

THE EFFICIENT, UNCOMPROMISING CONTROLLER

"If we want to properly qualify public spending by focussing not on curbing costs but on achieving results, we have to help the administration bring out its full potential and certainly not send messages pre-emptively exonerating anyone who wastes and fritters away the Recovery funds through gross negligence and carelessness."

Telos: The Court of Auditors is a key body in the life of the public administration that also finds itself in the awkward position of having to guarantee the proper spending and use of public funds. So, you have a jurisdictional, consultative and control function. But what is it you really do?

Luigi Caso: The Italian Court of Auditors was established in 1862, one year after Italian Unification. So, it is the oldest magistrature in Italy.

In an extreme nutshell, its function is to check that the money taken in the form of taxes is properly spent and, when serious cases of waste are detected, order the culprits to pay damages. Unfortunately, in a country that at times seems more inclined to deviate from rather than follow the rules and that is often indifferent to public assets, this function can be rather awkward. However, it is a function that is indispensable and coessential to a fully democratic system. In fact, it allows us to check whether the administrations are properly carrying out the *missions* entrusted to them by the Parliament and Regional Assemblies. It works within the regulatory and financial parameters set out in the applicable laws, including the laws deriving from Italy's EU membership, so that resources - especially when they are scarce - can be efficiently used. It does this by fostering the shift - in citizens' favour - in the relationship between capital expenditure (which keeps the mechanism running) and final expenditure (i.e. spending on public services). In doing so, the Court of Auditors (also thanks to its close relationship with the European Court of Auditors) is at the centre of the flow of rules and resources - both Italian and EU - linking the EU, the Italian State and the Autonomous Territories, monitoring it and sanctioning the main infringements of the financial rules.

The Italian legal notion of the "loss of revenues to the State" is like the bogeyman for the public administration and gets accused of being the source of many public officials' "signature phobia" when it comes time to adopt an act, especially in contractual matters. Does this interpretation correspond to reality?

Based on one of the fundamental rules of every democratic system, for each power there must be an equal corresponding responsibility. We can say that, if those in power are not responsible for their actions, this contradicts the very concept of democracy as we know it today. This rule is even addressed in our Constitution in Art. 28, which expressly states that public employees are directly liable for the actions they carry out in violation of rights (so, they are also liable for damage to public assets). However, starting in 1994 the scope of this liability has become increasingly narrow in terms of - as they said at the time and as they still say today - combatting the infamous "signature phobia". But we need to understand what is hidden behind this overused expression. On the one hand, we have the unjustifiable, unconfessed aspiration of a minority of public employees to total irresponsibility and, on the other, the justified difficulty of other employees to untangle themselves from an increasingly complex web of rules. Seeing as only the latter may be deemed worthy of protection, we cannot but agree that regulatory complexity must be fought through a series of streamlining initiatives and, perhaps, by buttressing the control and consultative functions of the Court of Auditors - especially when it comes to public tendering - in order to help public employees properly interpret and apply the many layers of regulations that have accumulated over the years. Instead, by introducing Art. 21 of Decree-Law 76/2020 (which the government decided to extend) the decision was - rather simplistically - made to suspend liability for revenue losses to the State due to gross negligence. As has been pointed out many times, this solution is not only technically reprehensible in many respects, it is also extremely harmful to citizens. First of all, there are clear doubts as to whether this rule is compatible with the Italian Constitution (it would be enough to carefully read Constitutional Court ruling 371/1998), and the EU Regulation establishing a Recovery and Resilience Facility (which, on the contrary, mandates reinforced jurisdictional control over the management of the funds that will be provided). What is more, the distinction between the harm suffered either due to actions (where damages may only be claimed in the event of fraud) or to omissions (where damages may even be claimed where there is gross negligence) reveals how little is known about the administrative apparatus. In fact, not only is it normally impossible to untangle actions from omissions in complex management, but defensive bureaucracy comes into play not only when things are not done that should be, but also when a series of things are done that are pointless, just to avoid taking any form of responsibility (constant requests for unnecessary documents, asking other administrations for opinions and so on). Then, again on a technical level, this does not even take into account one of the causes of the ever-growing regulatory disarray, i.e. the use of laws (a practice that has become more and more common in recent years) to establish temporary derogations from the applicable rules. However, the most serious consequence of this rule is that it has codified and legitimised shifting the cost of bureaucratic waste wholly onto the backs of taxpayers.

After all, we all experienced the effects of how the pandemic emergency was handled at the administrative level, marked by a

broad and extensive non-liability.

