

EVIDENCE OF IRREGULARITIES IN OSCIPS: AN AUDIT EXAMINATION ANALYSIS CONDUCTED BY THE COURT OF AUDITORS OF THE UNION

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ABSTRACT

This research identifies irregularities committed in the terms of partnerships celebrated with Civil Society Organizations of Public Interest (Oscip) in audits conducted by the Federal Court of Accounts (TCU), as well as to verify accountability practices in TCU audit activities. In order to operationalize the study, we adopted a document and technical examination to analyze TCU's judgments regarding the audits executed in the accounts of government partnerships with Oscips. The research identified 77 judgments with irregularities in the period from 2005 to 2016, which favored a total of 62 Oscips involved in deviations. The irregularities are related to the lack of knowledge of the norms in the elaboration of accountability, lack of adequate administrative control in the execution of the resources, and also, situations of financial overbilling and deviation of project purposes. Additionally, we observed that the control of norms and laws is the main aspect of the TCU's analysis regarding aspects of accountability, lacking better pieces of evidence on the performance of these organizations and transparency in the execution of the projects.

Keywords: Oscip. Accountability. Public funds.

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1 INTRODUCTION

The third sector has its importance as it provides a range of specific goods and services, meets the needs of specific groups, and provides a greater understanding of their peculiarities (Thompson & Williams, 2014). Due to the distinct characteristics of their products, these entities have a competitive advantage over the public and private sectors in delivering these goods and services (Wainwright, 2002), which may reduce pressures on the public sector in times of financial hardship (Dart, 2004).

In Brazil, Civil Society Organizations of Public Interest (Oscip), which belong to the third sector, were instituted by Law No. 9,790/99, with qualification granted by the Public Power to legal entities of private law, non-profit, to perform social services not exclusive to the State, with incentives and supervision by the Public Authorities, and the legal system is established through a Partnership Agreement (Di Pietro, 2005). One of the motivations for the existence of these organizations is the need to have less bureaucratic organisms to support the state in its activities (Mânica, 2007).

As providers of services to society and holders of public resources, the focus is on the responsibility of Oscips to deliver results; therefore, report presentation accounts tend to converge towards the precepts of accountability (Cameron, 2004). Monitoring and evaluation are important indicators for the delivery of services and to highlight the responsibility of third sector organizations (Shaw & Allen, 2006).

In Brazil, the Federal Court of Accounts (TCU) conducts the audit procedure in contracting public agencies in order to guarantee the accountability use in the contracts signed (Brazil, 2000).

The purpose of the audits is to analyze the legality and legitimacy of the management acts of those responsible with regard to the accounting, financial, budgetary, and equity aspects. The irregularities found by the TCU, such as embezzlement or misuse of resources, public assets or securities, fraud, and lack of accountability, are listed in audit reports. Proposals for referrals and determinations, named judgments, are sent based on irregular conducts (Brazil, 2000).

In contracts signed with public entities, in particular, the terms of the partnership agreed between Oscips and public agencies, there is a deviation from the responsibility for the resources allocated, a social loss. In the literature, evidence indicates that the growth in the number of contracts between public agencies and third sector organizations is also accompanied by deviations of purpose, which generate doubts about their structures in technical and physical terms (Guimarães, 2008).

Thus, in order to identify accountability regarding the application of public resources in the social interest, we had, in this research, following research question: upon analyzing the audits performed by the TCU, what irregularities are practiced by Oscips that use public resources? Our general objective is to identify the irregularities practiced by the Oscips, through document analysis of the audits performed by the TCU. Thus, through the judgments prepared by the Court, we intend to demonstrate the main irregularities evidenced in the resources transferred to Oscips under the terms of the partnership signed with the State.

Considering that, for government management, audits are understood as a control action by the Public Administration with precepts of execution by the TCU, with the purpose of promoting and establishing accountability on those managers of public resources (Grateron, 1999; Castaldelli Júnior, 2010), it is important to identify the causes of irregularities committed by Oscips. Thus, identifying the audit mechanisms practiced by the TCU allows elucidating behaviors related to the issue of transparency and accountability to its beneficiaries (Rodríguez, Pérez & Godoy, 2012; Valencia, Queiruga & Gonzáles-Benito, 2015).

