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EXTERNAL CONTROL IN PUBLIC FINANCE MANAGEMENT

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RESUMO

Este estudo trata da importância do controle externo na gestão das finanças públicas. No Brasil, a titularidade do controle externo é constitucionalmente atribuída ao legislativo com auxílio dos Tribunais de Contas. Nesse sentido, o objetivo geral desse artigo foi apresentar como é desenvolvido o processo de fiscalização dos órgãos de controle externo na administração pública e seu papel como instituição reguladora dos gastos públicos. Para atender a essa proposta, foi realizada uma pesquisa bibliográfica e documental em processos expostos no sítio do Tribunal de Contas do Estado de São Paulo, que foram analisados e confrontados com a legislação vigente. Ademais, foi descrito o papel do controle externo de acordo com a Constituição Federal de 1988, além de transcorrida a evolução da Administração Pública Brasileira, visto que foi a partir das práticas voltadas à Administração Pública Gerencial que o processo de controle passou a ser mais rigoroso, devido a atuação efetiva dos órgãos de controle externo

ABSTRACT

This study addresses the importance of external control in public finance management. In Brazil, the ownership of external control is constitutionally assigned to the legislature with the assistance of the Audit Courts. In this sense, the general objective of this article was to present how the process of oversight of external control bodies in public administration is developed and their role as a regulator of public spending. To comply with this proposal, a bibliographic and documentary research was conducted in processes exposed on the website of the Court of Auditors of the State of São Paulo, which were analyzed and confronted with current legislation. In addition, the role of external control according to the Federal Constitution of 1988 was described, besides the evolution of the Brazilian Public Administration, since it was from the practices directed to the Managerial Public Administration that the control process became more rigorous, due to the effective performance of external control agencies.



1. Introduction

There are several types of control and several classifications and concepts for each of them, but here we only need the concept of external control, and in the words of Meirelles (2016), "it is what is accomplished by a constitutional power or organ functionally independent on the administrative activity of another Power outside the Administration responsible for the controlled act".

It can be said that the control system is part of all good management, being an integral and essential part of any process of production of goods and services, and its main function is the search for better results by the organizations it integrates.

Di Pietro (2013) states that the purpose of control is to ensure that the Administration acts in accordance with the principles imposed by the legal system, such as those of legality, morality, public purpose, publicity, motivation, impersonality. In this context, it can be said that the external control bodies appear to create parameters, limits, obligations to public agents, seeking to ensure that the financial and patrimonial resources, which belong to the people, are returned to them, curbing opportunistic or even malpractice attitudes. by those. We say that the financial and patrimonial resources belong to the people, because they are the great financier of the state machine through taxes. Thus, it is also possible to see that the external control bodies seek to rescue morality in public administration and the efficiency of the Brazilian socioeconomic system.

Articles 70 to 75 of the 1988 Federal Constitution contain the main rules regarding the exercise of control by the Brazilian public administration, such as: those responsible for their execution and those responsible for rendering accounts, the nature and focus of inspections, the powers and composition of the Courts of Accounts, among others. The Constitution left the exercise of external control to the national congress, and the Federal Court of Accounts to assist it.

It is clear then that external control is the responsibility of the legislative power, after all it represents the people, so at the federal level the holder of external control is the National Congress that executes it with the assistance of the Federal Audit Court, at the state level the holder it is the Legislative Assembly with the help of the State Audit Courts, finally at the municipal level the holder is the City Council with the help of the State Audit Courts, or, if it has, the Municipal Account Courts.

It is important to note that although the Federal Court of Accounts is an auxiliary body, it is not subordinate to the legislature or any other power, being considered as an autonomous constitutional body, it was even conferred, by the 1988 Federal Constitution itself, its own and exclusive powers.

Therefore, the objective of this study was to present how the process of inspection of external control bodies in Public Administration is developed and its role as a regulatory institution for public spending.



2. Literature Review

This section is about the presentation of theoretical concepts of external control in public administration in Brazil. It does not aim to finalize the literature on the topic, but to present a reference that helps to achieve the objectives initially proposed by the study.