Are we really sure that, in the trials we have been through thus far (think about the purchasing of facemasks or syringes), things have been fast, inexpensive and efficient?

The National Recovery and Resilience Plan sets out “reforms” with the “purpose of eliminating bureaucratic constraints, making administrative action more effective and efficient and cutting times and costs for citizens and companies.” Do you think the extraordinary nature of the Plan will somehow influence the Court’s activities?

NextGenerationEU is not just a once-in-a-lifetime opportunity for economic recovery, it is also a warning for our administrative system in order to facilitate a radical organisational shift to adopt a different approach to the use of public resources. In fact, we need to go from merely quantifying costs to assessing the quality of the results. However, limiting controls and responsibility not only risks giving the greenlight to waste and inefficient spending - which only hurts taxpayers - it blocks the proper qualification of public spending and irreparably jeopardizes the achievement of the goals set. Instead, we need to increase meritocracy among public employees, as the European Commission has been asking us to do for years in its Country Report, as well as the system of controls, in order to facilitate the implementation of the necessary economic measures. In other words, if we want to properly qualify public spending by focussing not on curbing costs but on achieving results, we have to help the administration bring out its full potential and certainly not send messages pre-emptively exonerating anyone who wastes and fritters away the Recovery funds through gross negligence and carelessness.

We often find news of the Court of Auditors’ business splashed across the headlines. The easy target of opinions that are not well-informed. The case of the Italian biotech company ReiThera, where the Italian Court of Auditors blocked government investment in the Covid vaccine, is the most recent example. Could you tell us what really happened?

There is a tried-and-true rule which says that, when it comes to questions submitted to magistrates, their only response should come through their rulings. It follows that those - like me - who have not taken part in the decision but have only read the ruling published in the last few days are even more limited. So, if we restrict ourselves to just what is written in the grounds for the ruling (submitted 9 days after the decision and not after the 30 days set out by law), I think we can safely say that the decree for the production of the so-called “Italian vaccine” was not registered because a significant portion of the public funds was intended, not for the development of the vaccine but for the purchase of the operating facility - which was already being rented - where the company carries out research and development for its Swiss parent company. In any case, the government can always ask the joint sections of the Court of Auditors for the decree to be “registered with reserve”.

In this case, even though something was preventing the decree from being registered, the Court could order that it be registered with reserve, and consequently the government would assume political responsibility for that before the Parliament. Obviously, people may or may not agree on the reasons given by the Section, but I would have expected them to at least wait to read it rather than just blindly criticizing the ruling.

I confess that the interpretation of some of the comments has given me the impression that this is not a criticism of the Court of Auditors’ work (criticism that is always legitimate and welcome but that at least requires knowledge of the underlying reasons for the decision), but rather a radical opposition to the very existence of any type of control over the administration’s work by neutral, third-party magistrates acting exclusively on behalf of the Italian people.

If this is the case, I would like to reiterate that the desire to eliminate all bureaucratic constraints is understandable, especially for me because I studied at a university named after Guido Carli. However, what must be avoided is that, in this zeal for innovation, the structures holding up the entire legal system get mistaken for constraints, with the risk of leaving the latter untouched and carelessly eliminating the former, blissfully ignorant of the risk that the rules and rights deriving from them will come tumbling down.

Marco Sonsini

Editorial

“The Temptation of Irresponsibility” is the title of an article published last year in the Italian newspaper Il Sole 24 Ore by the man we’ve interviewed for our June issue: Luigi Caso.

Caso, a magistrate in the Italian Court of Auditors and President of the Italian Association of Accounting Magistrates, with his typically effective and clear writing style, takes up the evergreen issue of administrative streamlining, a never-ending mantra in public debate: the streamlined procedures needed to curb Italy’s typically slow bureaucracy, a heavy burden for both businesses and citizens alike, even from an economic point of view.

The main target is public contracts, criticised for how absurdly complex the procedures are, often causing delays in the signing of contracts for the works, services and supplies that get awarded through public tendering. However, at the same time, what the critics forget to mention is that, when the contracts are awarded, lawsuits are indiscriminately brought before the administrative judge who oversees the tendering process - almost as if this were the rule, not the exception.

PRIMOPIANOSCALA’s interview with Luigi Caso begins with the basics: What the Court of Auditors is and does, in a short yet spot-on description that helps us understand its, often “awkward”, functions.

Then he goes on to deconstruct, piece by piece, the “signature phobia” often used as an excuse for, or excusing, slow bureaucracy. “Based on one of the fundamental rules of every democratic system, for each power there must be an equal corresponding responsibility. We can say that, if those in power are not responsible for their actions, this contradicts the very concept of democracy as we know it today.”