This research contributes to the discussion on whether there is an advantage in certain social areas to have their activities performed only by the State, or whether the dissemination of responsibility to third sector entities is beneficial to society and efficient in investing public

resources, the responsibility of the Oscips in relation to their various beneficiaries, a basis for the disclosure of accountability and the performance of the TCU as a supervisory body.

2 THEORETICAL LANDMARK

2.1 Third sector entities

The term "third sector" was coined through a survey conducted in forty countries in 1990 by the Johns Hopkins, named the "Comparative Nonprofit Sector Project", the term "non-profit" in its strict sense means simply the non-distribution of its profits to the owners or shareholders, but which has a broader purpose due to its role in society (Salamon, 1996). Third-sector organizations are prominent in countries such as Australia (Furieux & Ryan, 2014), Germany (Bode & Brandsen, 2014), Italy (Ranci, 2015), United States (Garrow, 2010), and United Kingdom (Clifford, Geyne-Rahme & Mohan, 2013), as they are seen as important public service providers. Its origin in Latin America occurs through initiatives with development ideology in countries with totalitarian regimes, in the 1950s (Landim, 1987).

In a general manner, social organizations are essential for the achievement of services that are not exclusive to the state (Sano, 2003). Especially in Brazil, some entities focus on exercising the community and welfare role that today is the responsibility of the State and thus are able to use public or private resources received and exercise the role of managers of activities that bring solidarity and administrative management (Martins, 2004).

Clifford et al. (2013) state that the public sector continues to be the single and largest source of funding for such entities in developed countries. As a result, third-party organizations have practical requirements in the adoption of requirements already in place by the public sector (Thompson & Williams, 2014). This contact with the public area provides entities with legitimacy and security for their actions (Garrow, 2010).

Nonetheless, demands made by society, e.g.: transparency (Campos, Moreira & Scalzer, 2014, Valencia, et al., 2015), and more extensive evaluation practices by those who finance the projects elaborated by the entities (Arvidson, 2009) are born with the responsibility attributed to third sector entities. The monitoring defended is one that tends to privilege the measurement of the results in the social and economic environment, to the detriment of the simple analysis of the procedures interposed in the execution of the realized projects, i.e., the simple conference of documentation (Kendall & Knapp, 2000; Shaw & Allen, 2006). Furthermore, there is the defense of the obligation of these entities to render accounts (Abouassi & Trent, 2016), and any irregularity or illegality in the use of resources or public goods should be subject to supervision by the responsible bodies (Paes, 2004).

2.2 Accountability and the role of the audits

In nonprofit organizations, the amounts received derive from taxes and donations. In this context, the presence of beneficiaries, not customers, becomes clear. For these beneficiaries, there is a high risk of resources being invested in such organizations, since it is not allowed to withdraw the amounts invested, as is the case in the capital market. Therefore, the relationship between the agent (manager) and main (beneficiary) (Sunder, 2014).

The agent has the responsibility to conduct the activity assigned to him and, in order to remove such responsibility, must report to the principal. In the context of accountability, the act of reporting accounts arises from the obligation of the relationship existing in the contract between the actors involved (Nakagawa, 1993). Accountability refers to an organization's ability to maintain the trust of the society by disclosing important information to its supporters, without relinquishing its mission and appropriate management practices (Valencia et al., 2015). Within accountability, the agent has an obligation to explain his conduct and face the consequences of the judgment of the principal (Bovens, 2006).

