

Administrative Court recognizes weak performance and lack of fulfillment of the constitutional mandate in the control of public money

- The diagnosis was made by the Administrative Court itself and is included in the Corporate Plan (PLA-COR IV), the document that will guide the strategic and institutional development of that body for the period 2022 to 2025. According to that document, the Administrative Court's results for society are still questioned by the low celerity, especially in relation to the analysis of accounts, conclusion of audits, and respective judgments, as well as by the low publication of decisions, which has negative implications in the relevance of the body in society and in the intended changes in the public manager's conduct.



- The Administrative Court recognizes that it does not have a defined and monitored indicator to evaluate its results, and the preventive effect of its actions on society is not clear. Therefore, the general perception is that public managers and society have not yet felt the effectiveness of the Administrative Court. An advisory judge heard in the context of the elaboration of the Corporate Plan clearly said that “Today we pretend control; there is no effective control.” As a result, there is still little concern from the Government about the proper use of public funds, and society does not perceive the result or the added value of the Administrative Court’s actions, especially in auditing public accounts.

The Administrative Court is organized in Plenary and in three (3) Chambers, namely the First Section - Administrative Litigation Section; Second Section - Tax and Customs Litigation Section; and Third Section - Public Accounts Section.

The Administrative Litigation Section is responsible for settling disputes between the Public Administration and private parties, applying the norms of Administrative Law and, in a supplementary manner, the provisions of the judicial courts as long as they are adapted to the specific circumstances of the administrative jurisdiction. It is also incumbent upon the Administrative Litigation Section to hear, in first instance, appeals against administrative acts performed by members of the Council of Ministers and, in second instance, it is incumbent upon it to hear appeals against decisions of the Provincial Administrative Courts (TAP) and the Administrative Court of Maputo City (TACM).

The Tax and Customs Litigation Section (and tax litigation) deals with matters relating to the rights and duties of taxpayers. This section settles second instance disputes, that is, when claimants disagree with the decisions of the courts of first instance - the customs and tax courts, in addition to tax and customs matters that may derive from any authorities other than the Council of Ministers and the Prime Minister.

The third and last is the Public Accounts Section, which in other countries is equivalent to the Court of Accounts. This Section is organized into two subsections, namely the First Subsection - Prior supervision; and the Second Subsection - Concomitant and



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Successive Inspection. The Prior supervision Subsection is responsible, through the Visa, for verifying the conformity of the administrative acts and contracts of the bodies and entities under its jurisdiction. The Subsection for Concomitant and Successive Inspection performs the concomitant and successive inspection of public monies, as well as monies from loans, subsidies, guarantees, and

donations within the scope of the Central Public Administration.

In order to carry out its activities, the Public Accounts Section has technical support services known as accounting offices, namely the Visa Accounting Office, the Accounting and Audit Office, and the State General Account Office.

Pending processes, lack of measurement of procedural celerity, and suspicions of visa corruption

The increase in the stock of pending cases is the main finding of the diagnosis made on the performance of the Plenary of the Administrative Court. The number of cases pending for trial in the Plenary has grown from 377 in 2016 to 502 in 2019, leading to the

conclusion that the Plenary has not been giving an outflow of pending cases in the sense of reducing the stock consistently over the years.

“The resolution of cases in the Plenary is time-consuming and has not improved be-

tween 2017 and 2019. Cases settled in the last three years had an average age of four years. 40% of cases disposed of in the last four years were older than four years.” One of the factors noted in the diagnostic report that may be contributing to this situation is the fact that

the Administrative Court does not measure the timeliness of Plenary cases and does not produce adequate and complete information on the status of each pending case. Up-to-date information could allow critical analysis and decisions to be made to increase speed.

The increase in the stock of pending cases was also seen in the performance assessment of the 1st Section, the Administrative Litigation Section. The number of cases grew from 206 in 2016 to 356 in 2019. Considering that this section hears appeals from decisions made by the provincial and Maputo City administrative courts, the increase in the stock of pending cases is largely due to the exponential growth of judicial appeals against the decisions of the aforementioned courts of first instance.

The processing of these appeals involves sending the cases from the provinces to the Administrative Court and the expedition of letters rogatory for the notification of the parties, which takes time. This contributes to the fact that the Administrative Litigation Section does not handle pending cases in a timely manner in order to reduce the stock consistently over the years. "Nevertheless, the 1st Section is faster than the Plenary and the other Sections. Cases completed in the last three years had an average age of 17 months."

In contrast to the Plenary and the 1st Section, the diagnosis report shows that the 2nd Section - the Tax and Customs Litigation Section, is handling cases and has consistently reduced the stock of pending cases in recent years. Still, the resolution of cases in that Section has been guided to produce the case status on a regular basis. However, this processing is still manual and the speed of cases



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is not measured, nor is such information used for analysis and decision-making.

