

Brazilian Court of Audit (TCU) takes part in the 2nd International Seminar on Bi-national Entities Control

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The Brazilian Court of Audit (TCU), at the invitation of the Supreme Audit Institution of Paraguay (CGR), participated in the Second International Seminar on Bi-national Entities Control, held on July 16 in Asunción.

Organized by the SAI of Paraguay and the National University of Asunción (UNA), within UNA's Masters Program in Administrative Law, the event had as its main focus the legal and constitutional aspects of government oversight of the bi-national companies of Itaipu and Yacyretá.

The TCU was represented by the federal auditors Alden Mangueira Oliveira, head of office of Minister Augusto Nardes (Executive Secretary of EFSUR), Carlos Maurício Lociks de Araujo, advisor to Minister Raimundo Carreiro, who was the rapporteur of Ruling 2.918/2009- Plenary that addresses the subject, and Paulo Roberto Pinheiro Dias Pereira, coordinator of the audit survey to be conducted in Itaipu.

According to the organizers, one of the main motivations of the event was the Court Ruling 2.918/2009-Plenary, in which a new interpretation of the subject was presented, supporting the legal and constitutional possibility of the TCU to immediately exert its oversight powers over Itaipu. (See table on page 2).

Although the new thesis has not yet been analyzed by the Court, the issue aroused the interest of the SAI of Paraguay. Hence the invitation conveyed to TCU.

In their presentations, the TCU representatives addressed the historical and contextual aspects of the external control of Itaipu Bi-national and of other bi-national entities of interest to the Federal Government, the grounds of the thesis presented by Minister Raimundo Carreiro in Court Ruling 2.918/2009-Plenary, and the possible audit strategies that can be adopted in the Paraguayan-Brazilian bi-national company.

It was highlighted that the interpretation of the topic conveyed in the Court Ruling 2918 has not yet been object of deliberation by the Court. According to the thesis presented, the TCU would have immediate legal and constitutional authority to oversee the bi-national company, despite the fact that the Itaipu Treaty is silent as to government external control.

Currently, what is in effect in the Court is the interpretation given by Plenary Rulings 279/1995 and 124/1997, according to which the TCU would be unable to exercise its jurisdiction over Itaipu Bi-national, "due to the absence of legal provision and regulations in its legislation and to the fact that the hydroelectric company is subject to the international law regime". (See box on page 2).

Another topic raised was the importance of conducting joint audits of Itaipu, with staff from TCU and from the SAI of Paraguay. With this in mind, it was concluded that the SAI of Paraguay has experience in this field, since it oversaw the Paraguayan side of the company (right bank).

It was also highlighted in TCU statements that the latest political and institutional scenario, which promotes greater transparency of Itaipu management to the agencies of government control.

As an example, the commitment called "Administrative measures to be immediately implemented in Itaipu Bi-national" was pointed out. This commitment was signed by the chief executives of Itaipu, on 08/15/2008, and, among other deliberations, it established that all information requested by the official auditing agencies would be answered, seeking to ensure "total transparency" of the company management.

That commitment was approved by the "Joint Affidavit by the President of the Federative Republic of Brazil and the President of the Republic of Paraguay ", signed on 07/25/2009, which ordered its "strict observance and implementation".

In this context, it is worth noting that the Brazilian chief executive of Itaipu had said he fully agreed with carrying out an audit survey of the company (Brazilian side) to better understand its management. The procedure was approved in the TCU plenary and the preliminary works are already under way within the SEGECEX (General Secretariat of External Control).

Lectures

The seminar also had lectures on "International Treaties in Domestic Law [Argentina] and the Yacyretá Charter Treaty", given by PhD José Dobovsek, Argentina, and "The inclusion of the International Treaties and The Law Hierarchy regarding the Federal Constitution [Brazilian]", by professors Friedman Anderson Wendpap and Rosane Kolotelo Wendpap, from Brazil.

Finally, the Paraguay Comptroller General, Octavio Airaldi, talked about the "External Government Control of the Bi-national Entities: Itaipu and Yacyretá" within the framework of that country, at which time he thanked the speakers and TCU participants.

The two thesis on the TCU Jurisdiction to oversee Itaipu Bi-national

Current Interpretation (in force)	Proposed interpretation (not yet examined)
<p>"The Brazilian Court of Audit is unable to exercise its jurisdiction over the Itaipu Bi-national company, in compliance with the provisions of article 71, item V of the Federal Constitution, in view of the lack of provisions to this end in the norms of the Company and considering that the above mentioned Company is subject to the international law regime. Under these circumstances, it is imperative that the Itaipu statutory and regimental rules be modified, with the agreement of the Paraguay Government, in order to include this oversight procedure, which is also foreseen in that country's Constitution" (Plenary Ruling 279/1995).</p>	<p>"Until the Itaipu Treaty omission is emended to include the rules regarding the auditing referred to in item V of Article 71 of the Federal Constitution, this article has full and immediate effect and the Brazilian Court of Audit should, thus, audit the national accounts of the Itaipu Bi-national company, using the procedures provided for in Guideline No. 57/2008 TCU - applicable to this case only in its instrumental aspect. In order to perform this mandate, TCU can also make use of the oversight initiatives and tools foreseen in Law 8.443/92 and in the Court's Bylaws" (interpretation proposed by the rapporteur of Ruling 2.918/2009-Plenary)."</p>