

**Abstract**

**The costs of the emergency and the role of the Court of Auditors**

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This paper aims to highlight how the Italian Court of Auditors can help to detect the costs of the recent pandemic emergency.

The Court of Auditors is assigned the scrutiny of the economic-financial balance of the Public administrations in order to protect the economic unity of the Italian Republic. Such prerogatives have a great importance in the framework outlined by art. 2 §1 of the Constitutional Law n.1/2012, which, in line with the European Union legal system, recalls the Public Administrations as a whole to ensure balanced budgets and the sustainability of the public debt.

This means that the surveys of the Court of Auditors in the performance of its functions (judicial, control and advisory) *should indirectly* also reveal the emergency costs.

The paper will examine some fundamental documents such as the Report on the financial management of the local authorities 2019-2021, the deliberations of the Regional Audit sections of the Court on budgets of the local health authorities, as well as the Reports on the result of the controls on the financial management of the companies subject to the control of the Court of Auditors ex art. 12 of the Law n. 259 of 1958.

The exam will also focus on the controls that the Regional Control Sections of the Court of Auditors carries out on the budgets and final accounts of Local Authorities to verify the compliance with the annual objectives set by the Internal Stability Pact and the compliance with the obligation provided

by article 119 § 6 of the Italian Constitution. These controls aim also to verify the debt sustainability and the absence of irregularities that could jeopardize the balance economic-financial aspects of the Local Authorities.

An important perspective to better quantify the costs of the emergency is also identified by article 103 of the Italian Constitution which attributes to the Court of Auditors the jurisdiction on public accounting, civil, military and war pensions, as well as the jurisdiction on the liability of public accountants, public administrators and public officials in judgements concerning the management of the public money.

This approach could also lead to reflect on the relationship between public debt and emergency, and on the possibility of judgments raised by a party before the Court of Auditors.

Lastly, the examination of the Opinions drawn up by the Court of Auditors in the exercise of its advisory function could be also useful to trace the unclear perimeter of the costs of the emergency.

The work consists of two parts: a general part carried out by Professors Giovanna Colombini and Vanessa Manzetti and a part of analysis of case studies carried out by Dr. Francesca Carpita and Dr. Letizia Colangelo.

**Research paper**

**The costs of the emergency and the role of the Court of Auditors**

**Discussion points about the relationship between the controls of the regional chambers of the Italian Court of Auditors and the recording of the costs of the (not only) health emergency.**

The need to quantify, in a transparent and accurate way, the costs of any emergency situation is no easy task, considering political decision-makers finding themselves in situations of urgency to respond to many challenges posed by the complexity of emergency situations<sup>1</sup>.

In this research paper, we will highlight how the Italian Court of Auditors, in exercising its control role over all public management, represents a special scope for identifying the costs of any kind of emergency. Such emergency include, as recently, an acute pandemic and threat to public health, as well as environmental emergencies, such as volcanic, seismic, hydro-geological events (flooding, landslides, landslides) and forest fires. Eventually all natural emergency situations are highly likely to result into health emergencies.

The COVID-19 pandemic created a general necessity to adopt extraordinary measures to combat the virus, aimed at providing financial support to companies and families and strengthening the health system, all with the endorsement of the European Union, which suspended the Maastricht parameters (General Escape Clause) and called on the Member States to take all necessary action to tackle the health and economic crisis.

In Italy the emergency highlighted certain weaknesses in the national health system and required close coordination between the state and regional levels of government and the abandonment of the predominant logic of curbing health expenditure and territorial differentiation that had dominated the decade 2010-2019<sup>2</sup>.

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<sup>1</sup> L. Giani, M. D'Orsogna, A. Police (ed.), *From the right of emergency to the law of risk*, Naples, 2018.

<sup>2</sup>According to the national accounts data presented in Def. 2022, health expenditure for 2021 was 127,8 billion (see Table 4), an increase of 4.2 % compared to 2020 (+ 5,1 billion in absolute terms).

Compared to the standard National Health Fund agreed between the State, the Regions and Autonomous Provinces under the Health Pact 2019-2021 for the two-year period 2020-2021, the increased resources allocated by the CIPE for the NHS as a result of the pandemic have therefore led to a cumulative increase in funding needs of around EUR 7 billion, while health expenditure was around 9,3 billion higher than the trends set out in Decision 2019.