"Two other aspects deserve special attention: Tax and Customs Litigation is little known and/or used by society and the 2nd Section of the Administrative Court requires greater preparation and training to handle potentially complex matters, including those that may result from oil and natural gas exploration. The procedural legislation in this Litigation is out of context, so it is pertinent to approve the Proposed Codes of Tax and Customs Procedure submitted by the Administrative Court to the competent bodies in 2020."

In the Public Accounts Section, specifically in the Prior supervision Subsection, the report indicates that the Administrative Court does not regularly measure the speed of the Visa

processes, nor does it use such information for analysis and decision making. The time it takes for the Administrative Court to return a case and to grant the Visa is not measured. "The perception of the prevalence of corruption (among Visa entities and technicians) in obtaining a Visa, as well as the perception of "last minute" returns seems to be damaging to the image and trust that society should have in the Administrative Court.

Also in this Subsection, it was noted that in the last four years, there has been an increase in the number of contract files sent merely for annotation, by certain institutions, with prior exceptional authorization, "which may be an indication that the Jurisdictions are increasingly seeking the prerogative, given by the Law regarding Prior Supervision of contracts with certain conditions".

Delays in concluding audits and lack of judgment on the irregularities found during the audits

In the Subsection of the Concomitant and Successive Inspection, the diagnosis found that the increase in awareness of the Public Administration in sending Management Accounts to the Administrative Court was not accompanied by an increase in capacity in this subsection. Between 2017 and 2019, the Administrative Court received 4,621 Management Accounts, an average of 1,540 Accounts per year. In this period, only 405 Accounts were jurisdictionally terminated (9% of the total received) and 135 Accounts were adjudicated (3% of the total received). The balance of unfinished Accounts administratively doubled from 2,594 at the beginning of 2016

to about 6,603 by the end of 2019 (and more than 7,700 by the end of 2020).

The Administrative Court justifies the poor performance with the fact that the Accounts and Audit Office lacks technical capacity: Between 2016 and 2019 the number of auditors in the Accounts and Audit Office, still insufficient for the needs, decreased from 127 to 123. But still, the 2nd Subsection remains with three judges (one of them being borrowed from the 2nd Section) when, by law, the number of judges assigned to the 2nd Subsection should have tripled to nine by at least 10 years.

"Thus, the effectiveness of the external con-

trol of the Public Accounts Section with respect to external verification of Management Accounts is questionable. Hence, one may also question to what extent the Administrative Court is fulfilling its constitutional mandate and being a relevant institution in terms of its contribution to the proper use of public money, bringing visible results to society."

Regarding audits, between 2017 and 2019 the Administrative Court conducted 740 Audits, with 530 cases having jurisdictionally ended (71% of the total number initiated) and of these 185 was by trial (25% of the total number initiated). This shows that only a

small proportion of the Hearings initiated are either tried or “terminated” by some other mechanism, in accordance with the law. Considering three counseling judges in the 2nd Sub-Section of the Accounts Section, each judge “terminated”, on average, 59 cases per year, and tried, on average, 20 cases per year.

At the end of 2020, the Section had a balance of 500 audit cases referring to previous years and not administratively ready. There is also no clear, consolidated and up-to-date information on which years these cases relate to, as the information provided by the computer system is not credible and is not used for analysis and decision making. The Administrative Court does not measure the celerity of the Verification of Management Accounts, the full conduct of Audits, and the jurisdictional phase, including the trial. “However, it is perceived that it takes an extremely long time to conclude the audit processes, which includes the elaboration of the final report (already after observing the contradictory).

Consequently, the audit processes take time to be concluded and presented to the jurisdictional phase in a timely manner.”

The Administrative Court itself considers questionable the effectiveness of the external control of the Public Accounts Section in a scenario of delayed completion of audits, in the technical and jurisdictional phase, combined with a scenario of annual audits of only 16% of the auditable institutions in the country. “Hence, one can also question to what extent the Administrative Court is fulfilling its mandate and being a relevant institution in terms of its contribution to the good use of public monies.”

The diagnostic report shows that the monitoring of the implementation of audit recommendations is weak and it is not clear whether there is a change in the positive direction in the conduct of the public manager in this regard. “The Performance Audit is not receiving the necessary attention from the Administrative Court and there appear to

be weaknesses in terms of methodological guidelines and skills; and the comprehensiveness of the audit (to all institutions) over a period of time and the risk-based selection is questionable.”


In relation to the Report and Opinion on the General State Account, the diagnostic document talks about quality improvements, including the inclusion of chapters on the extractive industry, and also about publishing the report in a more accessible format for the general public. But there are challenges, not least the non-inclusion of a conclusive opinion and the fact that the irregularities found in the audits or analyses carried out as part of the preparation of the Report and Opinion on the State General Account are not taken to trial in order to allow for the restoration of legality, verification of the application or not of sanctions. “These aspects may raise doubts about the effectiveness of the Administrative Court in terms of its mandate in the good use of public money.”



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