2.1 The evolution of public administration

According to Matias-Pereira (2018), the concept of public administration is comprehensive, since it refers to a diversity of ways of acting and developing activities. In short, public management is concerned with the set of services, functions and bodies responsible for planning, directing, controlling and directing the assets and interests of society at the federal, state and municipal levels.

Sustained by the common good of the community, the public administration has undergone several changes and improvements since its emergence according to its objectives and the needs of the people who elect their candidates by voting in the modern State, evolving through three management models: patrimonialism, bureaucratic and managerial, with the purpose of repairing or eliminating flaws in previous management standards (Silva, 2017).

In Brazil, until 1930, the patrimonialism management model was predominant, together with nepotism, defined as favoring relatives of the public agent and corruption, since there was no distinction between public and monarch patrimony, which, in turn, instead, it could use it arbitrarily, without any prior communication or accountability to society, causing in the view of the equipping of the State as an extension of the power of the nobles, having their needs met from the work performed by the citizens (Bresser- Pereira & Spink, 1998).

With the intention of combating the aforementioned practices, bureaucratic public administration emerged in the second half of the 19th century, idealized by Max Weber. This management model is oriented towards the restructuring of the State, professionalizing it, formalizing it and distinguishing public and private assets, through strict control of processes, with a view to efficiency. Weber added impersonality practices to administrative processes, differentiating the public from the private good; formality, establishing rules for the use of resources; and professionalism, with public offices being held on merit. However, the rules ended up overriding the demands of the population, tightening up administrative processes due to the excess of authoritarianism, centralization, formalization. This conduct characterized the bureaucratic model as slow, inefficient and unsustainable (Junquilha, 2010).

It was noticeable the need to adopt a new management model that visualized the results to raise the level of productivity of the State. Then comes the managerial public administration, also called the new public administration, focusing on the citizen and valuing effectiveness and competitiveness (Matias-Pereira, 2018).

While corporate revenue depends on payments that customers make freely when purchasing their products and services, government revenue derives from taxes, that is, from mandatory contributions, with no direct consideration. While the market controls the administration of companies, society - through elected politicians - controls public administration. While business administration is focused on private profit, to maximize the interests of shareholders,



hoping that, through the market, the collective interest will be served, the managerial Public Administration is explicit and directly focused on the public interest (Paludo, 2012).

Characterized by decentralization, appreciation for the quality of services provided and innovation, the new management model was developed in three stages, namely: first, managerialism, focusing on reducing costs and reducing staff. Then, it adopted consumerism, visualizing the citizen as a customer and focusing on raising the level of satisfaction of their wants and needs. The last stage was the public service orientation (PSO), which valued principles of equity and transparency, also known as accountability, in government actions and the active participation of citizens in political decisions, through their right of inspection (Paludo, 2012).

However, managerial public administration cannot be considered a model that replaced bureaucratic management, since it maintained several criteria that encompass the three pillars of Max Weber's theory: professionalism, formalism and impersonality, but it must be seen as an improvement processes, focusing on the citizen (Matias-Pereira, 2018).

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However, with the promulgation of the Federal Constitution in 1988, there was a process of plastering the development of the new administration, going back to the management model adopted in the 1930s. The one also known as Carta Magna do Brazil, endorsed citizen participation in public administration in several forms, with the imposition of limits on it, but it brought to its core the excessive bureaucracy, as it is an extremely long-winded formal document that differs from the Brazilian reality in some situations, contributing to the malfunctioning of public administration and its low performance (Bresser-Pereira, & Spink, 1998; Tranjan, 2016).

From the 1990s onwards, state reform began, motivated by a context of national economic crisis, with the aim of modernizing and expanding the Brazilian economy in the face of a globalized scenario. The proposals involved the evolution of the legal system, restructuring and administrative autonomy. As a result of this Master Plan for the Reform of the State Apparatus, management by results began and, mainly, the considerable reduction of the direct participation of the State in the execution of public services (Bresser-Pereira, & Spink, 1998).

Currently, the literature on public policies emphasizes the concepts of governance and governance. Respectively, they concern the legality of the government-society relationship and the administrative capacity to carry out political actions, aiming at the country's economic and social development. These concepts are linked to accountability, which incorporates the processes of accountability and transparency in decisions. Public organizations must be committed to employing measures using integrity, responsibility and control in order to curb unethical behavior and allow the population to evaluate political actions (Matias-Pereira, 2018).