The financial 'sustainability' of the National Health Service during the pandemic was ensured by increased transfers from the central level, which compensated for the reduction in regional tax resources caused by the recession. Decisive in this regard is the increase in contributions from the State to healthcare bodies, which rose by EUR 11 billion compared to 2019, which more than compensated for the simultaneous decrease in those of local authorities, down by EUR 5 billion. In 2021, on the other hand, with the recovery of the economy, local and regional authorities' contributions to health

A reconstructive analysis of the financial burdens that the health emergency has placed on the budgets of the regions can be found in the audit of the budgets of the regions and local health authorities carried out by the Court of Auditors - a body which has been recognized by the Constitution as having a role of control over all public budget implementation (Article 110 (2), cost), and the role of jurisdiction in the event of damage to public finances (Article 103 (2) of the cost).

The Court of Auditors<sup>3</sup> pointed out that between 2010 and 2019 the fall in investment in the health sector was concentrated mainly in the local authorities' sector<sup>4</sup>. This trend was reversed in 2020-2021, when measures to combat the COVID-19 pandemic and the start of implementation of NRRP programs led to an increase in expenditure and investment in the health sector<sup>5</sup>.

This increase in costs and, consequently, expenditure in regional and local budgets in response to the pandemic has led to questions about the need to identify these costs. This need recalled the role of the Court of Auditors as a constitutional body, that devolved the task of supervising the compliance of all public administrations with the balance of public finances, as stipulated in Constitutional Reform No 1 of 2012 introducing the principle of budgetary balance and the sustainability of public debt<sup>6</sup>.

In exercising its constitutional prerogatives, the Court has provided valuable insights not only on the increase in costs linked to the pandemic, but also on the performance of expenditure and on the sound

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authorities rose from 32,9 to 41,0 billion, while State contributions stabilised at around 2020 billion (EUR 85,7 billion). The impact on expenditure due to Covid was partly 'balanced' by the reduction in costs for other 'non-emergency' services, such as those for ordinary and *day hospitalizations*, which decreased on average by 20 % compared to 2019 and those of outpatient specialists and diagnostics, which, moreover, resulted in a lower revenue from co-payments of around EUR 742 million.

<sup>3</sup> Autonomous Section, Referral to Parliament on the financial management of regional health services.

<sup>4</sup> In the decade 2010-2019, investment in local authorities fell by around 10 billion in absolute terms, while central government investment remained broadly unchanged. As a result, the share of local government investment in total government decreased by eight percentage points between 2008 and 2019, from 64.9 % to 56.6 %.

<sup>5</sup> Investments by local health authorities in 2021 grew by 66 % compared to 2019 (+ 1,6 billion), in absolute terms, for the first time after 13 years, the 2008 level.

<sup>6</sup> For details see A. Balestrino, M. Bernasconi, S. Campostrini, G. Colombini, M. Degni, P. Ferro, P.P. Italia, V. Manzetti (ed.), *The global dimension of finance and public accounting – proceedings of the annual public accounting conference Pisa 6-7 December 2018*, Naples, 2020.

and prudent management of resources intended to cushion the effects of the health crisis resulting from COVID-19.

## Case Studies

Important insights on the costs of the health emergency can be found in the “Report on coordination of public finances for 2021”, in which the Court found that the increase in health expenditure was also affected by resources that were not strictly related to the health services provided, such as expenditure managed directly by the Special Commissioner for the Emergency and the purchase of everyday equipment for schools (approx. one billion).

Most of the funds made available to tackle the emergency in the health sector<sup>7</sup> were managed directly by the regions based on operational programs under the joint monitoring of the Ministry of Health and the Ministry of Finance<sup>8</sup>. The Joint Chambers of the Court of Auditors, in their annual report to the Parliament, pointed out that slightly more than half of the resources allocated to the regions in 2020 to deal with the epidemic were used in the reference year and that, in parallel, there was a sharp increase in provisions, which is symptomatic of the low capacity to use resources at local level. The report further highlighted the different ways in which regions responded to the crisis when looking at individual cost and revenue items. Differences are also reflected in the varying conditions of regional health systems in terms of the quality of the services offered, staff shortages due to the financial constraints imposed by possible return plans and the slow progress of investments sacrificed by current needs.

