Questioning the jurisdictional mechanism of budgetary and financial discipline

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The Court of accounts in Morocco[1]assumes a jurisdictional function in the area of budgetary and financial discipline[2], playing a key role in the verification of budgetary acts in order to ensure their compliance with the legislative and regulatory provisions in force.

The Court of accounts occupies a central position in preserving the financial balance of the State by issuing opinions and judgments[3] regarding the legality of public spending and budgetary decisions.

The jurisdictional mission of the Court of accounts falls within the framework of constitutional responsibility[4] superior control of public finances and to guarantee that budgetary acts respect the fundamental principles of legality, transparency and efficiency.

As the highest institution for public financial control in Morocco, the Court, which undertakes independent control and also intervenes in the continuous

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[1]The first attempt to create an audit mechanism for public administration in Morocco dates back to 1960, with the National Audit Commission headed by the Ministry of Finance. However, it was not until 1979 that the Court of accounts of Morocco (CCM) was created by Law No. 12-79. The CCM was then recognized as the Supreme Audit Institution of Morocco in the 1996 Constitution.

[2]The Court of accounts exercises a judicial role to ensure budgetary discipline. It identifies and sanctions violations of the rules concerning public expenditure and revenue committed by civil servants or agents of organizations under its supervision.

[3]The Court of accounts examines, investigates and pronounces judgments on the accounts of State services as well as those of public companies and establishments which have an assigned public accountant. It also evaluates the accounts of persons who acted as de facto accountants.

[4]The 2011 constitution devotes chapter X to the Court of accounts. It establishes the CCM as the supreme institution for control of public finances, in particular its article 147. While article 148 explicitly outlines its jurisdictional mission.

monitoring of the financial operations of the State, ensures constant supervision of the management of public resources.

The Court exercises its jurisdictional power impartially, thereby contributing to strengthening responsibility and accountability[5] in public finance management. Its role is of paramount importance in ensuring sound financial governance and ensuring the protection of the public interest.

In addition, the financial responsibility system is a cornerstone in accountability, thus making it possible to determine the scope of intervention of those responsible.

The Moroccan model[6] adopted in terms of superior control of public finances is based on the “court” approach. This jurisdictional model[7] is not attached to parliament like the Anglo-Saxon models but attached to the constitutional principle of separation of powers.

Through this article we will aim to answer questions around the regime of financial responsibility within the framework of budgetary and financial discipline as the jurisdictional mission of the Court of accounts. We also wonder about the nature of the persons subject to litigation, the issues that arise between respecting the instructions of the administrative authority and the difficulty of respecting legal standards.

In addition, this article will focus on the procedure for referral to the Court of accounts and the intervention of certain categories in the investigation process and the extent of the scope of financial responsibility and the sanctions surrounding it.

[5]It is a constitutional principle correlated with accountability.
[6]The supreme audit institutions differ widely in terms of structure and mode of operation. There are generally two types of ISC: courts and offices. Morocco adopts the court model by collegial approach and endowed with judicial functions.
[7]The Code of Financial Jurisdictions determines the responsibilities and organization of the Court of accounts at the national and territorial level.

At the end, this article will discuss the nature of sanctions in the context of budgetary and financial discipline while treating the bridges between sanctions of a jurisdictional nature with those of penal and disciplinary forms.

To approach the answer to each point cited above, we rely on a normative approach, given the legal nature of the attributions of the Court of accounts, and another comparative approach allowing us to understand international practices in this area.

Separation of power and exclusion of Members of Government and Parliament from Budgetary and Financial Discipline:

The Court of accounts exercises a judicial function specialized in budgetary and financial discipline. This competence extends to any individual occupying a responsibility[8], civil servant, or agent working within the organizations subject to his control.

As a judicial body, the Court has the power to judge and rule on matters relating to legality and financial management within these entities. Its supervision applies to aspects such as compliance with financial regulations and legitimacy of expenditures[9]. The Court aims to guarantee transparency, legality, and accountability in the management of public funds.

The decisions of the Court may take the form of financial sanctions alternative to any criminal[10] (INTOSAI, 2015), recommendations, or other measures aimed at correcting non-compliant practices. Its role helps to strengthen financial governance and ensure adequate use of public resources.

[8]In Morocco, responsibility is organized by organic law No. 02.12 relating to appointments to senior positions in application of articles 49 and 92 of the constitution promulgated by Dahir n° 1.12.20 of 27 Chaâbane 1433 (July 17, 2012) and the Decree n° 2.12.412 of October 11, 2012 relating to the application of the provisions of articles 4 and 5 of organic law n° 02.12 relating to the procedure for appointment to senior positions deliberated within the government council

[9]The court refers to legislative and regulatory texts relating to financial control, in particular the rules of public accounting, expenditure control, public procurement and debt recovery.

[10]Sanctions of a financial nature by consolidating the principle “alternative to all criminal matters” is what differentiates it from criminal law which can impose, in addition to fines, physical constraints (prison or detention).

Financial responsibility limited to managers:

Section two of Law 62.9 (la loi n° 62-99 formant code des juridictions financières promulgué par le dahir n° 1-02-124 du 1 er rabii II 1423 (13 juin 2002), 2002) , concerning litigants[11], restricts the application of budgetary and financial discipline to state agents only, without apparent exception.

However, article 52 of the same law intervenes to clarify that members of the government, as well as members of the House of Representatives and the House of Advisors, escape the jurisdiction of the court in matters of budgetary and financial discipline when They act within the scope of their official duties.

In other words, these senior government officials benefit from a deliberate exclusion from the Court's jurisdiction when they act as official representatives of the executive or legislature.

This provision aims to consecrate the constitutional principle by preserving the separation of powers[12] and to ensure a certain immunity for key members of government and parliament when exercising their official responsibilities being subject to further control of a political nature with all that poses, in the case of technocrats, questionable aspects in terms of control over public management by elected representatives[13] (MEYNAUD, 1964).

This duality raises questions about the real scope of the authority of the Court of accounts in these particularly limited situations and especially in the establishment of a culture of accountability and equality before the law.[14].

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[11]According to article 51 of law 62.99 thebodies subject to the control of the court are: State services; public establishments; companies or enterprises in which the State or public establishments hold separately or jointly, directly or indirectly, a majority stake in the capital or a preponderant decision-making power; and companies or enterprises in which the State or public establishments hold, jointly with local authorities, a majority stake in the capital or a preponderant decision-making power.

[12]Constitutional principle provided for by article 1 of the 2011 constitution.

[13]In this point, we note the difficulty of controlling and politically subjecting members of government who do not belong to any “technocratic” political party.

[14]Equality before the law is another constitutional principle provided for in article six of the constitution.

