of Accounts. The Court of Accounts controls only the collection and use, according to the destinations provided by law, of the revenues due to the State Property Fund. The controversies around the privatizations led to the idea of involving the Court of Accounts again, which was realized through Law No. 77 of February 7, 2002, which in Article 27, paragraph (2) contained the following text:

*"The Court of Accounts exercises control over the compliance by the authorities with attributions in the field of privatization with the methods and procedures of privatization provided by law, as well as over the way in which they ensured the compliance with the contractual clauses established through the privatization contracts. The Court of Accounts exercises control over the compliance with the legal provisions regarding the administration and use of the financial resources resulting from the privatization actions"*<sup>18</sup>.

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<sup>17</sup> Ibidem, p.269

<sup>18</sup> Ibidem, p.270

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In the following paragraph, it was specified:

*"The Court of Accounts can exercise control in the case provided in paragraph (2) regardless of the moment when the privatization process took place, through the sale of the shares held by the state in the commercial companies, until the clarification of all aspects."*

Interestingly and importantly, the civil and criminal liability of the persons involved in the operations related to the privatization process had been prescribed or had recently exceeded, after the date of entry into force of Law 77/2002, the prescription period.

Other state institutions also tried to evade the control exercised by the Court of Accounts. Article 20 of Law 94/1992 provided that the execution of the budgets of the Chamber of Deputies, the Senate, the Presidency, and the Government was controlled only by the Court of Accounts. Several deputies and senators submitted a project in 1995 to amend this article so that this control of the execution of the budgets of the Senate and the Chamber of Deputies, the discharge of management, as well as the jurisdictional attributes, were exercised only by the permanent bureau of each chamber, and the Court could control the execution of the budgets only at their request. This legislative project did not pass, but the desire of some parliamentarians to change this article continued<sup>19</sup>.

Prime Minister Radu Vasile included in Law 99/1999 a new paragraph in Article 20 of Law 94/1992:

*"(2) The Court of Accounts controls the execution of the budgets of the Chamber of Deputies and the Senate only at the request of the Permanent Bureau of each Chamber. The result of the control is presented to the Permanent Bureau to decide."*

This article did not last long. The Presidency and the Government considered that the Parliament was privileged, so the article was annulled by Law 77/2002, abrogating the paragraph:

*"Article 20 - (1) The control of the execution of the budgets of the Chamber of Deputies and the Senate, the Presidential Administration, the Government, the High Court of Cassation and Justice, the Constitutional Court, the Legislative Council, and the People's Advocate is exercised exclusively by the Court of Accounts"<sup>20</sup>.*

Divergences arose regarding the National Bank. Finally, through Law 312/2004, a certain consensus was reached in the sense that within the National Bank of Romania, an Audit Committee operates, which reports to the Board of Directors,

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<sup>19</sup> Ibidem, 271

<sup>20</sup> Ibidem, p.272

and the law stipulates and fixes the destinations of the revenues and the profit of the National Bank, which establishes through Article 47 (2):

"All commercial operations carried out by the National Bank of Romania, which are reflected in the revenue and expenditure budget and in the annual financial statements, are subject to the subsequent control of the Court of Accounts of Romania<sup>21</sup>."

The activity of the Court of Accounts in the period when the institution was coordinated by Nicolae Văcăroiu focused on the development of the role of Supreme Audit Institutions (SAIs) and increasing the performance of the use of public funds. Nicolae Văcăroiu was the first president of the Court of Accounts after 1990 to have a nine-year mandate. During the period 2008-2017, the members of the Court wanted to implement development strategies that correlated with the vision of becoming a model institution for the public sector in Romania. In this sense, the Court's own audit standards, the Regulation on the organization and conduct of activities specific to the Court of Accounts, the valorization of the acts resulting from these activities, the compliance, financial, and performance audit manuals, the visual identity manual, control and audit guides on various fields of activity, internal norms and procedures for the improvement of the Court's own activity were established.

The Court of Accounts has an essential role in the reform of the public administration in Romania. In addition to this role, it is necessary to improve public financial control, responsibility, and probity. All these lead to the increase of global efficiency as well as the efficiency of the Romanian economy by limiting the waste of public resources and the possibilities of fraud and corruption.

The 94/1992 law of the Court of Accounts was amended and supplemented by Law No. 217/2008. The main amendments concerned the quality of the Court of Accounts as the supreme audit institution representing Romania in the international organizations of these institutions (INTOSAI, EUROSAI, Contact Committee, the control function of the Court of Accounts carried out through public external audit procedures provided in the Court's own audit standards, developed in accordance with internationally accepted audit standards). Another amendment concerns the definition of the concepts associated with the specialized activities of the Court of Accounts:

Control as an activity through which the compliance with the law regarding the establishment, administration, and use of public funds is verified and monitored; public external audit which includes financial audit and performance audit; financial audit aimed at determining whether the financial statements are complete,

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<sup>21</sup> Ibidem, p.274

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real, and in accordance with the laws and regulations in force, and performance audit aimed at determining whether an entity, a program, an activity, or an operation functions in terms of efficiency, economy, and effectiveness<sup>22</sup>.

One of the concerns of the Court of Accounts is the development of organizational capacity. The elaboration of institutional development strategies starts from the premise of changes in the organizational environment, correlated with ensuring optimal evolution. All these are achieved through strategic management. The set of all processes through which the management founds, elaborates, implements, and evaluates the strategic plan is represented by strategic management.

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<sup>22</sup> Ibidem, p. 13

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