The Federal Constitution of 1988 brought, specifically in Article 37, five principles that guide and set standards for public administration, they are: legality, impersonality, morality, publicity and, after management reform, the principle of efficiency, with an emphasis on results, trainers of the acronym LIMPE (Matias-Pereira, 2018).

With regard to the principle of legality, it is presented as a total subjection of public acts to legal and regimental rules, under penalty of nullification. All administrative activity must be legal. In relation to the principle of impersonality, impartiality and objectivity are sought in administrative acts, which must be imputed to the entity or body on whose behalf it is carried out and intended for the whole of society. The principle of morality, on the other hand, addresses the application of the law formally and substantially, evaluating the conduct of certain public services that, even legal, can be immoral and should not be exercised, since they affect the common good. Regarding the principle of publicity, the Constitution guarantees that all public acts are disclosed, except those of a confidential nature, conditionally in an informative, educational or social way, aiming at the transparency of actions and guaranteeing society knowledge, control and inspection about the activities carried out. Finally, the efficiency principle was the last to be incorporated into the others. Its objective is to control processes by results, encouraging the public manager to plan, organize and structure public acts and rational use of resources, aiming at economy, efficiency and quality (Di Pietro, 2013).

2.2 The external control system according to the Federal Constitution of 1988

The word control, from the Latin *contrarotulus*, referred, in the medieval era, to the technique of checking accounts by means of a double registration between taxpayers and the tax collector. Its current meaning includes the acts of verification, registration and inspection commonly related to finance (Castro, 2015).

Applied to management, the concept of control is legitimized as one of the essential pillars of this function, along with planning, organization and direction. Thus, it refers to the performance of public bodies in a manner consistent with the principles that underlie them, which are: legality, impersonality, morality, publicity and efficiency. The new model of public administration brought with it the concept of accountability, which presupposes the responsibility of the public manager to render accounts, reporting the execution of all tasks and the application of resources, the auditor being responsible for their inspection (Matias-Pereira, 2018).

This verification takes place through the analysis of the accounting statements of public agencies, which show the changes in equity during the fiscal year, as well as revenues and expenses. Thus, the compliance with budget planning and the financial performance of public management are verified (Barroso Filho, 2017).

The Federal Constitution enacted in 1988 mentions, in Article 70, that the accounting, financial, budgetary, operational and patrimonial inspection of the Union and of the entities of the direct and indirect administration, regarding the legality, legitimacy, economy, application of the subsidies and waiver of revenues, will be exercised by the National Congress, through



external control, and by the internal control system for each branch (Federal Constitution of Brazil, 1988).

More clearly, the aspects that guide inspection, according to Silva (2014), are:

- legality, the first principle of Public Administration, which indicates that capital allocation and raising processes must be in accordance with the law;
- legitimacy, related to the basic principle of morality, provides that acts are both legal and moral, aiming at the good of society as a whole;
- economy, which involves cost-benefit analysis, obtaining the best results at the lowest possible cost, without affecting quality;
- application of grants, which involve financial subsidies in order to defray the expenses of the institutions, which may be non-profit or commercial and industrial;
- waiver of revenues, related to tax and financial incentives offered to citizens in favor of the country's social and economic development.

In article 71 of the 1988 Federal Constitution, it appears that "external control, under the responsibility of the National Congress, will be exercised with the assistance of the Federal Court of Accounts". (Federal Constitution of Brazil, 1988). Thus, it is incumbent upon the Federal Court of Accounts, an independent body to the tripartite branch of the Power, the responsibility of external control to assist the Legislative Power, guaranteeing the accounting, financial, operational and patrimonial inspection of public acts and safeguarding the right of the population. to monitor the application of resources (Simões, 2014).