The practice of accountability in the third sector goes beyond attending to certain stakeholders groups, from which the aim of the agent is the purpose of fundraising. It addresses issues that are more extensive to various stakeholders and seeks to produce complex relationships with the whole community (Coule, 2015, Knutsen & Brower, 2010, Ebrahim, 2003a), since the essence of accountability is based on relationships between organizations and society and/or stakeholders (Gray, Bebbington & Collison, 2006; Miller, 2002). Therefore, there is a need to build a sense of responsibility on the part of third sector entities managers, providing information that meets legitimate expectations regarding the needs of all those involved. (Sinclair 1995, Larry 1995, Fry 1995, Chisolm, 1995).

In the study by Rocha (2009), accountability is identified as a process similar to the "reporting accounts" performed by the actions of TCH. In turn, the purpose of supervision is to investigate the management of organizations, in order to safeguard the financial resources directed to projects that aim at social interest (Kluvers, 2003; Koppell, 2005). Saxton (2012) and Benjamin (2008) identified, in their studies, the role of accountability in third-party institutions' accountability and concluded that disclosure was more focused on providing financial and performance analysis than effectively establishing accountability dialogue mechanisms, with the participation of stakeholders in the pursuit of interactive engagement.

There are studies mapping what features may be analyzed to arrive at a means of evidencing accountability. These characteristics serve as the basis of construction to seek to perform audits. Among these are those highlighted by Denhardt and Denhardt (2000), which indicate accountability based on bureaucratic control, performance control, and democratic control. The first is intended to analyze the conformity of laws and regulations. The second focuses on performance control. And the third, in addition to the performance of public resources invested, focuses on the behavior of managers before such resources and society.

Koppel (2005) emphasizes that accountability may be identified when the entity has transparency when rendering accounts in order to serve the interests of society and not its individuals; when there is the obligation to respond for their actions, even if they result in punishment; when there is internal control relative to its final activities; when the entity has responsibility for the standards it must follow; and when there is responsiveness in responding to what is demanded by society.

The auditing exams in the reporting accounts of third-party entities perform the role of contract control and the proper use of resources received. The accounting audit, in particular, identifies the standards and guidelines related to the financial statements, as well as the legal provisions that aim to conduct the operational and business purposes of the third sector (Graciliano, Filho, Nunes & Zampa, 2010). The accounting information, from the viewpoint of responsibility, is important for its various stakeholders since they have data that show the use of resources, public or private, in projects developed by such entities (Campos et al., 2014).

On the research by Do Carmo Dalto, Lopez and Martinez (2014), the group identified the types of irregularities that occurred in administrative contracts between federal universities and support foundations in Brazil from 2006 to 2010, deviation from purpose, mainly due to the failures of the internal controls of the federal universities in the final control of the resources with the support foundations. The authors emphasize that good practices, such as transparency, evaluation, and public advocate mechanism, need to be encouraged in order to make managerial accountability feasible.

In addition to the support foundations, the Oscips are the object of a study on the management of the resources allocated through partnership terms, since their behavior as an extension of public administration activities (Sano, 2003). Thus, focusing on the research and efficiency of the terms of partnership with Oscips is one way of identifying the responsibility of those who coordinate public resources. The lack of responsabilization when reporting the accounts, according to the assumptions of accountability, contributes to the misuse of purpose

and may lead to an increase in the number of irregularities of state resources in third sector organizations (Guimarães, 2008).

Considering the obligations, Soldi et al. (2007) warn that disclosing any type of information does not solve the problem of lack of transparency, since the disseminated information must contain quality. Therefore, there is a need for changing the behavior of organizations in releasing information with accuracy, especially in relation to the practice of monitoring and evaluation (Kendall & Knapp, 2000; Ebrahim, 2003b). Thus, the need for research on accountability and on the legislation governing the issue focused on the management contract, an instrument that creates the link between the State and the entities, and which defines the attributions, responsibilities and obligations of each one of the parties.

3 METHODOLOGY

The methodological procedure was based on an exploratory study with survey and document examination, the method allowed us compiling the available information about the reports of audits, rendering and accounts performed in the public agencies that signed a Partnership Agreement with Oscips. After the documents were collected, we analysed the information available in the documents so as to identify the irregularities committed by the Oscips and the accountability performed by the TCU in the audits. The document available for the examination is named a judgment, which is the manifestation on the part of the TCU of the decisions on a certain case derived from the audits, benefits and taking of accounts.