In the context of the exclusion of members of government and parliament from budgetary and financial discipline (BFD), it is interesting to note that several control institutions around the world are adopting similar approaches.

In France, the Court of accounts exercises extensive jurisdiction over financial supervision, covering a wide range of entities and responsibilities. Similarly, in the United States, the Government Accountability Office (GAO) carries out its oversight role with a particular emphasis on the accountability of government agencies, while generally excluding members of Congress from its direct jurisdiction.

Comparably, in the United Kingdom, the National Audit Office (NAO) plays a key role in evaluating the management of public funds, having powers similar to those of the French Court of accounts.

In short, these institutions share similarities with their Moroccan counterpart, the Court of accounts, in their approach to the question of the exclusion of members of the government from the BFD, while taking into account the subtleties specific to each legal and institutional context.

Need balance accountability mechanisms: Duality between compliance with orders and legality of actions

According to the provision of Article 53 of the Code of Financial Jurisdictions (CFJ), a person accused of financial offenses can demonstrate that he acted on the basis of a written order from his superior or an authorized person ; therefore, his responsibility[15] could be transferred to the person who issued this order.

This mechanism can create situations where people carrying out orders, even if they are aware of the potential illegality of the requested actions, could be

[15]Responsibility is a central value of the public service enshrined in Article 17 of the general statute of the civil service which provides that: “All civil servants, whatever their rank in the hierarchy, are responsible for the execution of the tasks assigned to them. entrusted”.

exempted from liability if they can justify having acted under the authority of a superior or an authorized person.

Therefore, this raises concerns regarding transparency, integrity and accountability within audited entities, as it could create incentives for individuals to avoid their financial obligations by hiding behind written or oral orders. Also, this situation could potentially encourage irresponsible behavior if individuals believe they can escape consequences by invoking received orders.

In everyday life and given the nature of public administration, it is common for many directives and orders within the administration to be transmitted verbally rather than through official and formal written documents. (Zaouaq, 28 Jun 2020). This practice finds its justification in the need to ensure smooth, rapid and flexible communication, essential in a dynamic operational environment.

However, this predominance of verbal communications can pose a challenge when considering a provision specifying the transfer of liability in the event of a written order.

Indeed, since most orders are given orally, the implementation of this provision could create situations of inequality. Individuals acting on oral directives may not benefit from the same accountability transfer mechanism as those acting on written orders, thereby introducing complexity into the accountability process.

To illustrate this dynamic, let's take the example of a civil servant acting on a verbal order to make an expenditure[16]. If this order is not documented and justified in writing, the transfer of liability provision may not apply in the same manner as if the order had been given in writing. This highlights the need to balance accountability mechanisms to reflect actual communication practices within public administration.

[16]Normally, an expense goes through a set of stages including preparation, award and execution. It is then subject to a set of rules pre-established by the regulations in force and according to the stage of the procedure.

To address this potential challenge, it may be beneficial to have specific procedures in place to document or confirm verbal orders. This approach would promote effective traceability of oral directives, thereby helping to ensure fair and transparent accountability, while preserving the practical and operational nature of communications within the administration.

By adjusting accountability mechanisms thoughtfully, it is possible to reconcile the demands of the daily reality of management in public organizations with the imperatives of transparency and procedural integrity.

In fact, the clause specifying the transfer of responsibility in the event of a written order could then create situations where people who acted on oral orders do not benefit from the same mechanism of transfer of responsibility.

Monopoly of state institutions in the process of referral to the Court of accounts

The dominance of government entities or parliament for referral to the court:

It is essential to emphasize that the Court of accounts thus becomes the central pivot, playing a fundamental role in evaluating the conformity of financial practices with established standards.[17]. This judicial body also guarantees the accountability of government institutions. Control and inspection reports[18]are of crucial importance in this process, enabling the Court to fulfill its mandate in a comprehensive and impartial manner. Thus, this procedure demonstrates the continued commitment of the Kingdom of Morocco to rigorous and transparent financial management, with the Court of accounts ensuring this guarantor role.

[17]The Court of accounts adopts legal and regulatory standards as well as international standards, whether accounting standards, financial statements, internal control, information systems, etc.

[18]Decree 2.11.112 dated June 23, 2011 relating to general inspections, defines the tasks and skills assigned to general inspections, covering control, inspection, ethics support, audit and evaluation of results, as well as their coordination, communication and monitoring missions in collaboration with the Mediator Institution. In addition, they ensure cooperation with the Court of accounts, the General Inspectorate of Finance and the Central Anti-Corruption Authority.

The Court of accounts of the Kingdom of Morocco, at the heart of the preservation of budgetary and financial discipline, can be seized by the King's Attorney General[19]on his own initiative or at the request of the First President of the Court or a specific formation[20] (la loi n° 62-99 formant code des juridictions financières promulgué par le dahir n° 1-02-124 du 1 er rabii II 1423 (13 juin 2002), 2002). This referral occurs when offenses[21]falling within the jurisdiction of the Court in budgetary and financial matters are discovered.

In this process, the King's Attorney General may be contacted by various authorities, such as the Prime Minister[22], the Speaker of one of the Houses of Parliament, as well as the Minister of Finance and other relevant Ministries. These requests are made explicitly through the King's Attorney General, accompanied by exhaustive control or inspection reports, supported by the necessary supporting documents.[23]. This interinstitutional collaboration strengthens the mission of the Court of accounts in maintaining transparency and integrity in the management of public finances.

In France, the Court of accounts[24]can be seized in a similar manner to the Moroccan Court of accounts, in particular by the First President and the Prosecutor General at the Court. The similarities lie in the diversity of actors authorized to initiate the control process. However, the specificities of the legal and political systems of the two countries may lead to differences in the way in which the referral is made and processed.

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[19]Fundamentally focused on protecting the public interest and respecting the legal framework established by law, the public prosecutor exercised by the king's attorney general can also be responsible for carrying out investigations. He acts independently when forming the legal decision and does not participate in making the final decision. In certain cases, it may initiate legal proceedings and issue an opinion on the decision to be rendered by the competent bodies.

[20]Article 57 of law 62.99 relating to CFJ.

[21]The offenses sanctioned by the Court of accounts are defined in articles 54,55 and 56 of Law 62.99 relating to CFJ.

[22]The 2011 Constitution confers on the Prime Minister the status of “head of government”.

[23]Article 58 of law 62.99 relating to CFJ.

[24]The French Court of accounts, established in 1807, is the supreme authority responsible for monitoring the correct use of public funds in France and punishing violations of this use, in accordance with Article 47-2 of the French Constitution.