The Courts of Accounts are technical and administrative bodies composed of nine ministers in charge of verifying public financial management. The Legislative Branch sends the accountability prepared by the Executive Branch, but which involves the three branches in a unique way, to the Court of Auditors, so that it can make a detailed assessment of the performance of public administrators and issue feedback, which can classify as regular, with qualification, irregular and illiquid. They are considered regular when the statements are consistent with the rendering of accounts; regular with the exception of any flaws, however, not so considerable as to make the approval unfeasible; irregular when there are illegal acts or breaches of rules; or illiquidable, impossible to be judged due to contingencies. Finally, the Legislative Branch issues a political judgment, based on the report received from Federal Courts of Accounts (Simões, 2014).

The Federal Constitution foresees in its article 31, § 4, that "the creation of Courts, Councils or bodies of Municipal Accounts is forbidden" (Federal Constitution of Brazil, 1988). Only two municipalities, São Paulo and Rio de Janeiro, have their own Municipal Audit Court, since they already existed before the promulgation of the Constitution, dated in 1988. However, currently, the states of Bahia, Pará and Goiás have their own Municipal Courts of Accounts with the aim of assisting Municipal Councils in exercising external control, however they are qualified as state institutions (Paraíso, 2016; Costaldello, 2017).



With regard to the state of São Paulo, the Court of Auditors of the State of São Paulo - TCESP, is responsible for the independent accounting, financial, budgetary and patrimonial inspection of the municipalities (with the exception of the state capital), based the principles provided for by law. It is responsible for the supervision of public resources and their destination, as well as the verification of the proper occupation of positions, which is done through competitions (TCESP, 2016).

To verify the correct application of public resources, TCESP aims at the results, using the Municipal Management Effectiveness Index, composed of indicators such as planning, fiscal management, health, education, protection, environment and governance of information technology (TCESP, 2016).

The existence of external control in public agencies promotes greater reliability and security among the population and prevents abuse of power, due to the guidelines or even punishments received by administrative agents. Consequently, the country's economy achieves progressive improvements, since, with the reliability of the services provided, it stimulates the interest of potential investors, in addition to effectively reaching the objective of public administration: the common good of society (France, 2016).

2.3 The practical performance of the Court of Auditors from a legal perspective

The Courts of Accounts act as auxiliary bodies of the Legislative Power with regard to external control, which is also assigned financial, budgetary and patrimonial inspection and advice on public administration accounts (Fernandes, 2012). According to the National Council of the Public Ministry (2017), the performance of the Court of Auditors takes place on a legal basis. The main laws that govern its practice are:

- Law 4320, of March 17, 1964, which establishes rules for budget preparation and control;
- Law 8666, of June 21, 1993, called the Bidding Law;
- Complementary Law 101, of May 4, 2000, also called the Fiscal Responsibility Law;
- Law 10520, of July 17, 2002, also called the Auction Law, one of the bidding modalities;
- Resolution 01/2012, which establishes new procedures for examining public accounts;
- Law 13303, of June 30, 2016, known as the State-Owned Law, which, in addition to other aspects, establish rules for bidding in public companies;
- Normative Instruction 05, of May 26, 2017, which regulates the hiring of personnel.

Among its activities, is the inspection of public accounting, the hiring of companies to provide services and the payroll expenses of public employees.

2.3.1 Accounting

With regard to accounting, Complementary Law No. 101, of May 4, 2000, or Fiscal Responsibility Law, stipulates rules oriented to responsibility and transparency in fiscal management and effective use of public resources, determining that there is a planning financial (Complementary Law No. 101, 2000). Thus, in Article 1, § 1, it is provided that responsibility in fiscal management presupposes planned and transparent action, in which



risks are prevented and corrections of deviations capable of affecting the balance of public accounts, through the fulfillment of results goals between revenues and expenses and compliance with limits and conditions with respect to the waiver of revenue, generation of expenses with personnel, social security and others, consolidated and securities debts, credit operations, including by anticipating revenue, granting guarantees and enrollment in Remains Payable (Complementary Law No. 101, 2000).

For better understanding, the Fiscal Responsibility Law brings definitions such as that of a controlled company, which corresponds to the organization in which the majority of the share capital belongs to a federative entity, and that of a dependent company, which receives resources from the entity to pay costs and expenses. Still, it presents the concept of net current revenue, which corresponds to the sum of all revenues in the period with deductions, namely:

- In the Union: social contributions and amounts transferred by legal and constitutional provisions.
- In the States: only the amounts transferred to the municipalities due to constitutional determinations (Complementary Law No. 101, 2000).