Similar observations were made by the Court’s Chamber of Autonomies, in its Report to Parliament on the financial management of regional health services, in which the Chamber analyzed those areas

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<sup>7</sup> Of the EUR 8 billion made available to address the health emergency in 2020, 3,6 were managed directly by the regions. In addition to these, additional resources totalling 1,4 billion should be allocated to the regions in 2022, even if they relate to competence 2021.

<sup>8</sup> With a view to structurally strengthening the national health service in hospitals, the Regions and Autonomous Provinces have had to ensure, by means of a specific reorganisation plan to adequately deal with pandemic emergencies, that activities in Intensive Terapia and care-intensive care areas will increase, making the response to the significant increase in demand for care structural in relation to the subsequent stages of managing the epidemiological situation related to the Sars-CoV-2 virus, its outcomes and any sudden increases in the pandemic curve.

most in need of extraordinary funding resulting from the support of exceptional costs<sup>9</sup>. The later include increasing the number of health staff, increasing intensive and sub-intensive care places<sup>10</sup>, stepping up territorial assistance<sup>11</sup> and recovering waiting lists.

In particular, the pandemic crisis has shown that a policy of linear cuts in healthcare expenditure with severe restrictions on staff expenditure has weakened the entire national health service. In the health emergency, this situation has worsened as a result of retirements and the increasing phenomenon of voluntary resignation, which have led local health authorities (ASLs) to contract private health services, following the negotiated procedure and the lowest price criterion. These assignments to private cooperatives occurred in clear circumvention of the public tendering requirement and a lack of professional suitability indicators, resulting, in particular in public hospitals, in the phenomenon of “token doctors”. That implies healthcare staff who are members of these cooperatives and intervene on request to cover essential strategic health services in the context of the COVID-19 emergency (such as first aid, intensive care, anesthesia and cardiology) irrespectively of whether or not they possess the specific skills required for that particular service.

This phenomenon has been reported by the Anti-Corruption Authority (ANAC) and the Court of Auditors, as they are highly labor-intensive contracts which would have required, instead of the negotiated procedure, selection through a public tendering procedure, of the economic operator following the most advantageous economic offer in terms of quantity (expenditure) and quality (highly qualified professionalism), far from leading to savings in expenditure, but has led to situations that are not only out of control, not only from a financial point of view, but above all from the point of view of ensuring the quality of healthcare provision, as there is no provision for an accreditation

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<sup>9</sup> The health workforce represented the aggregate that was most affected to contain expenditure trends, with repercussions on the operational capacity of health bodies. The derogations and additional resources for the recruitment of staff approved in the 2020 and 2021 emergency legislation did not derogate from the overall expenditure limit redefined in 2019 by Article 11 (1) of Decree-Law No 35/2019.

<sup>10</sup> The Cura Italia Decree (Decree-Law No 18/2020), through the National Emergency Fund (refinanced by the subsequent Decree-Law No 34/2020, cd. Relaunch), funded the purchase of facilities and equipment specifically designed to treat COVID-19 patients, such as assisted ventilation systems in intensive care units.

<sup>11</sup> The Cura Italia Decree established the Special Care Continuity Units (USCA) in order to obtain constant monitoring and early tracking of cases and contacts in order to ensure the home management of COVID-19 patients. In the context of the judgment on the equalisation of the general accounts of the Regions, some regional control chambers have examined the issue in more detail, pointing to a partial achievement of the objective.

system for these cooperatives. This is demonstrated by a recent survey carried out by the Carabinieri Anti-adulteration and Health Unit (NAS) on token doctors, which reveals an alarming professional inadequacy and a total ignorance on the part of these doctors of the organization of the healthcare facility in which they operate, the objectives, procedures and digitalized management of medical records.

The emergence of this phenomenon in Italy, especially in the context of the COVID crisis, has led the Court of Auditors, through the Regional Control Chambers, to verify its quantitative and qualitative impact, as part of the control it normally carries out on the ASLs' budgets, in accordance with Article 1 (7) of Legislative Decree No n.174/2012. According to which the assessment of 'economic and financial imbalances, the macro coverage of expenditure; infringement of rules aimed at ensuring the regularity of financial management or failure to comply with the objectives laid down in the Internal Stability Pact (the latter being suspended following the pandemic)' entails the obligation for the institution to take, within 60 days of the deposit of the decision of the Regional Chamber of the Court of Auditors, appropriate measures to eliminate irregularities and restore budgetary balances. Failure to comply will result in expenditure programs being blocked. This procedure is independent of the Covid emergency.