In this context, the particularities of the legal and political systems of the two countries, France and Morocco, can lead to significant differences in the way in which the referral to the Court of accounts is made and processed. The distinctions can manifest themselves at several levels, notably in the formal referral procedures, the prerogatives and powers attributed to stakeholders, as well as in the degree of independence and autonomy available to the Court of accounts in each country. These institutional nuances can influence the scope of investigations, the way in which results are communicated and the receptiveness of recommendations issued by the Court of accounts, thus creating a framework specific to each national system.

In the United States, the U.S. Government Accountability Office[25](GAO) can be requested for specific investigations by Congress, reflecting a similarity with the Moroccan Court of accounts which can be seized by the legislature. The differences lie in the nature of the American federal political system compared to the Moroccan constitutional monarchy, which can influence how these entities are seized and operate.

The NAO in the United Kingdom, like the Moroccan Court of accounts, can be requested by Parliament for specific investigations. The similarities lie in the fact that these institutions are seized by legislative entities. However, differences in the UK parliamentary structure and specific legal frameworks can influence how these institutions are captured and operate.

The Federal Financial Controller (Bundesrechnungshof) in Germany may be called upon for specific investigations, with similarities to the Moroccan Court of accounts. The differences lie in the respective political systems, which may affect the implementation of referral powers and the handling of investigations.

[25]The GAO is an independent, impartial agency whose mission is to help Congress fulfill its constitutional obligations. GAO is also committed to improving the performance of the Federal Government and ensuring its accountability to the American people. This agency reviews the use of public funds, evaluates federal programs and policies, and provides analysis, recommendations, and other assistance to help Congress make informed decisions on oversight, policy, and funding.

In Canada, the Office of the Auditor General can be called upon to examine the management of public funds, similar to the Moroccan Court of accounts. However, differences in specific legislative frameworks and government structures can lead to variations in how these institutions are captured and operate.

Citizen participation limited by the legislation of direct referral to the supreme institution of control of public finances:

Although access to budget data is crucial, it alone is not enough to ensure responsible and effective management of public finances. To truly improve transparency and accountability, it is essential to create mechanisms allowing active participation of civil society and citizens in the decision-making and budget monitoring process. This participation should be encouraged at all levels, thereby providing citizens with a voice in the way public resources are allocated and used (Partnership, 2012).

Furthermore, to ensure truly transparent and accountable budgetary management, it is imperative to put in place independent and institutionalized monitoring mechanisms. These monitoring entities must have the power to monitor budgetary decisions, evaluate their effectiveness and report any irregularities or mismanagement. This would strengthen public confidence in the management of public finances and ensure that resources are used optimally to meet the needs of society.

Whereas, the possibility for civil society to directly contact a public finance control institution depends largely on the legal and institutional framework in place in each country. In many countries, public financial audit institutions are generally mandated by government entities, parliaments, or presidents.

However, some countries may have citizen participation mechanisms or independent entities that allow civil society to report financial irregularities or request investigations. These mechanisms can be established within the

framework of mediation entities, ombudsman, or specific monitoring organizations.

An example could be the Ombudsman's Office in Sweden, which, although not focused exclusively on public finances, provides an open complaint channel for citizens to report problems related to public management.

Another example of a country where civil society has some possibility of directly contacting a public finance control institution is Brazil. In this country, the Union Audit Court (TCU) is the body responsible for controlling public finances at the federal level. Although the TCU has traditionally functioned as a government body, there are mechanisms that allow civil society to engage in the monitoring process.

The TCU in Brazil has established channels for citizen participation, including the possibility for civil society organizations to present denunciations and petitions directly to the court, calling for investigations into matters related to the management of public finances. This provides some opening for civil society to raise concerns and influence the public finance audit process.

In several countries, citizen participation mechanisms and independent entities have been established to enable civil society to report financial irregularities and request investigations. A notable example is Brazil, where the Union Audit Court (TCU) accepts complaints from civil society, providing an opening to raise public financial management concerns.

Similarly, Norway has established the Office of the Auditor General (Riksrevisjonen) which, although primarily governmental, allows citizens to report financial concerns through dedicated channels. In the United States, independent Inspectors General offices in various government departments also accept reports from the public regarding fraud, waste, and abuse.

In South Africa, the Public Protector, an independent institution, investigates government maladministration and corruption, with citizens being able to file complaints. In Sweden, in addition to Brazil, the National Audit Office provides mechanisms for reporting financial problems and requesting investigations.

The Court of accounts in France establishes a citizen platform which allows everyone to propose control and investigation themes for financial jurisdictions. In addition, it manages another platform which allows, via secure exchanges, irregularities to be reported to financial jurisdictions. It is administered by the General Prosecutor's Office at the Court of accounts.

Finally, in India, the Central Vigilance Commission acts as an independent body to combat corruption, providing channels for whistleblowers and civil society to report questionable financial practices.

Although these mechanisms share the objective of involving civil society in the control of public finances, their structures, powers and efficiencies may vary depending on the specific institutional context of each country. The diversity of these approaches reflects the need to adapt to national realities while promoting transparency and accountability in the management of public funds.

Despite international models that encourage citizen participation in the monitoring of public finances through institutions such as the Court of accounts, Morocco does not appear to have adopted this approach. Unlike other countries, where civil society and citizens have an active role in the control of public expenditure through dedicated institutional mechanisms, particularly via electronic platforms, Morocco does not seem to recognize this possibility through its Court of Justice. accounts.

The Moroccan Court of accounts, as a constitutional institution, does not seem to provide formal mechanisms allowing citizen participation in the process of monitoring public finances. This situation contrasts with practices observed

globally, where the active participation of citizens and civil society in the oversight of government spending is encouraged and institutionalized.

Questioning the budgetary and financial discipline procedure:

1. **The King's Attorney General : exclusive guarantor of the referral procedure:**

Within the higher institutions of public finance control, public ministries find their place among those with jurisdictional powers.[26]. However, the missions entrusted to these public ministries appear to be very different from one country to another and if the presence of a public prosecutor among the actors[27], it is not considered obligatory for the deployment of jurisdictional powers.

In Morocco, according to the provisions of article fifty-seven of law 62.99, the Court may be required to rule on cases when referred to it by the King's Attorney General (KAG). However, it should also be noted that there are specific circumstances[28] where certain institutions have the possibility of referring the matter to the Court always through the king's attorney general .

This additional seizure may be based on control or inspection reports from these institutions. Thus, the procedure for referral to the Court can be triggered either by the King's Attorney General directly, in accordance with article fifty-seven of the code of financial jurisdictions, or by other institutions authorized to act on the basis of control or inspection reports.