The Fiscal Responsibility Law, which is based on principles such as planning, control, transparency and accountability, determines some main points regarding public resources, such as the use of the resource exclusively for its intended purpose, in addition to establish a limit for public debt (Complementary Law No. 101, 2000). For Fiscal Responsibility Law offenders, there are sanctions applied in accordance with the misdemeanor, such as a fine, imprisonment, suspension, termination of mandate and / or, even, detention. The infractions refer to the lack of transparency due to the non-publication of the required reports, to the extrapolation of the limits established for public spending, to apply funds improperly, to carry out credit operations in excess and outside the limits stipulated by the Federal Senate (Tesouro Nacional, 2019).

Law 4320, of March 17, 1964, defines norms and criteria for the preparation of public budgets, as well as their control and execution and, together with the Fiscal Responsibility Law, complements the Federal Constitution in its financial scope. In this way, it institutes the economic classification of revenues into current and capital, with revenues from operating activities of persons under public or private law being defined as current in order to meet current expenses; and capital revenues are those arising from debts, loans and financing. Also, expenses are classified as current, which include current and capital expenditure costs and transfers, which include expenses with investments, transfers and financial investments.

Still, the Federal Constitution of 1988 provides in its article 165 three budget plans: the Law of Budgetary Guidelines, which establishes goals for the government and guides the elaboration of the Annual Budget Law for the following year, and the Plan Pluriannual, which involves medium-term planning and must be compatible with the previous ones (Federal Constitution of Brazil, 1988).



2.3.2 Contracting / purchasing goods and services

For the acquisition of goods or services, the public administration must comply with specific legislation. Among them, the Bidding Law, 8666/93 and the Fiscal Responsibility Law can be mentioned.

Based on the Fiscal Responsibility Law, in its article 16, it estimates that the manager must carry out the projection of a new expense on the fiscal budget, for three financial years and ensure that the new contracting coincides with the Pluriannual Plan, with the Law of Budget Guidelines and the Annual Budget Law. Otherwise, the expense may not be authorized, as well as being considered irregular, which may result in imprisonment. Except, daily expenses related to operational activities and task maintenance are not subject to this article (TCESP, 2012).

The Bidding Law, 8666, of June 21, 1993, is fully valid for direct and indirect management bodies, and partially for state-owned companies, which are also governed by law 13303/2016. This legislation provides that for contracting third parties, a bid must be preceded, except in some situations, namely

- Disposal of movable property, in the case of donations, exchanges, sale of shares or bonds, sale of goods produced by public administration institutions, or even, on sale to other public bodies, provided for in article 17 of the legislation (Law No. 8666, 1993).
- Engineering works and services with a value of up to 10% of the predicted limit, that is, R\$ 33,000; and purchases and services with a value of up to 10% of the predicted limit, that is, up to R\$ 17,600. In such cases, bidding is not necessary, giving the administrator the option to contract directly, according to article 24 (Law No. 13303, 2016).
- In cases of war, public calamity or emergency, provided for in Article 24 (Law No. 8666, 1993).
- When there are no interested in submitting proposals, characterizing the deserted bidding process (Law No. 8666, 1993).
- When there are no conditions for competition, characterizing the unenforceability of bidding, as provided for in Article 25. (Law No. 8666, 1993).

The bidding law came about with the objective of guaranteeing the basic principle of equality, according to which everyone is equal before the law, and guaranteeing the best choice, observing issues such as lowest price, best technique, technique and price and highest bid. Therefore, it is forbidden to consent to clauses that hurt competitiveness and impartiality (Law No. 8666, 1993).

With regard to public works, the Federal Court of Accounts institutes phases for execution, starting with a basic project to make the bidding process feasible and, subsequently, the publication of a public notice, which establishes guidelines for the proposals and, after selection, raises in a contract, which must be signed for the fulfillment of the external and contractual phase of the bidding. After these steps, inspection and monitoring by qualified professionals must be carried out, in addition to the periodic maintenance of the work aiming at durability (Pereira Junior, 2012).