The work of the Regional Audit Chambers of the Court of Auditors in carrying out legality and regularity controls on the local health authority's budgets and on the general accounts of the regions, through the "giudizi di parificazione", revealed that the deficit situation in regional budgets stems mainly from health expenditure, which accounts for around 80 % of the regional budgets.

These controls are therefore a source of considerable increase in knowledge of regional finance and the national health system, which can lead to a better understanding of how and why the pandemic has triggered a different response capacity at local level and widened the gaps between the different regional systems in terms of managing funds and using doctors by tokens. As a result of a financial audit carried out by the Court of Auditors, useful insights were also available on the performance of the various regional health systems in the broad sense.

The comparison of data contained in the reports annexed to the aforementioned "giudizi di parificazione" of regions with a different economic and social background has revealed important differences. Particular attention should be paid to the situation of those regions that are already

affected by various health spending review measures and are currently in deficit recovery plans, such as Abruzzo, or in a situation of “extraordinary management” such as Calabria. The pandemic has aggravated situations that were already financially precarious due to pre-existing health deficits and bad management.

In addition to these situations, the reports of the Court of Auditors have also revealed doubtful ways of managing the COVID-19 crisis. For example, the Veneto Region’s accounts for 2020<sup>12</sup> reveal that a total of EUR 313.161.628,00 has been assigned to combat the health emergency, yet the largest share (EUR 289.025.495,00) was a transfer of state funds to the region<sup>13</sup>. These funds have been transferred to an undertaking ‘Azienda Zero’, which subsequently has been entrusted with paying the sums to SSR bodies after allocation by the Region.

The Court of Auditors highlighted the criticisms of this management, pointing out that SSR bodies actually used just over half of the resources allocated to them, setting aside the remaining amount<sup>14</sup>. The management of the resources of the regional health service by the Lazio Region was also highlighted, given that the special rule of automatic contextuality of assessment and commitment, which, according to the Constitutional Court, should make it possible to identify and separate health services for the essential levels of services (LEA) and other health services, did not in fact allow this clear identification, on the ground that the area of health in the region was unbalanced in terms of the overall balance between income and expenditure, due to the losses of the hospital companies, and the inadequacy of the allocation both in relation to the previous deficit and to the cost incurred, which was significantly higher than the resources periodically allocated.

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<sup>12</sup> Decision No 101/2022/PARI.

<sup>13</sup> The Court of Auditors pointed out that health expenditure remains the most significant component of the regional accounts (more than 80 % of total expenditure commitments).

<sup>14</sup> In its decision No 101/2022/PARI, the Veneto SRC pointed out that the Region had provided for the recovery in 2021 of health services suspended by a maximum amount of EUR 41.058.093,30 from the resources of the State Emergency Decrees allocated to the Region in 2020 and set aside as at 31/12/2020, broken down between the bodies responsible for SSR EUR 35.303.605,3 and set aside EUR 5.754.488,00 in Azienda Zero; according to the Region, however, it appears that only EUR 19.699.668,80 – and thus slightly more than half of the allocated resources – were used by the health authorities, the remainder being set aside by the companies themselves. Therefore, although the Region, in addition to the resources set aside as at 31/12/2020, allocated an additional EUR 20.355.820,30 for the recovery of suspended healthcare services, it appears that in 2021 the companies used these sums only partially; this resulted in a total provision of EUR 21.358.424,5 (EUR 5.754.488,00 in Azienda Zero + 15.603.936,50 in the health authorities), higher than in the previous financial year (EUR 20.702.273,00).



This cost is covered by an extraordinary cash payment, without a prior assessment of the costs required and the costs that can be reduced, if it has enabled the achievement of the ELAs certified by the Ministry, has also revealed an opaque accounting practice that is certainly not in compliance with the principles of balance and sustainability, particularly by hospital companies, and which, moreover, has given rise to unequal treatment between hospitals and accredited entities, the latter being reimbursed on the basis of the rate applied.