The duality of seizure mechanisms offers a certain flexibility in the process, allowing the Court to examine cases coming from different sources while

[26]For more information, see INTOSAI-P 50 -2019- Principles of Judicial Activities of SAIs.
[27]Within a supreme audit institution, several functions are essential to the deployment of jurisdictional skills: Instructors, "Financial judges" or "members of the collegial body", The Attorney General or the assistant to the Attorney General when the law provides for it. In Morocco, we find in particular the king's attorney general and the rapporteur advisor.
[28]Particularly when dysfunctions falling within the jurisdiction of the Court of accounts are brought to the attention of a minister through the inspection of his department.

maintaining an essential link with the King's Attorney General, guarantor of the procedure.

As a result, the Court plays a central role in responding to infractions related to budgetary discipline, while responding to the various institutional dynamics at play.

Compared to international standards and especially INTOSAI standards[29],

2. **The King's Attorney General: a risk of significant influence on business**

Consolidating the power of seizure exclusively in the hands of the King's Attorney General (KAG) could result in exclusive control over cases submitted to the Court. This concentration of power could be interpreted as a method to selectively influence the judicial process.

By giving the KAG the monopoly as intermediary-channel for seizure, we create a scenario where a single entity holds significant influence over the cases brought before the Court, thus raising potential concerns in terms of transparency, impartiality and Accountability.

This exclusive channel of control could raise concerns about the possibility of manipulation of the judicial process in favor of specific objectives, thereby undermining public confidence in the integrity of the system of budgetary and financial discipline.

The discretionary power granted to the King's Attorney General in the decision to prosecute or close a case is not without risks. Indeed, this discretion, without safeguards, can lead to potentially worrying consequences.

On the one hand, a major risk is linked to the possibility of an unfair exercise of discretionary power. If this power is used in a selective or partisan manner, it

[29]The International Standards for Supreme Audit Institutions (ISSAI) are published by the International Organization of Supreme Audit Institutions (INTOSAI).

can give rise to inequalities in the processing of cases, favoring certain individuals or groups over others. This could undermine public confidence in this judicial system and erode the fundamental constitutional principle of equality before the law.

On the other hand, another risk lies in the subjectivity inherent in discretion. The decisions of the King's Attorney General are based on his interpretation of facts and evidence, which can lead to judgments influenced by personal considerations. This subjectivity could lead to errors in judgment and potentially unfair decisions.

Furthermore, the risk of political manipulation is always present. If discretion is used for political reasons rather than objective legal considerations, this could compromise the independence of this judicial system and threaten its integrity.

In order to minimize these risks, it is crucial to establish control and transparency mechanisms, as well as to guarantee the consistent application of the principles of justice and fairness in the exercise of the discretionary power of the King's Attorney General.

So thisimpartiality of the judgment process must be guaranteed by regulations governing the activities of the jurisdictional court and the procedures resulting therefrom[30].Indeed, the King's Attorney General must be confident that his personal opinions, exchanged in private after the public hearings, will not be disclosed, unless the law explicitly provides for public access to these opinions and provides the appropriate framework for this effect.

3. The reporting advisor: what risk of influence of the instruction process?

When a case is initiated, the reporting advisor in charge of the investigation has extensive powers, allowing him to conduct in-depth investigations and obtain

[30]This is the seventh principle of the jurisdictional activities of SAIs from the INTOSAI-P 50 standard.

information from public or private entities. However, inappropriate use of these prerogatives could compromise the neutrality and fairness of the investigation. Therefore, excessive concentration of power in the hands of a single person can potentially lead to bias, subjective interpretations of facts, or biased investigations.

It is crucial to put in place control and monitoring mechanisms to mitigate this risk and ensure transparency and impartiality throughout the investigation process.

The reporting advisor may also request all the necessary documents and question the persons involved as well as the witnesses, the latter taking an oath in accordance with the procedures defined by the code of criminal procedure. Indeed, by allowing the reporting advisor to question those involved and witnesses, there is the risk of indirect pressure, bias or undesirable influences, thus compromising the objectivity of the process.

When establishing rigorous control mechanisms, it is necessary to ensure the existence of safeguards and guarantors, such as independent committees or supervisory entities, in order to closely monitor the exercise of the powers of the rapporteur advisor. . These monitoring entities can play a crucial role in ensuring the fairness and impartiality of the investigation by regularly evaluating the procedures followed, reviewing requests for documentation, and ensuring that interrogations respect human rights. of the people involved.

The transparency of procedures must be ensured by the publication of clear directives on the operation of the investigation and the rights of stakeholders. In addition, preventing any potential abuse of the reporting advisor's powers also requires adequate and ongoing training on the ethical and legal standards that guide his or her actions. This awareness helps minimize the risk of bias or inappropriate use of investigative skills.

In short, constant vigilance, increased transparency and adequate training are essential elements to guarantee the credibility and fairness of the investigations carried out under the aegis of the reporting advisor, while preserving the fundamental rights of the people involved.

The hearing sessions are recorded in minutes drawn up by the clerk, guaranteeing precise documentation of the statements and elements collected. In the event of non-cooperation from the interested party or witnesses, the reporting advisor submits a report to the first president, who takes appropriate measures in accordance with the provisions of article 69 of the code of financial jurisdictions.

4. Importance of the hearing process as part of the investigation carried out by the reporting advisor:

The recording of sessions in minutes drawn up by the clerk indicates a concern for precise documentation, thus guaranteeing the traceability and authenticity of the statements and elements collected during the hearing. This practice strengthens the reliability of the information collected, ensuring a solid foundation for subsequent stages of the investigation.

5. Mechanisms for mitigating the risk of non-cooperation during instruction

When parties involved, whether the person concerned or witnesses, demonstrate non-cooperation during the investigation, several appropriate measures can be implemented to overcome these obstacles and ensure the efficient progress of the investigation. investigation.

Firstly, the formal summons represents a legal step consisting of ordering the presence of recalcitrant people. This measure reinforces the obligation to cooperate and can be accompanied by sanctions in the event of non-compliance, thus creating a binding framework.

At the same time, the imposition of fines[31]or disciplinary sanctions[32]constitutes a financial or disciplinary incentive for cooperation, thereby discouraging non-cooperation and promoting transparency in the hearing process.

In some cases, obtaining a court order may be considered. This approach legally legitimizes the requirement for cooperation, providing a solid basis for enforcing the participation of the parties involved.

The investigation team can also explore alternative sources of evidence to compensate for the lack of cooperation. This proactive approach ensures a complete investigation despite the obstacles encountered.

It is essential to clearly communicate the legal consequences of non-cooperation to the parties involved. This awareness highlights the importance of their collaboration in respecting procedures, highlighting the potential negative implications on their position in the legal process.

If the situation warrants it, the reporting advisor may consider making the hearing public before the administration. This measure aims to draw attention to the lack of cooperation, thus reinforcing administrative pressure and the importance of respecting established procedures.