As criteria for a tie in a bidding process, the legislation provides for the preference for products or services of Brazilian companies, companies that invest in the country or that have vacancies reserved for the disabled and rehabilitated by Social Security, in that order. If the tie remains, a draw will be held. (Law No. 8666, 1993).

According to article 22 of the Bidding Law, for the organization of the bidding phases, some modalities are considered, such as competition, price taking and invitation, which are defined according to the value of the contract; competition, which aims to select technical, scientific or artistic work; and auction, with the objective of selling assets. Still, there is another modality, such as the auction, governed by law 10520/2002, which defines the contracting of common goods or services and first the price dispute is held so that, later on, the classified is qualified (Conlicitação, 2019).

2.3.3 Personnel expenses

Complementary Law 101, of 2000, also called the Fiscal Responsibility Law, determines some main points referring to the expenditure of public resources on personnel, both active, inactive and pensioners. Thus, the legislation provides that personnel expenses cannot exceed the limit of 50% of current net revenue in the Union and 60% of current net revenue in states and municipalities (Complementary Law No. 101, 2000).

Normative 05, of May 26, 2017, governs actions related to the hiring of human resources under the regime of indirect action in public management and repeals Normative Instruction 02, published on April 30, 2008, with the objective of meet market innovations and improve contract management (Portal de Compras, 2019).

Thus, with the update, the hiring planning, which was not carried out before, is treated with relevance and is elaborated in stages, with preliminary study, risk management and basic project, requiring a specific team with technical knowledge for the execution of these steps (Portal de Compras, 2019)

In addition, normative instruction 05/2017 brought with it productivity standards, aiming at competitiveness and encouraging the use of technology in the execution of tasks in order to optimize the activities provided. Also, when it comes to payment, management is responsible for paying the costs arising from activities that actually took place, called a taxable event (Portal de Compras, 2019).

3. Methodological procedures

This study was carried out from a bibliographic search and documentary analysis. According to Gil (2002) bibliographic research is developed based on material already prepared, consisting mainly of books and scientific articles. Although in almost all studies some type of work of this nature is required, there is research developed exclusively from bibliographic sources. Much of the exploratory studies can be defined as bibliographic research.

For Cechinel, et al., (2016), documentary research raises materials that have not yet been edited, or that have not received sufficient analytical treatment, such as letters, notary documents, memos, personal correspondence, notices, agendas, diaries, proposals, reports, minutes, studies, reviews, etc.



The information collected by the bibliographic research was based on books, scientific articles, periodicals, e-books, magazines and legal documents.

The data collected by the documentary research was based on the website of the São Paulo State Court of Auditors (www.tce.sp.gov.br). For greater accuracy of the results obtained, an unstructured interview was also conducted with one of the directors of one of the regional units of TCESP, in order to collect information on the practical performance of the inspection agents.

Therefore, an analysis of actual data of the performance of contemporary external control was carried out based on a documentary analysis, considering the doctrine, jurisprudence and pertinent laws applicable to the case and, for this better reasoning, the bibliographic survey was also considered in the construction of work.

4. Results

In this part, the results are presented with discussions on the topic. Such information was raised from a documentary research carried out in cases contained on the website of the Court of Accounts of the State of São Paulo - TCESP, covering cases from some municipalities in the State, such as Fernandópolis, São Carlos, Rubineia, Campinas, Jales and Americana.

From the legal basis, the research in public documents was carried out with the objective of identifying some reasons that provoke the disapproval of public accounts. Several examples were found and, among them, are shown in the tables below some real situations that occurred in cities in the state of São Paulo, as well as the jurisdiction.