The Regional Section of the Court raised concerns about the legality of these accounting procedures and even greater concerns about the payment of the health fund managed by the central health management body (GSA) in the Lazio Region, which, rather than making the payments, or even transfers to the local health authorities, entrusted the management of the health fund to a third party. This third party was called “Lazio Crea” and was wholly owned by the Region, did however not fall within the area of the entities authorized to operate. Furthermore, the GSA entered in its balance sheet a claim on a subsidiary company, including this item as a revenue, when it was clear that the claim was non-existent against the investee company. All these aspects have led the Regional Control Chamber to place a reserve of equal treatment for this part of the Lazio Region’s accounts.

All aspects criticized by the Court of Auditors show that at regional level there are different forms of action taken to deal with the health emergency, and how paradoxical situations have occurred with regard to staff shortages.

One example of this is the case in the Abruzzo region, where it was not possible to use EUR 15 388 033,00 to increase the number of staff for intensive care, precisely because of the shortage of staff. Or in the Veneto region, where EUR 19 888 091,00 for the recovery of waiting lists was left behind at Azienda Zero because, according to the Region, it was impossible to make new recruitments or request additional services over and above the working hours of staff already in service. Or, as again in the case of the Abruzzo region<sup>15</sup>, where the problems linked to compliance with the expenditure ceilings for the recruitment of staff laid down in Law No 191/2009 have in fact fueled the use of private cooperatives, since it is impossible to adopt extraordinary measures for the

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<sup>15</sup> SRC Abruzzo, by Decision No 212/2022/PARI.

recruitment of staff which would have led to non-compliance with the expenditure ceilings laid down in Law No 191/2009.

However, the Court of Auditors found that, except for certain pathological situations such as those mentioned above, the costs attributable to expenditure on staff recruited to combat the COVID-19 emergency did not create major difficulties for the years 2020 and 2021 in relation to the pursuit of the public finance objective under Article 2 (71) of Law No 191 of 23 December 2009. They were found to be authorized and financed by way of derogation from the expenditure ceilings by means of the Government Emergency Decrees, while for 2022 the costs of managing the pandemic were included in ordinary staff expenditure. This means that the stabilization of staff recruited during the pandemic and the need to maintain the service could probably make it impossible to pursue compliance with the expenditure ceiling laid down in Law No 191 of 2009.

Beyond the cases mentioned above, the Court of Auditors has pointed out that, to circumvent the validity of the expenditure ceilings for recruitment in the pandemic and to avoid the demand for additional services to staff and the risk of interruption of the health service, alternative means of recruiting staff, such as the use of costs of consulting, collaborating and temporary work, have been created<sup>16</sup>.

In this respect, an in-depth investigation was carried out by the Piedmont SRC, at the same time as the review of the 2020 annual accounts, reported on a case-by-case basis the development of all forms of flexible work (coordinated and continuous collaboration, agency work, advice, other flexible contracts). This resulted in an increase of ten times for coordinated and continuous collaborations, seven times for advice, doubling for flexible contracts and substantial stability in the administration. This has led the Regional Section to stress that the use of the aforementioned types of contract inevitably involves a continuous rotation of staff, with implications for continuity of care and timeliness of services, which are necessary conditions to ensure adequate services in the health sector, as well as the increase in costs.

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<sup>16</sup> See SRC for Piedmont, at the same time as reporting for 2020, carried out an institution-specific survey on the development of all forms of flexible work (coordinated and continuous collaborations, provision of work, advice, other flexible contracts), with increases of ten times for the first, seven times for advice, doubling for flexible contracts and substantial stability for supply.

It is sufficient to read the report attached to Calabria's "giudizio di parificazione", which shows a suboptimal result on the management of the health emergency. Even though, in 2020 and 2021, the Region received over EUR 251,911 million in financial resources, 67 % of the amount had not yet been transferred to the health bodies and the status of the 'Covid operational plan' operations were far behind schedule as of 31.12.2021.

To give a concrete example, only 10 % of the planned and financed beds had been built, and the region had not given rise to any of the 18 reorganization and restructuring of first aid facilities and no reports had been made by the five provincial SSR companies on the actions taken to implement integrated Domestic Assistance services.