Finally, the involvement of the public prosecutor can play a crucial role. By launching prosecutions in cases of non-cooperation, the public prosecutor ensures compliance with procedures and contributes to maintaining the integrity of the investigation process.

By adopting these measures strategically, the prosecution can effectively overcome obstacles related to non-cooperation, thereby ensuring a fair and impartial investigation.

[31]Article 69 of the CFJ specifies fines of between 500 Dh and 2000 Dh against witnesses who do not respond within the time limit set by the court to requests for communication of pieces and documents or to summons sent to them by the court. , or refuse to take an oath or testify.

[32]Article 111 of the CFJ stipulates that proceedings before the court do not prevent the exercise of disciplinary action and criminal action.

In short, the rigor of the hearing process, as a central pillar ensuring the integrity of the investigation, requires careful design of prevention measures. The latter are essential to anticipate and overcome possible difficulties that may arise in connection with the cooperation of the parties involved.

Thus, the establishment of robust mechanisms aimed at guaranteeing the transparency, legitimacy and fairness of the instruction constitutes a key element to ensure the credibility and impartiality of the process.

6. **The confidentiality of the investigation guarantees the preservation of the integrity of the investigation**

The instruction is carried out in confidentiality. It pursues the objective of preserving the integrity of the investigation. This is achieved by facilitating constant and structured communication between the reporting advisor and the King's Attorney General.

This approach guarantees meticulous monitoring of the case, thus promoting close and efficient coordination between the different actors in the judicial process.

Confidentiality surrounding the investigation helps protect the sensitivity of the information involved, while allowing relevant authorities to remain informed and make informed decisions.

In short, this approach seeks to reconcile the need for discretion with the need for transparent and effective management of training.

7. **Speed of the transition phase and time pressure on the formulation of requisitions:**

At the end of the investigation, the reporting advisor transfers the entire file, accompanied by his detailed report, to the King's Attorney General. The latter has a period of fifteen days from receipt of the file to formulate his requisitions. This step marks a crucial transition in the process, where the results of the investigation

are presented to the King's Attorney General, providing him with the opportunity to take appropriate action based on the findings and evidence gathered during the investigation. In fact, the efficiency and speed of this phase are essential to ensure prompt and fair justice.

However, this fifteen-day period may raise concerns about the time pressure placed on the King's Attorney General. The brevity of the deadline could compromise the quality of the analysis of the elements of the file, potentially affect the formulation of the requisitions and generate concerns regarding a thorough evaluation of the facts. Precise time management is therefore crucial to avoid any haste detrimental to the fairness and equity of the procedure.

8. Defense by witnesses serving to strengthen the fairness of the investigation process

Law 62.99 gives the possibility for the person concerned, or their lawyer acting on their behalf, to request the presence of witnesses of their choice in the context of the investigation process. This right underlines the importance of this faculty to guarantee a fair defense, thus offering a crucial opportunity to enrich the deliberations by providing additional elements of evidence.

This defense measure is part of the perspective of strengthening procedural justice and encouraging active participation of the defense in the prosecution process. The underlying goal is to create a more equitable environment, where the defense has the means to comprehensively present its side of the story.

The active participation of the defense in the investigation process is thus encouraged, strengthening the legitimacy and credibility of the entire judicial system. This measure constitutes a concrete mechanism allowing the person concerned to play a proactive role in their own defense, thus promoting fairer justice that respects fundamental rights. By integrating this faculty into the procedure, we strive to harmonize the principles of procedural justice with the specific requirements of the prosecution process before the financial courts.

9. Summons to the hearing: a transition to judgment

When the first president concludes, following examination of the file, that the case is ready to be judged. This speed of the procedure offers a rapid conclusion to the investigation. This also guarantees effective management of judicial resources and contributes to the speedy delivery of justice, thus meeting the expectations of an efficient procedure.

However, this speed can also be a source of potential disadvantages. The time pressure inherent in being summoned to the hearing within a relatively short period of fifteen days can compromise the quality of the defense preparation. The parties involved may feel undue pressure to put together all the necessary elements, which could impact their ability to present a complete and balanced argument.

The major risk associated with this phase is the possibility of hasty justice, where crucial details could be overlooked due to the tight timetable.

Consider, as an example, the judgment of the Court of Appeal number 20/2015 of May 15, 2015. As part of her appeal, the accountant expressly requested the annulment of the initial judgment. She put forward the argument that the latter was inaccurate, in particular because it had failed to take into account the defenses and justifications she had submitted. These elements were crucial to demonstrate the validity of the procedures associated with the disbursement of the expense in question. In other words, the accountant challenges the previous decision by asserting that crucial elements for her defense were not properly taken into consideration during the initial judgment.

In order to minimize this risk, it is imperative to establish flexible mechanisms allowing deadlines to be adjusted according to the complexity of each case. Transparency in communicating deadlines and facilitating access to legal information are also essential to ensure the fairness of the process.

In sum, although speeding up the process may have efficiency benefits, it requires careful management to avoid potential downsides and ensure fair justice.

10. Extended decision-making latitude of the president of the formation:

i) Necessity of the order of the hearing and risk of abuse:

Although the power is necessary to maintain order and ensure the smooth running of the hearing, it carries potential risks of abuse. The president may be able to make unilateral decisions that could affect the procedural justice and fairness of the hearing.

For example, excessive use of power by the President could result in arbitrary decisions or actions that could limit the individual's ability to effectively present his or her defense.

Therefore, it is crucial to ensure that the panel chair uses his or her authority in a balanced and impartial manner, ensuring that all parties benefit from a fair and transparent process.

An additional risk is that measures deemed necessary by the president to maintain order could be perceived as restrictive and potentially detrimental to defense rights.

Thus, an appropriate balance must be maintained to ensure fair procedural justice while maintaining necessary order during the hearing.

ii) Need for a fair and balanced debate:

Every person responsible before the law has the right to a public hearing before an independent and impartial court, which will determine whether he or she is liable.[33].Similarly, this right to have access to evidential elements also exists in

[33]Principle 6 of INTOSAI-P 50.

other types of audit or control, but it is much more tyrannical in jurisdictional activities. Failure to comply with these obligations may result in a formal defect and thus the annulment of the judgment.

For the Court of accounts, before any case, the reporting advisor, who investigated the case, presents a summary of his report. Then, the person concerned, whether present themselves or represented by their lawyer, and within the framework of the adversarial procedure, has the opportunity to present their explanations and justifications. Therefore, the risk in this phase of the hearing lies in the potential imbalance of information between the summary of the reporting advisor and the explanations of the person concerned.

The reporting advisor, by presenting a summary of his report, can influence the initial perception of the panel on the case. If this presentation is biased or lacks neutrality, it could create an unfavorable prejudice against the person concerned even before they have had the opportunity to present their arguments.