Table 1. Analysis of public accounts in the accounting scope

| Scope: Accounting | | |
|---|--|--|
| Cases | Inappropriate acts | Legislation |
| I - Process: TC-10377/989 / 16-5 - Rendering of accounts resulting from transfers made by the Fernandópolis City Hall to the Fernandópolis Commercial and Industrial Association. Decision with Transit Judged on 02/26/2019. | In 2014, the amount of R \$ 110,000.00 was transferred to the Commercial and Industrial Association of Fernandópolis, whose purpose does not match the activities provided for in Article 16 of Federal Law 4320/64. | Article 16 - Law nº 4320/64: “The granting of social subsidies will aim at providing essential social, medical and educational assistance services, whenever the supplementation of resources of private origin applied to these objectives, proves to be more economical” (Law No. 4320, 1964). |
| II - Process: TC-002792/026/12 - Annual accounts of the Municipal Development Company of Campinas S / A, related to the 2012 financial year. Decision with final judgment on 05/27/2019. | In 2012, the State government adopted the cash regime for the recognition of traffic ticket revenues. | Article 177 - Law 6404/76: “The company's bookkeeping will be kept in permanent records, in compliance with the precepts of commercial legislation and this Law and generally accepted accounting principles, observing uniform accounting methods or criteria over time and recording changes assets under the accrual basis” (Law No. 6404, 1976). |

Source: Authors, elaborated based on Court of Auditors of the State of São Paulo.

According to the aforementioned, it is noted that in case I, referring to the rendering of accounts made by the City of Fernandópolis, the law was violated due to the monetary



transfer to an entity whose purpose of action does not comply with those foreseen: social, medical or educational assistance. In case II, it is noted that the non-compliance with the legislation occurred due to the use of the cash accounting regime, which is characterized by recording expenses and revenues only when there is an effective payment or receipt. However, current legislation requires that bookkeeping take place on an accrual basis, which is accounted for regardless of actual receipt or payment.

Table 2. Analysis of public accounts in the scope of acquisitions of goods or services.

| Scope: Purchases of goods or services. | | |
|---|---|--|
| Cases | Inappropriate acts | Legislation |
| I - TC-800254/203/07: Separated from the accounts of the municipality of Rubineia, to deal with matters relating to the purchase of medicines without a bidding procedure. Decision with Judged Transit on 06/22/2017. | An expense of R \$ 74,805.18 incurred by the municipality in the purchase of medicines, deemed irregular due to the non-attachment of documents that could prove the thesis defended of sporadic and punctual purchases, but unpredictable. | Complementary Law 709 - Article 33, item III, b: "the accounts will be deemed irregular when proven (...) breach of the legal or regulatory rule." Article 36 - "When judging irregular accounts, if there is a debt, the Court of Auditors will condemn the person responsible for the payment of the debt updated monetarily, plus the default interest due, and may also impose a fine" (TCESP, 1993). |
| II - TC-000325/013/11 Secretary of State for Education - São Carlos - purchase of laundry materials in excessive and unjustified quantities, in the months of January and February and throughout 2010. Decision with Judgment on 08/13/2018. | In 2010, during a visit, the inspection agents did not find the laundry mentioned. In addition, the tax documents for the purchase of cleaning products were in quantities incompatible with the real needs of the Entity. | Article 116 - Law 8666/93: "The signing of an agreement, agreement or adjustment by the bodies or entities of the Public Administration depends on prior approval of a competent work plan proposed by the interested organization, which must contain, at least, the following information: I - identification of the object to be executed; II - goals to be achieved; III - stages or stages of execution; IV - plan for the application of financial resources; V - disbursement schedule; VI - prediction of the beginning and end of the object's execution, as well as the completion of the programmed stages or phases" (Law No. 8666, 1993). |

Source: Authors, elaborated based on Court of Auditors of the State of São Paulo.

In the case I mentioned above, which occurred in the municipality of Rubineia, the non-compliance with the legislation is visible, since the Bidding Law, 8666/93 requires the presentation of a work plan, containing documents that prove the prior need to acquire a good. Then, case II is in breach of the law for exceeding the real needs for the purchase of cleaning products, in addition to the fact that, upon receiving the inspection agents, the laundry mentioned by the São Carlos Department of Education was not found (Table 3).