The research performed consists of the following activities:

- a) assessment of the judgments in the electronic site in the TCU;
- b) identification of the judgments which have presented the words "irregularity" and Oscip;
- c) treatment of the initial sample and exclusion of those judgments that did not in fact present irregularity in Oscips;
- d) identification (mainly of contracted and contracting institutions), local, type, year, and nature of the irregularity according to Law No. 9,790/99 and nature of the activity performed by Oscip;
- e) examination of the data in the judgments.

According to Godoy (1995), the document examination presents an important advantage for the research, since the documents analyzed do not change over time, and thus remain intertwined with that historical context. As a definition of document research, Godoy (p.22, 1995) considers that it is "the examination of materials of a diverse nature that have not yet received an analytical treatment, or that may be reexamined, seeking new and/or complementary interpretations (...)".

The first part of the research consisted of surveying aspects related to Oscips characteristics and irregularities, as follows:

- a) observation of the year in which the judgment, on audit findings, was issued, provision or taking of accounts, used as the frame of the infraction;
- b) observation of agglomeration by the federative state of Brazil of the contractor to indicate the regions most affected by irregularities;
- c) observation of the types of irregularities pointed out by the TCU and;
- d) measurement of the repetition of the irregularities noted in the judgments for later analysis of the results found, as in the work of Do Carmo Dalto et al. (2014).

After observing the specific characteristics of the Oscips and the types of irregularities, the second part aimed at examining the data in the judgments, presenting codifications as follows:

- (a) the first codification indicates the types of irregularities identified in the judgments and;

b) second codification groups types of irregularities in modalities based on Law 9,790/99.

Finally, additional information regarding the justifications given by Oscips and the opinions issued by the TCU, as well as the classification of accountability, were presented. For that, we based our research on the work of Denhardt and Denhardt (2000) and Koppel (2005). The first classifies the type of accountability into bureaucratic, performance, and democratic. The second work, however, characterizes accountability with respect to transparency, subjection, control, responsibility, and responsiveness. The study comprised the years from 2005 to 2016, a period in which, on the TCU website, the observations are concentrated.

4 EXAMINATION OF DOCUMENTS (JUDGMENTS)

As we analyzed the judgments of audit reports, rendering and accounting on the TCU portal, of the 265 reports withdrawn from the site, 77 presented irregularities in the period from 2005 to 2016, distributed as follows: 2005 - one judgment; 2007 - three judgments; 2008 - two judgments; 2009 - three judgments; 2011 - eight judgments; 2012 - six judgments; 2013 - three judgments; 2014 - eight judgments; 2015 - twenty-four judgments; and 2016 - nineteen judgments. For better visualization of the sample, the selection is displayed in Table 1:

Table 1

Sample Selection

Total judgments, benefits and statements of accounts for the period from 2005 to 2016	265
Judgments withdrawn for containing only the words "irregularity" or "irregularity" and "university support foundation", or "irregularity" and "agreement"	188
Judgments containing the words "irregularities" and "Oscip"	77

Source: Data from the research (2017).

The results from the judgments sampled presented 62 different Oscips, within a total of 77 analyzed judgments. The sample itself might be characterized as a census in which we sought to identify the characteristics present in the judgments with the nomenclatures "irregularities" and "Oscip". Thus, it is an intentional sampling, not probabilistic, and the findings of this work are related only to the 77 judgments, which we analyzed here. The number of Oscips contemplated is due to the fact that there were entities that generated irregularities with public funds in more than one Partnership Agreement, which shows that the partnerships are signed independently of the existence of previous contracts with irregularities. In the findings of the TCU, we observed that there is a certain period of time for the elaboration of the judgment, different from the date of signature of the Term of Partnership. Considering that this may be taken as a factor when signing contracts with entities that later were indicated with irregularities. Table 2 shows Oscips analyzed by purpose.