Furthermore, the person concerned, although having the opportunity to present their explanations, may find themselves in an unfavorable position if the initial summary of the reporting advisor has already influenced the opinions of the members of the panel. This could compromise the fundamental principle of fairness in the conduct of the hearing.

In order to mitigate this risk, it is essential that the summary of the reporting advisor is objective, balanced and based on facts. Furthermore, the person concerned should be given sufficient time to respond to the summary and present their arguments fully, thus ensuring a fair and informed debate.

An inclusive repressive approach at all levels of the administrative hierarchy

Extended responsibility at the administrative hierarchy level

Article 54 of Law 62.99 stipulates that all actors within the administration, such as authorizing officers, sub-authorizing officers, managers, civil servants or

agents, as well as those acting on their behalf, may be subject to sanctions. they commit offenses in the exercise of their functions.

This provision aims to establish broad accountability, encompassing each level of the administrative hierarchy. It highlights the importance of professional and ethical conduct at all levels of public administration. The objective is to ensure integrated governance by sanctioning any act contrary to the standards and laws governing professional responsibilities within the administration.

Returning to the royal decree on public accounting, in particular its article 64, by law, ministers are authorizing officers. This means that they assume broad responsibilities and are therefore subject to the sanctions provided for in the financial jurisdictions code. But as we have seen, article 52 of the code of financial jurisdictions excludes the submission of members of the government by budgetary and financial discipline.

The circumstances surrounding the sanctions

Circumstances mitigating respect for the integrity of the judicial system

Good faith and legal responsibility: A subtlety in the sanctioning of offenses

The recognition of good faith as a mitigating circumstance when forming a judgment makes it possible to introduce a fair dimension into the assessment of sanctions for an offense committed (Judgments Nos. 23, 24, 25, 26, 27, 28 and 29/2019/Ch DBF).

However, this mitigation does not release the accused from his liability regarding material and formal offenses lacking the required moral element.

In addition, the material violation, consisting of the transgression of a rule of law or a contractual commitment, is necessary to establish the offense. Thus, although good faith may influence the severity of the sanction, it does not exempt from the fundamental legal responsibility linked to the objective violation of pre-established rules, thus preserving the integrity of the judicial system.

Judgment with considerations of the Circumstances

When assessing the sanctions for an offense linked to the inaccurate certification of the service made for the execution of an expenditure in the context of public procurement, the occasional nature of the act in relation to the usual responsibilities of the person involved and his lack of knowledge of reception procedures are considered by the judgment panel.

This procedure is particularly relevant when the project owner has not provided the technical documents necessary for the conformity check[34]. By recognizing these elements, the judging panel seeks to integrate a contextual perspective into the determination of fines, taking into account individual circumstances that may have influenced the behavior of the person in question. In these cases, the responsibility of the project owner arises.

Also, the constraints and difficulties encountered by the public body in terms of management, the constraints associated with the legal training of the accused and the insufficiency of human resources within the body, particularly when management is centralized at the ministerial level. , are also recognized as mitigating circumstances (Judgments No. 50 and 53/2019/Ch DBF).

Also, the limited participation of the pursued in the conclusion of the contract, the occasional nature of the inaccurate certification, and the low value of the work (Judgments No. 23, 24, 25, 26, 27, 28 and 29/2019/Ch DBF) .

knowledge of management practices by hierarchical superiors, the justification of offenses linked to the continuity of public service, adaptation to the missions of the organization, the inadequacy of the legal framework, and the speed of regularizations (Judgments no. 15 , 43, 44, 48, 49, 50 and 53/2019/Ch DBF).

[34]These technical specifications and consistency are determined in the specifications, particularly in the Consultation Regulations and in the Special Specifications (which will subsequently be the market). Also, the Schedule of estimated retail prices may also contain these technical characteristics through the mention for each item, contract object, the brand, the reference and the consistency of the services.

The Role of the Forecast Program in sanction decisions

A mitigating circumstance for the offense linked to the splitting of expenses is the absence of the forecast program of projects to be carried out by the organization during the budget year in question.

However, this mitigation is subject to the condition that the preparation of said program does not fall within the competence of the person being prosecuted. In other words, if the accused person is not responsible for drawing up the forecast program, his or her absence can be taken into consideration as a mitigating circumstance in the context of the offense relating to the splitting of expenses.

So we are talking here about the obligatory nature of the development of the forecast program and the determination of responsibilities. According to decree 2.22.431…. (Judgment no. 53/2019/Ch DBF).

Aggravating circumstances

Increased Consequences in the event of False Certification with full participation in the procedure

The full participation of an individual prosecuted under the Budgetary and Financial Discipline (DBF) in all stages of a contract is considered an aggravating circumstance in the context of a sanction linked to the irregularity concerning false certification the conformity of the equipment delivered to the contractual technical specifications.

This means that if the pursuer played an extensive role in the acquisition process, including in particular the definition of needs, the evaluation of technical offers, the conformity examination, and the reception of the equipment covered by the contract, this increases the severity of the sanction in the event of an irregularity relating to the false certification of the conformity of the equipment in relation to the contractual technical specifications. In other words, total involvement in all phases of the market reinforces the responsibility of the

accused when a false certification of conformity is noted, leading to more severe consequences within the framework of the sanction for this irregularity. (Judgments no. 10 , 11 and 40/2019/Ch DBF)

Judicial Disputes: A determining parameter in Financial Sanctions

Legal disputes between the co-contractors and the project owner, arising from the latter's non-compliance with the rules for the execution of public expenditure, are considered aggravating circumstances when assessing the amount of the fine by the panel. of judgment. This also includes the legal costs resulting from such litigation and the potentially damaging impact of such litigation on the reputation of the public body.

Thus, the judgment panel takes these additional elements into account when determining the fine, recognizing the aggravating nature that legal disputes and their associated consequences on public finances and the reputation of the organization can have. (Judgments n ° 50 and 53/2019/Ch DBF).

The scope of sanctions in matters of budgetary and financial discipline: Parallelism of disciplinary and penal procedures

In terms of budgetary and financial discipline, sanctions may vary depending on the specific laws and regulations of each country. They generally aim to make the actors involved in the management of public finances accountable and to guarantee compliance with established budgetary and financial rules. Here are some examples of possible sanctions.

Coexistence of judicial prosecutions and disciplinary actions:

Proceedings before the court or before the regional courts of accounts do not prevent a person from also being the subject of disciplinary or criminal action.

Violation of professional, ethical or disciplinary rules justifies the use of administrative sanctions by the appointing authority.