Contrary to what you might think, since 1994 this liability has been getting narrower and narrower. Why? Precisely to contrast the fear highlighted by politicians and by those who want to have “free rein”, which arises from (few) real concerns and (often) from apprehension that stems, in our opinion, from a lack of professionalism and a reluctance to assume any responsibility.

One thing that aptly illustrates the irrational nature of this apprehension is, according to Caso, that once a person could be indicted for liability for loss of revenues to the state in cases of ordinary negligence, but now they can only be indicted in cases

of fraud and gross negligence - albeit this seems like an irrational and, perhaps unconstitutional, falling point.

"The desire to eliminate bureaucratic constraints is understandable, especially for me because I studied at a university named after Guido Carli," Caso points out. Though he adds that people need to keep their guard up to prevent that *"in this zeal for innovation, the structures holding up the entire legal system get mistaken for constraints, with the risk of leaving the latter untouched and carelessly eliminating the former, blissfully ignorant of the risk that the rules and rights deriving from them will come tumbling down."*

An awkward position, like the one of the Court of Auditors, is definitely not very popular. Just listen to the **speech** of Prime Minister Mario Draghi at the start of the judiciary year for the Court, who defines it as an "essential guaranteeing body".

Draghi also reiterates the word "control", which he even defines as "*efficient and uncompromising*", yet with a quantum leap he issues the following warning: "*I think it is essential that such control be quick.*"

Even Draghi falls into the trap of the "*paralysing effects of signature avoidance*" and blames the complexity, incompleteness and contradictory nature of the rules for unloading an "unreasonable amount of responsibility" on public officials. Listen to, or **read** Draghi's speech and enjoy Caso's interview. I'll leave it to you to come to your own conclusions.

Even this June, PRIMOPIANOSCALA**c** is here with cover graphics of a torn white page revealing the interview in both Italian and English below, and an insect looking up at the text. For Caso we have chosen the Libellula, a genus of dragonfly whose name comes from Latin and means "little scale". It is also a perfect flying machine, with an extremely acute awareness of details, and most importantly, very fast. Some species can fly up to 50 km/h. With its enormous eyes that can turn in all directions, it has 360° vision. The perfect accounting magistrate to stave off any temptation to...?



Luigi Caso a judge in the Italian Court of Auditors since 2002, has been the President of the **Italian Association of Accounting Magistrates** since 2018.

He graduated in Law from LUISS University in Rome in 1989 and, just a few months later, took and passed the state exam to become an ordinary magistrate. He was assigned to the Civil Court of Rome and handled cases of family law, property rights, intellectual property and disputes against the Public Administration.

In 1996 he was called to join the Legislative Office of the Ministry of Justice, where he remained until early 2002, working mainly in the area of administrative law and the judicial system. During that time, he also helped draft the Law on the so-called **single first-instance judge**. In 2002, after passing both the exam to be a military magistrate and the exam to be an accounting magistrate, he opted to join the Court of Auditors. Here, he has dealt with matters relating to jurisdiction, including drafting important rulings on employee liability in publically held companies, and control, by engaging in the preventive monitoring of the legality of the acts of the Ministry for Economic Development and the Ministry of Agriculture. Since 2019 he has also monitored the management of the CONSIP, a joint-stock company, set up for a centralised management of the public procurement. Finally, he assembled the Joint Sections of the Court.

Meanwhile, he continues his work with the ministerial cabinets. He is Vice Head of the legislative office of the Ministry for Economic Development, where he helps draw up consumer codes and insurance codes. He is also a legal advisor to Legislative Office of the Presidency of the Council of Ministers and the Head of the Legislative Office of the Ministry of Labour and the Ministry of Youth.

During that time, he also served on task forces to adopt European regulations on the Fiscal Compact and to amend Art. 81 of the Italian Constitution. In particular, he helped draft 2012 Decree-Law 174 regarding the controls by the Court of Auditors' on the financial statements of local administrations.

In 2013 he was appointed Head of the Legislative Office of the Ministry for the Economy and Finance. Shortly thereafter, from 2014 to 2018, he served as the Head of Cabinet of the Ministry of Labour during the Job's Act and the Third Sector reform, in addition to many other reforms regarding pensions and assistance.

He is also a tax magistrate and a member of the Federal Court of Appeals for football and rugby. He has written numerous publications covering various areas of law.

Luigi hails from Salerno in the southern Italian region of Campania. He is 55 years old and has been married since 1994. He has four children and lives in Rome in a house bursting with books.