Table 2

Oscips by purpose, in relation to the Partnership Terms with Irregularities in the TCU from 2005 to 2016

Purpose	Frequency	%
Assistance	16	25.8%
Purpose not registered	15	24.2%
Educational	6	9.7%
Researches	6	9.7%
Citizenship	5	8.1%
Cultural	5	8.1%
Credit	4	6.5%
Environmental	2	3.2%
Legal	1	1.6%
Health	1	1.6%

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Volunteering	1	1.6%
Overall Total	62	100.0%

Source: Data from the research (2017).

Among the entities belonging to the sample studied, the care purpose prevails, with 26.2% of the cases, and the non-registered purposes, with 24.6%. The entities within this item act on more than one purpose and may not be classified in a single predominant activity. Currently, there are 7,636 entities registered with the Ministry of Justice and Public Security, and only 3,608 have in their register their purpose. From these, 1,338 (37.08%) are pertinent to the purpose of care, followed by 553 (15.33%) for environmental purposes and 347 (9.62%) for cultural purposes.

The analysis of the state and region of Brazil of origin of the Oscips surveyed indicates that the Northeast region has the largest number of entities with irregularities in the TCU, with 21 Oscips, followed by the Southeast region, with 16. Table 3 presents data of irregularities considering the states with 10 or more types of irregularities, as well as types of irregularities with five incidences or more. The result of the table shows that 45.5% of the irregularities were concentrated in only six states.

Table 3

Type of irregularity committed by the Oscips identified by the TCU per federative unit - 2005 to 2016

Type of irregularity	Bahia	Federal District	Pernambuco	Paraná	Rio de Janeiro	São Paulo	Frequency
Incomplete accounts report	2	2	2	3	2	2	13
Breach of obligation to present accounts to the grantor	2	0	0	0	1	2	5
Absence of proof of expenditure	1	2	4	8	3	2	20
Irregular movement in bank accounts	0	1	1	3	1	2	8
Overbilling	1	2	2	5	1	0	11
Issuance of invoices/ bills in disagreement with the respective cost sheets	0	1	2	4	1	0	8
Failure in elaborating the main purpose of the partnership agreement	1	0	0	2	0	2	5
Payment of expenses not related to the purpose of the partnership agreement	1	1	1	2	1	3	9

Allocation of Oscip's employee as manager of the contract, in violation of art. 3 of Law 9,790/99.	0	0	0	2	1	2	5
Absence of proof of service provided	1	1	2	2	1	1	8
Frequency	9	10	14	31	12	16	92
%	4.5%	5.0%	6.9%	15.3%	5.9%	7.9%	45.5%

Source: Data from the research (2017).

The Oscips that presented the greatest number of irregularities belong to the states of Bahia (9), Federal District (10), Pernambuco (14), Paraná (31), Rio de Janeiro (12), and São Paulo (16). The state of Paraná covered 7 entities (11.3% of the total) within the research, but in the elaboration of the analysis by type of irregularity, it is the state that presents the most irregular situations promoted by Oscips analyzed, with 15.3% of the cases. The state of Pernambuco displayed the largest number of entities found, 14.5% (9 cases) and presented 6.9% of the total number of irregularities found. The irregularities found originated in the states in which the Oscips were contracted, and the origin of the entity contracted may be different from the place where the service was provided.

Upon analyzing the records issued by the TCU, there are irregularities committed by the lack of knowledge on the part of the managers of the proper way of presenting the accounts. There were situations in which there was strong indications of the creation of a “façade” entities, founded exclusively for the purpose of deviation of public resources. Other cases presented situations in which the directors of Oscips received values through the terms of the partnership, which is prohibited by Law 9,790/99. These pieces of evidence demonstrate a lack of control on the part of the contractor, in addition to the lack of responsibility of both the contractor and the contractor (Koppel, 2005).