This connection between violation of standards and application of administrative sanctions creates a professional environment where compliance and respect for rules are encouraged, thus contributing to the cohesion and positive reputation of the civil service and therefore of enforcement by the administration of the sanctions provided for by the regulations in force for permanent or trainee staff, is proportional to the seriousness of the fault committed, and after prior consultation, if necessary, of the disciplinary council of the administration.

The accused official has all the guarantees of defense before the disciplinary commissions, in particular the possibility of being assisted by a lawyer and of calling witnesses.

Circular from the Secretary General of the Government n° 17-63-FP of May 3, 1963 on legal proceedings initiated against civil servants and agents recognizes that civil service services frequently receive notifications from different public prosecutor's offices.

These notifications concern both notices of legal proceedings initiated against civil servants and agents, as well as notices of convictions pronounced against some of them.

In other words, judicial authorities regularly report criminal cases involving members of the public service, whether for ongoing proceedings or convictions already handed down.

It is common to find that these officers are subject to convictions, which may consist of a combination of suspended or non-suspended imprisonment, accompanied by a fine. Alternatively, the sentence may be limited to one of these two sentences, reflecting the diversity of verdicts these staff members are likely to face.

The Secretary General of the Government confirms that this situation could harm the reputation of the administration and would have harmful consequences on the proper functioning of public services. Consequently, he orders that it is imperative to take vigorous recovery measures as quickly as possible and he provides strict directives to all those responsible for administrative services and personnel. This aims to ensure that all agents, regardless of their functions, who have been sentenced to repressive penalties, are simultaneously subject, in accordance with the required disciplinary procedures and guarantees, to administrative sanctions.

The administrative sanctions to be applied must be closely aligned, in each situation, with the seriousness of the alleged offense and the sentence imposed. In the event of manifestly serious misconduct committed by a civil servant, it is imperative to immediately suspend him from his duties, possibly with a total or partial reduction of his salary. The definitive resolution of his situation will only be concluded after the decision of the competent court has become final.

The prosecution situation becomes more complex when a civil servant is simultaneously prosecuted before the financial courts as well as disciplinary before the administrative authority. There are two scenarios, either to impose an administrative sanction before the judicial authority has rendered a final judgment, or to wait until the final judgment is pronounced.

In the first scenario, the administration pronounces the disciplinary sanction before the final judgment. But if the fault committed is of little seriousness from a criminal point of view and does not present any shameful character, it is obvious that waiting for the court's judgment would lead to depriving the administration for a very long time of the services of an agent. who may only receive a light disciplinary sentence and who will ultimately be reinstated in his job.

Article sixty-three of the general statute of the civil service resolves this problem by stipulating that the administrative authority cannot pronounce a

disciplinary sanction against a civil servant subject to suspension as long as his situation has not been resolved with regard to the judicial authority.

This then results in the civil servant being provisionally suspended but will not be inflicted with one of the disciplinary sanctions stipulated in article sixty-six of the general status of the civil service.

In the present case, according to article seventy-three of the general status of the civil service, in the event of serious misconduct the suspension of the civil servant, by the authority having disciplinary power, must be definitively settled within a period of four months from the day on which the decision suspension has taken effect.

In the event of criminal proceedings, his situation is only definitively resolved after the decision rendered by the court seized has become final.

On the other hand, the financial jurisdiction has a maximum period of one year from the date of the provisional judgment to issue a final judgment. That is to say that the disciplinary sanction may not be applied if the civil servant benefits from the reasons for leaving service provided for in article seventy-six of the general status of the civil service, especially regularly accepted resignation and admission to retirement.

At the same time, when the court detects facts justifying a disciplinary sanction, it takes a formal step by informing the King's Attorney General, a key figure as a judicial authority representing the State. The Attorney General then reports these facts to the disciplinary authority responsible for the person in question, thus initiating an essential process to maintain the integrity of judicial institutions.

However, this process is not without risks. The six-month period allocated to the disciplinary authority to review the facts and take appropriate disciplinary action may result in delays, potentially compromising the efficiency of handling

disciplinary cases. These delays may have implications for the justice and speed of decisions rendered by the court.

However, the code of financial jurisdictions, in particular its article 111, does not specify the specific role assigned to the Court of accounts following the communication of disciplinary sanctions by the competent authority. This finding highlights a gap in the current legal framework, as it does not provide clear guidelines or legislative provisions defining the specific actions or responsibilities that the Court of accounts should assume in this phase of the disciplinary process.

In other words, article 111 of the code of financial jurisdictions does not explicitly address the stages subsequent to the communication of disciplinary sanctions, thus leaving ambiguity as to how the Court of accounts should act in such circumstances. This lack of clarification may lead to uncertainties as to the procedures to follow and the real powers of the Court of accounts in this specific context.

By detailing this observation, it appears that the central issue lies in the lack of legal guidance on the precise role of the Court of accounts after disciplinary sanctions have been communicated. This situation may give rise to practical and theoretical challenges, potentially requiring a legislative review to fill this gap and establish clear guidelines for the actions of the Court of accounts in such situations.

During these six months, the disciplinary authority conducts investigations, evaluates the allegations, and determines appropriate sanctions. It is imperative that this process is conducted in an impartial and transparent manner to prevent any risk of external influence or bias. Ensuring total impartiality is crucial to guarantee the legitimacy of the disciplinary decisions taken.

Despite these challenges, it is crucial to emphasize the need for effective coordination between different judicial and disciplinary authorities. Insufficient

collaboration can lead to gaps in the process, increasing the risk of misunderstandings and dysfunctions.

Thus, although this system is designed to maintain the integrity of disciplinary procedures, it is essential to carefully manage the associated risks, such as delays, potential external influences, the need for transparency and coordination between authorities. Vigilance against these risks is necessary to preserve fairness and trust in the entire disciplinary process.

Certainly, harmonization between the rules governing disciplinary measures and those applied by the financial courts to make provisional judgments final is essential to ensure consistency between the application of disciplinary sanctions and proceedings before the financial courts.

Disciplinary sanctions: Absence of justifying facts

The coexistence of disciplinary sanctions in parallel with proceedings before the financial courts concerns a multitude of facts justifying this recourse.

However, the code of financial jurisdictions does not specify the cases where the facts justify the use of disciplinary sanctions.

It appeared that Article 111 and 114 for the court of accounts and 162 and 164 for the regional court of accounts detailed the specific steps or mechanisms to follow in taking disciplinary action in response to wrongdoing. This may include guidelines on how to conduct disciplinary investigations, apply appropriate sanctions, and ensure rights and legal procedures are respected throughout the process.

Although these articles do not explicitly detail disciplinary sanctions, they simply recognize the feasibility of the simultaneous application of criminal and disciplinary proceedings in proceedings before financial courts. This finding highlights a certain flexibility in the way in which these cases can be handled,

thus allowing the competent authorities to choose the appropriate route depending on the nature and seriousness of the alleged infringements.