It was also noted that the costs entered in the budget for managing the Covid (EUR 311,785 million over the two-year period) were significantly higher than the amount received by the health authorities from the Region and that the phenomenon of earmarking resources for the recovery of healthcare services is an accounting practice followed by several ASLs. The Court of Auditors noted that the Court of Auditors found more significant delays than the national average and too general planning of actions for recovery of services by the extraordinary management.

Lastly, the comments made by the Lombardy Regional Control Section, which was one of the regions most affected by the emergency, are important. In addition to the increase in provisions and non-compliance with the SPEA's ceilings, SRC's comments focused on the transparency of health accounts.

As regards the resources made available for the COVID-19 emergency, the Region appears to have followed up on the commitment made at the meeting of the Technical Table on 14 December 2020 to transfer these sums, which have been mistakenly allocated as a restricted fund, to a separate fund. However, the investigation revealed such a variance of data from one document to another, that the Court was frustrated by the rationale behind the provisions of Article 20 of Legislative Decree No 118 of 23 June 2011. Therein 'transparency of health accounts' is not only the title, but the purpose of the article.

In the Region's health management, the Court of Auditors has generally found that accounting practices vary to such an extent, that it is sometimes difficult to identify the origin of funds, thereby

undermining the principle of transparency in terms of forecasting and making it difficult to plan both current and investment expenditure properly.

## **Conclusions**

The cases examined show that the role of the Court of Auditors, and in particular the controls carried out by the Regional Chambers on the general accounts of the Regions and on the budgets of the local health authorities, is crucial for the assessment of the costs of the health emergency<sup>17</sup>, now and for any future emergency.

Such a control would make it possible to reveal critical management situations (such as those of the national health system) by calling upon the responsibility of the regional elected assemblies when presenting the same general accounts. On the other hand, the control cannot be fully effective. Despite the law stipulating that the detection of economic financial imbalances or management irregularities entails an obligation on the part of the body to take appropriate measures to remedy the irregularities, and, in the event of non-compliance, the blocking of spending programs, such a measure has never been applied by any regional chamber of the Court of Auditors. Notwithstanding the fact that this law explicitly applies to ASLs and hospitals and has been recognized by the Constitutional Court itself as constitutionally legitimate (judgment n.39/2014).

The reasons that the regional control chambers have never activated the measure of blocking spending programs to this date are complex. They are essentially related to the nature of the “right to health”, which in Italy constitutes a fundamental right and that the Italian Constitutional Court has defined this right as financially “uncompressible”. Unfortunately, it has shown all its fragility in terms of effectiveness, regardless of the pandemic emergency. Therefore, the measure could not be easily applied in the health emergency.

Amongst the many issues contributes to the weakening of the protection of the right to health, we can identify the current system of economic and asset accounting adopted by the ASLs, which is merely

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<sup>17</sup> Article 1 (166) et seq. of Law No 266 of 23 December 2005, as subsequently amended by Decree-Law No 174/2012.

descriptive. This means that the costs and expenditure may exceed the available resources transferred from the region as a result of the absence of a legal limit on expenditure authorizations.

It is perhaps too early to take stock of the legacy the pandemic will leave us behind. The effects of the crisis are still ongoing and the extend of the changes and costs that the health system has had to bear after a non-short period of “cohabitation” with the virus cannot yet be fully estimated.

Nonetheless, recent emergencies have also stimulated changes in the functions of the Court of Auditors by emphasizing its advisory and steering role which could be a pre-law instrument. Old and new prerogatives increasingly enable the Court, in its role as guardian of the budget as a public good, to capture aspects beyond the strict accounting figure and, based on the financial data of the public administration, assess the effects and effects of the planned objectives in relation to the results achieved. Important information can be extracted from the Court’s advisory and control functions, not only to identify the costs of the emergency but also to guide public policies in general.

In conclusion, during a health emergency that has rapidly become an economic and social emergency, the Court of Auditors has taken on a new role. Besides its traditional financial and budgetary controls, the Court has evolved into an auxiliary to the elected assemblies of national, regional, and local governments. During the pandemic emergency this role has been played in defense of the effectiveness of the right to health, considering also intergenerational fairness and sustainable development.