The data were collected and analyzed considering the type of irregularity found in the judgments. During the collection, we observed judgments that were annotated due to the resources required by the entities under analysis. Therefore, judgments dealing with the same Partnership Terms, Oscips and public entities were excluded, totaling 77 judgments as for the final sample of the study. Table 4 shows the types found and classified by the number of entities in which such irregularities occurred.

Table 4

Number of entities by type of irregularities – 2005 a 2016

Mode	Type of Irregularity	Frequency
Proof of documents	Absence of proof of expenditure incurred	26
	Unreliable budge elaboration	5
	Inconsistency in proving the services counterpart	4
	Lack of proof of tax collection	3
	Checks deposited for non-accredited banks	1
Total <i>per mode</i>		39
accounts report	Incomplete and unsupported account presentation	17
	Breach of obligation to render accounts to the grantor	15
Total <i>per mode</i>		32
Execution of the	Absence of proof of service provided	15

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physical object	Invoices issued in disagreement with the respective cost sheets	10
	Failure to elaborate the main object of the Partnership Agreement	7
	Partially fulfilled the objectives of the Partnership Instrument	5
	Deficiency in services supervision	3
	Project Abandonment	1
<i>Total per mode</i>		41
Application of project financial resources	Invoice overbilling	16
	Payment of expenses incompatible with the objective of the Partnership Agreement	11
	Irregular movement in bank accounts	9
	Deposits in current account for beneficiaries without link with the resource	4
	Non-identification of the destination of the funds withdrawn and the respective creditor	4
	Application of resources from partnership terms without need	4
	Presence of conflict of interest	3
	Partnership Term Remains not returned to the public funds	3
	Lack of financial application for surplus resources	3
	Misuse of administrative fees	3
Payment of expenses in duplicity	1	
<i>Total per mode</i>		61
Application in project human resources	Oscip's employee assignment as contract manager	7
	Circumventing working rights	7
	Insufficient justification for hiring staff	4
<i>Total per mode</i>		18
Inconsistenci as Oscip	Irregularities in the Oscip's constitution	4
	Services not included in the purposes of Oscip	7
<i>Total per mode</i>		11

Source: Data from the research (2017).

The data presented in Table 3 show that the most commonly found type, in the analyzed judgments, is Absence of Expenses Evidence, with 26 cases, followed by Presentation of Incomplete and Insubstantial Accounts with 17 cases, and Overflow of Invoices, with 16 incidents. The judgments are based on the findings expressed in Table 3, Law No. 9,790/99, which qualifies Oscips. Regarding the resources involved, the emphasis in the judgments is on the contractor not having adequate control over the expenses incurred with the expenses of the projects. The TCU rapporteurs, when analyzing the terms of the partnership, place as a presupposition for the execution of the project that the contracted Oscip must have regular conditions for execution of the object, including human and physical resources. In the absence of this structure, the failures incurred are seen as administrative faults of the contractors.

We may observe the absence of the practice of responsibility, as noted by Sinclair (1995), Fry (1995), and Chisolm (1995), in order to provide stakeholders with information consistent with the objective of the organization. The more financial-related approach, with no performance-related observations, may be weakening the responsible attitudes of managers.

In view of the perspective presented by Guimarães (2008), when stating that the investigation of the public resources destined to the Oscips contributes to identifying the

responsibility of those who coordinate public resources, the irregularity type classified as Conflict of Interest should be emphasized. In this item, we found services provided by a private company subcontracted by Oscip in which the partner of the company had first-degree kinship with the manager of Oscip who hired him, demonstrating that there are effectively diffuse interests to the good use of public resources and that without an investigation or audit, situations like this would not be verified. Graciliano et al. (2010), also affirm that the audit is performed to verify if the legal provisions are effectively fulfilled, then considering that situations of conflict of interest may be characterized as an indirect distribution of profits, which is prohibited by Law 9,790/99.