Table 3. Analysis of public accounts within the scope of payroll expenses

| Scope: Personnel expenses. | | |
|---|---|---|
| Cases | Inappropriate acts | Legislation |
| I - Case: TC-000382/011/11 - Accountability of funds transferred by the Jales City Hall to the Association of Disabled Persons of the Region of Jales, in 2010. Decision with Judgment on 12/06/2018. | Use of almost all the amount received (R\$ 11,453.17), 85.68%, for the hiring and payment of personnel and social and labor charges. | Article 37, II of the 1988 Federal Constitution - hiring must be carried out by the Municipal Government through a public tender (Federal Constitution of Brazil, 1988). |
| II - Process: TC-000898/026/10 - Records of the 2010 annual accounts of the Health Foundation of the Municipality of Americana. Decision with Judged Transit on 03/04/2016. | In 2010, positions were filled on a commission basis, without the characteristics of leadership, direction or advice. The relationship between open positions and positions is unfavorable (42 to 325). | Article 37, V, Federal Constitution of 1988 - the trust functions, exercised exclusively by civil servants occupying a permanent position, and the commissioned positions, to be filled by career servants in the cases, conditions and minimum percentages provided for by law, are intended if only to the attributions of direction, leadership and advice (Federal Constitution of Brazil, 1988). |

Source: Authors, elaborated based on Court of Auditors of the State of São Paulo.

In case I, referring to the city of Jales / SP, there was a contravention of the legislation due to the use of 85.68% of the resource received for the purpose of hiring personnel, however such hiring, as mentioned in article 37 of the 1988 Federal Constitution, should be carried out by the municipal government through a public tender. In the second aforementioned situation, which occurred in the municipality of Americana / SP, there is a failure to comply with the legislation due to the filling of positions on a commission basis without belonging to the areas of direction, leadership or advisory, as provided for in article 37 of the 1988 Federal Constitution.

5. Results Discussion

The objective of this study was to present how the inspection process of external control bodies in public administration is developed and its role as a regulatory institution for public spending, presenting the evolution of the Brazilian Public Administration, describing the role of the external control system according to the Federal Constitution of 1988 and demonstrating, based on documentary research, how external control bodies have acted in detecting errors and fraud and their contribution to the transparency of the management of public resources.

The role of external control bodies in the process of overseeing public spending is based on the foundations of specific Brazilian legislation. Among the main ones, we can mention the complementary Law 101/00, called the Fiscal Responsibility Law; Resolution 01/2012, which establishes new procedures for analyzing public accounts; Law 4320/64, which establishes rules for budget control; Law 8666/93, called the Bidding Law; Law 10520/02, called the Auction Law, one of the bidding modalities; Law 13303/16, known as the State-Owned Law; and Normative Instruction 05/17, which regulates the hiring of personnel. Based on these laws, cases from cities in the state of São Paulo, such as Fernandópolis, São Carlos, Rubineia, Campinas, Jales and Americana, were analyzed.



The analyzed processes highlight the need for a public supervisory body such as the Court of Auditors, so that public resources are allocated according to the legislation. In the accounting sphere, there is a violation of legislation in two situations. First, in the transfer in monetary value to an entity of a different nature from those permitted by law: social, medical or educational assistance and, secondly, the adoption of a cash regime, with Brazil adopting the accrual basis for its accounting. Regarding the acquisition of goods and services, external control was effective in the irregular purchase of medicines with correct documents and in the excessive purchase of cleaning products for a laundry that did not exist in another institution. In the scope of personnel expenses, the Court of Auditors identified non-conformity of public acts with the Federal Constitution, since there was no public tender for hiring personnel, and, also, different committee positions were filled than those provided by law: management, leadership or advice.

Thus, it is possible to note that the work carried out by external control agents, such as the Court of Auditors, contributes to the transparency of the acts practiced by public agents, making the link of all the principles that must be followed: legality, impersonality, morality, advertising and efficiency.

6. Final Considerations

From the results of the research, it is noted that external control plays an important role in the management of public finances, since it promotes greater reliability and security among the population and prevents abuse of power, due to the guidelines or even punishments received by agents administrative costs. Consequently, the country's economy achieves progressive improvements, since, with the reliability of the services provided, it stimulates the interest of potential investors, in addition to effectively reaching the public administration's objective: the common good of society, in line with the principles that underlie it, which involve legality, impersonality, morality, publicity and efficiency. For future research, it is proposed to deepen the theme with field research to identify the process in a practical way, together with the inspection agents of the Federal Court of Accounts.

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