

Three arguments in favor of organizing a supreme audit institution as a court

I would use three arguments in favor of organizing a supreme audit institution as a court: An argument from the nature of the institution (*the institutional argument*); an argument from the effectiveness of audit action (*the practical argument*); and an argument drawn from the principles of the rule of law (*the legal argument*).

I begin with the institutional argument

A jurisdictional supreme audit institution is clearly distinguished, within the frame of the democratic principle of the separation of powers, from the two other branches of state power, the legislative and the executive one. As a consequence, its institutional independence within a democratically organized country is maximized.

The audit institution is not in a hierarchical relationship with the authorities of the other state powers, the legislative and executive power. Therefore it is constitutionally inconceivable that the audit institution receives political mandates on which audits to schedule and which audits to refrain from.

To put it in a sentence: the judicial nature of a supreme audit institution is the maximum possible guarantee of its independence within a system of separation of powers

I proceed now to the practical argument

A supreme audit institution organized as a court is able to impose sanctions to the auditees without the risk of being accused of partial behavior. Granted, the individual that conducts an audit cannot be totally impartial as to the correctness of the audit findings. Even if there is a separation between the individuals carrying out the audit and those that decide on the sanctions to impose, suspicions on lack of impartiality remain. There is a problem of objective impartiality.

However, this problem the same problem does not arise when the audit institution is a court. Here the findings against the auditee are presented and discuss in a public audience, they are assessed by independent and impartial

judges, submitted, in Europe at least, to international control, and the sanctions imposed against the auditee are subject to the obligations detailed motivation and publicity.

This allows for the effectiveness of the audit process. The procedure does not culminate into a simple report addressed to parliamentarian or administrative authorities. At the end of the trial, it may produce direct sanctions against the auditee, which by their nature are supposed to develop a particular deterrent effect.

And finally, the legal argument

An audit institution organized as a court has the power to interpret the applicable law and thus to formulate and shape the general principles of the fiscal law such that it enlightens all civil servants involved in public management.

A Court of audit forms, through its case law, concepts such as that of the authorizing or the accountant officer, of the deficit, of the fiscal accountability and sustainability, of the gravity of the fault committed by the fiscal officer.

Having these concepts formulated through judicial decisions is different than through simple reports. Judicial decisions bind legally the administration. Definitions in court judgments constitute jurisprudence. And jurisprudence is an extension of the enforceable law. Its binding force is intertwined with the binding force of the law itself, because it constitutes its official interpretation.

What was mentioned above applies with particular intensity to the Greek Court of Audit

The Greek audit institution is a court and in fact a supreme court in the Greek legal order, one of the three supreme courts of Greece. Its judges are selected and promoted by senior judges of the same court. The only intervention of the Government in its function is when the Government decides on the promotion to the position of president or vice-president. But even there, the personalities to be promoted are selected from among the senior judges of the court, rather than from a politically charged list of outsiders.

Inside the Greek Court of audit there is also a clear differentiation between the audit function and the judicial function of the Court. Those who audit and reveal irregularities can, following specific procedures provided which ensure the rights of defense of the auditee, bring charges against the auditee. However,

the judiciary protection of the auditees charged is ensured by the possibility of the right to an appeal to special judicial bodies within the Court, which exercise full jurisdiction.

Finally, the Greek Court of audit, like all the supreme Greek courts, interprets the Constitution and has the power to set aside unconstitutional laws. Thus, it is allowed to cover by its jurisprudence an extremely broad area of various topics, including, but not limited to, fiscal law. Broad legal principles, such as proportionality, equality, protection of individual rights or the rule of law are systematically analyzed in its judgments and thus guiding rules are offered to the fiscal authorities to act in conformity with the requirements of the legal order.

One would perhaps single out a basic disadvantage of a supreme audit institution organized as a court

Being a court, the supreme audit institution mainly comprises of lawyers, that is, by non-experts in accounting verifications. Indeed, judges lacking special training should not carry out accounting verifications themselves, nor any other exercise that escapes their capacity as lawyers.

However, the main audit objective facing supreme audit institutions today is not the verification of accounting matters, but rather the audit of the effectiveness of the internal control systems to prevent fiscal risks (waste of public money, irregularities, corruption). And after all, nothing prevents the cooperation in a supreme audit institution between judges and accountant auditors to achieve the best positive results for the audit institution.

The supreme audit institutions prepare, among others, reports to the Parliament, and who, better than a judge, can articulate and simplify complex fiscal notions involved in audit findings such that they are presented intelligibly to the parliamentarians?