It is important to emphasize that the absence of specification of disciplinary sanctions in these articles does not mean the absence of consequences. On the contrary, this could reflect an intention to leave a margin of appreciation to the disciplinary authorities to determine the most appropriate sanctions according to the specific circumstances of each case. This flexible approach offers a certain latitude to adapt disciplinary responses according to the complexity and diversity of situations that may arise.

The possibility of conducting criminal and disciplinary proceedings concurrently also indicates a desire to ensure a comprehensive and balanced response to alleged offenses. This approach recognizes the distinct nature of these two types of prosecutions while emphasizing the need for effective coordination between criminal and disciplinary authorities to ensure a fair and equitable procedure.

Although the articles in question do not explain disciplinary sanctions, they open the door to a nuanced approach allowing criminal and disciplinary proceedings to be applied simultaneously before financial courts. This flexibility aims to guarantee an appropriate and fair response to alleged offenses, while preserving the coherence and integrity of the judicial system.

However, it is important to emphasize that the code of financial jurisdictions only specifies one reason giving rise to a disciplinary sanction, namely the abusive destruction of supporting documents or accounts. This restriction underlines the particular severity attached to such acts within this code governing the functioning of financial jurisdictions.

The focus on the abusive destruction of supporting documents or accounts as the sole reason for disciplinary sanctions can be interpreted as recognition of the crucial importance of these documents in the context of investigations and judgments by financial courts. This perhaps also reflects a specific concern about preserving the integrity of accounting and financial information, which is essential to ensuring transparency and legality in the management of public resources.

The absence of other specific grounds for disciplinary sanctions in the code of financial jurisdictions could indicate a certain margin of interpretation and discretion granted to disciplinary authorities to assess potential behaviors and infractions on a case-by-case basis. This highlights the need for a flexible approach to adapt to the diversity of situations that may arise in the context of financial jurisdictions.

Of course, the abusive destruction of supporting documents or accounts is the only specific reason stated in the code of financial jurisdictions leading to disciplinary sanctions, this can be interpreted as a strong measure in favor of protecting the integrity of financial procedures. However, this limitation may also leave room for a case-by-case assessment of infractions, highlighting the need for a balanced and nuanced approach in dealing with disciplinary violations.

Disciplinary and criminal options for de facto accountants:

Article thirty-seven of the the code of financial jurisdictions initially sets out the possibility of criminal sanctions against the de facto accountant. In other words, this provision recognizes the criminal justice route to deal with cases where a person acts as a de facto accountant, without complying with the rules and required financial obligations. This recognition underlines the severity attached to such offenses and the possibility of recourse to criminal sanctions to deal with them.

However, Article fourty-four offers an alternative to the criminal sanction, introducing the possibility of a different sanction in the form of a fine. This fine

is calculated according to the importance and duration of the holding or handling of funds and assets, and it is capped in order to guarantee proportionality with the amounts unduly held or handled. This provision reflects a more nuanced approach, allowing authorities to choose a response tailored to the specific circumstances of each case, while avoiding an excessive amount of fine.

The introduction of this alternative sanction underlines the importance of flexibility in the legal system to respond effectively to the diversity of situations linked to the holding or handling of funds and securities by a de facto accountant. This approach offers a range of options for judicial authorities, aimed at ensuring proportionate and fair justice in these delicate financial matters.

Similar to how improper destruction of supporting documents or accounts is considered grounds for disciplinary action, it may also be subject to criminal prosecution. This indicates that the consequences for such criminal behavior are not limited only to the disciplinary field, but also include the criminal field. In other words, those who engage in the improper destruction of financial records may face criminal prosecution, underscoring the seriousness of this offense within the legal context.

The inclusion of the possibility of criminal prosecution in cases of improper destruction of supporting documents or accounts reinforces the idea that the legislation seeks to ensure a comprehensive and rigorous response to such wrongdoing. By considering both disciplinary and criminal sanctions, the law demonstrates a desire to strongly deter this type of behavior, thus emphasizing the importance of preserving the integrity of financial documents in the context of judicial and administrative procedures. This integrated approach aims to ensure the effectiveness of the legal system in preserving transparency and legality in the management of financial resources.

Except that the report of the Court of accounts for the year 2021 specifies that the attorney general at the Court of accounts referred twenty cases to the first

president of the public prosecutor's office in application of article 111 of the code of financial jurisdictions.

This report also identified the facts giving rise to criminal proceedings in matters of public procurement, in particular the guidelines for the award procedure, over-invoicing of public orders, fictitious mandates, presentation of inaccurate accounts, use of the property of a public body. for personal purposes and purchase of equipment in the absence of a real need.

Likewise, the annual report for 2019 and 2020 states that the General Prosecutor's Office at the Court of accounts was seized of twenty-eight files relating to facts that could lead to criminal sanctions. Among these files, twenty were transmitted by the King's Prosecutors to the regional Courts of accounts, in accordance with article 162 of the code of financial jurisdictions. Subsequently, the General Prosecutor's Office at the Court referred twenty two cases to the King's Prosecutor General at the Court of Cassation, as President of the Public Prosecutor's Office, so that he could take appropriate measures.

However, during the same period, the King's Attorney General at the Court made six decisions not to prosecute, due to lack of sufficient charges justifying the initiation of legal proceedings. These decisions reflect a careful evaluation of the elements of each case and highlight the importance given to rigor in the application of legal procedures regarding financial accountability.

In 2018, eight cases out of fourteen containing facts of a criminal nature. However, six decisions to suspend public action were taken by the King's Attorney General at the Court concerning the remaining files, for lack of presumptions of evidence and convincing supporting documents for the exercise of the 'public action.

A clear procedure for dealing with proven facts:

When the court finds facts which appear to justify a disciplinary sanction, the King's Attorney General is responsible for reporting these elements to the authority competent in disciplinary matters with regard to the person concerned.

This process involves coordination between the court and the disciplinary authority to address potential infractions and take appropriate action. Within six months, the disciplinary authority is required to communicate to the court the measures it has taken, thus providing a reasoned explanation of the disciplinary sanctions applied.

However, if the facts noted by the court seem to justify a criminal sanction, the King's Attorney General takes the initiative, or does so at the request of the first president, to refer the matter to the Minister of Justice. The latter is then responsible for taking the measures he considers appropriate in response to these facts of a criminal nature. At the same time, the Attorney General informs the competent authority, to which the person concerned is attached, of these steps. This approach highlights a distinction between disciplinary and criminal cases, with direct involvement of the Minister of Justice in cases relating to the criminal sphere.

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