

Ubiratan Aguiar

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Control is bothersome. *The President of the TCU defends oversight power and assures that TCU measures resulted in an economy of BRL 31.9 billion.*

Lúcio Vaz

The president of the Brazilian Court of Audit (TCU), Ubiratan Aguiar, is sure of one thing: Brazilian society desires thorough control of public expenses. He challenges the criticism of the Highway Civil Construction Companies Association (Aneor), affirms that the Court merely complies with the law, and warns: "Control is bothersome. And we shall keep on bothering." He defended the need for preventive action, stating that trying to recover funds 15 or 20 years after the judgment is like not wanting to punish those who deviate public funds, who overcharge, who practice all kinds of irregularities. Aguiar affirmed in an interview to the *Correio* that he does not fear a potential loss of power by the Court of Audit: "Society should be afraid, , not us."

Based on a survey that compared several countries, Aneor states that the TCU has excessive powers, for it is allowed to apply penalties to both companies and workers. How do you analyze this affirmation?

"These are different cultures; completely different sets of legislation. The TCU does not report to any of the standing powers, but it does intervene in all of them and it is obliged to assist the Legislative Branch. However, we do not apply sanctions because we send all of our decisions to the Public Prosecutor's Office so they can promote the penal and civil actions. TCU decisions are also forwarded to the Federal Attorney-General's Office so that agency can recover what was deviated. Our decisions indicate irregularities, debts and fines. All we do is in compliance with the Constitution, which has granted us such mandates. Anyone can disagree with the vote issued by TCU, but no one can say the vote is illegal. We do what the law says. Yet, the duty of controlling bothers people. And we will keep on bothering."

Aneor's survey criticizes TCU's preventive action.

"These preventive actions alone, such as the writs of prevention many people complain about, have resulted in an economy of BRL 31.9 billion in 2008 for the Brazilian State. If this is not watching over the State and the use of public funds; if this is not complying with the law, I don't know what is. Let the laws be changed then; let them say the court is not supposed to inspect. Is this what the society wants? Is this what the serious managers wish? I don't believe so. I don't believe any idea will ever prosper to belittle the competence of those who contribute to controlling the public assets."

Aneor states that in the other countries the audits are carried out after the works are completed. In Brazil, the court acts in advance and has the authority to bring a bidding process to a halt. What do you think about this?

"If you judge after the fact has occurred, so that you can only recover public resources after 10, 15, 20 years of judgments, you are not really willing to enforce the law, you are not willing to punish those who deviate the public funds, who overcharge, who practice all kinds of irregularities that are detected in advance. Should one prevent a contract from being signed once the overprice is confirmed? Must the controlling authority fail to warn Congress that such fact has occurred? Should the works be allowed to continue once the collusion is already characterized? I think Brazil is in the path of seriousness. And this is what all men of good faith in the country should expect."

The contractors affirm there has been excess in halting the works. Is there such an excess?

"I see no excess. I see a slow pace of action. In certain airport works, people had been claiming for years that there were irregularities. After three years, they verified that the Court was correct and new biddings began. If this had been done three years earlier, the works would be completed by now. The suspensions are a result of reluctance to comply with the Court's decisions."

Do you fear this articulation may result in loss of power by the Court?

"Society is the one who should fear, not us. We are public servants, we fulfill our duties. If the law is to be modified, we will not be the ones to do it; it will be modified in the Congress".

The slow pace is the real problem. Indeed the TCU has the power to interrupt construction works if there are evidences of irregularities, but not only for one or two years. A survey carried out by the *Correio* in 2007 showed that at least 11 enterprises were halted for six years. The reason is that, according to a TCU recommendation and a decision of the Congress, all the works with evidences of serious irregularities no longer receive federal funds. Without the money, suspension of the work is inevitable until the issues of overcharging, overpricing, flaws in the bidding processes, in the project, or in license granting are all remedied. Prior inspection, indicated by the constructors as an excessive measure, is in fact a TCU strategy. The Court noticed that it was much harder to verify the irregularity after the works were completed. Once concluded, the convicted parties may still appeal to the courts, which delay the final decision for another five to ten years. A survey done by the *Correio* with 8 thousand proceedings shows that 174 of them took more than ten years to be completed. One of these proceedings consumed 19 years. The president of the TCU, Ubiratan Aguiar, reminds us that last year the Court's actions generated a benefit of BRL 31.9 billion. The inspections carried out in the energy sector represent more than BRL 11 billion of that outcome. (LR & LV)."