Regarding the type of irregularity in the presentation of accounts, those attributed by the decisions fall not only on the person in charge of Oscip, but also on the one designated by the contractor as the controller (appointment of public servant or constitution of commission). As Bovens (2006) comments, there is a clear obligation that the resource agent should explain his behavior; this obligation is also extended to the contractor. Therefore, failures must be identified by the contracting entities in relation to the supervision regarding the monitoring and control of the service rendering by Oscip. Although the focus of this investigation is not directed at the contractor, in the reports of the judgments there is an emphasis on the recommendation of Law No. 8.666 / 93 (Law on Bids) to be also allocated to the purchase of Oscips.

Upon mode analysis, the perception of financial resources is emphasized. It is important to highlight the focus on financial issues when presenting accounts to the TCU. That goes against to what was commented by Saxton (2012), however, it is not related to the issues related to performance analysis of those organization, as well as to the monitoring of its practices and evaluation (Kendall & Knapp, 2000; Ebrahim, 2003b). We should emphasize that financial data, especially accounting data, are important for the identification of stakeholders' use of public and private resources (Graciliano, Filho, Nunes & Zampa, 2010; Campos et al., 2014), which does not disqualify their employment for the accounts report.

In the discussions of the judgments of this research, the findings indicate that the accounts report employed by the TCU focuses on the use of public resources by the managers appointed for its execution. Therefore, there is a confirmation consistent with the study by Rocha (2009) regarding accounts presentation as an important object in the use of accountability. Also in the document examination, we were able to observe that the focus is on a bureaucratic control as emphasized by Denhardt and Denhardt (2000) since the basis for the investigation is directed to Law 9,790/99.

Focusing on the modality of application in the human resources of the project highlights the findings regarding some typical characteristics of the hiring of personnel. Among them, to appoint Oscip contracting personnel, as manager of a contract, when the latter also performs activities at the contracted institution. There were labor reports and labor obligations in order to facilitate the bureaucratic terms, since, through public agencies, such outsourcing would not be possible due to the obligation of imposing a public tender. This situation is an indication of circumvention of the rules for the use of Oscips for a specific interest, using them for other purposes.

With the characteristics presented, the internal control objects of the contracting organizations should be better observed in order to analyze and identify failures that may hinder the contracting of entities that have qualifying characteristics to perform activities that are not exclusive to the State. This failure of internal control is a prominence placed by Koppel (2005), and one of the main flaws detected in the research of Do Carmo Dalto, Lopez and Martinez (2014) at universities and support foundations.

In regard to the health area, which, although not represented in the sample of this study in a significant way, underwent several TCU recommendations for using resources from the Unified Health System (SUS) with the frequent outsourcing of health services through the Oscips, while it should be understood that they must respond by the managerial administration

and not by the proper management of an activity pertinent to the State. There is an agreement on the part of the supervisory bodies, such as the TCU and the State Court of Auditors (TCE), that there is a misuse of purpose by public entities when contracting Oscips and other non-profit entities. This issue has already been emphasized in the findings by Do Carmo et al. (2014).

Starting from the Oscips, there is also a finding of misuse of purpose in some Partnership Terms signed and inconsistency in the delivery of contracted objects, or non-delivery of the object contracted in the Partnership Agreement. This irregularity, the misuse of purpose between Oscip and the contractor, occurs when, in addition to the accounting of financial amounts, the object of the contract is not properly presented, a fact evidenced in the analysis of the TCU's audits, according to Table 4. The importance given to these items underscores the lack of administrative structure, which includes control instruments. This evidence goes against one of the questions posed by Koppel (2005), who emphasizes that control is one of the ways to identify accountability in the execution of an entity's activities.

We should note that such information disclosure of the terms of the partnership is passed on to contracting public bodies by a legal obligation. However, there is no obligation that this accounts report should be made public, favoring transparency as presented in the Campos et al. (2014), and Valencia et al. (2015). Thus, in addition to losses in the area of transparency, faults may also be observed in the issue of responsiveness, since the entity will have no greater concerns than those related to legal charges regarding information.

Another important point is that, in the judgments, there were no Oscips actions related to having a constant dialogue with the various stakeholders. This is an important item emphasized by Gray, Bebbington & Collison (2006) and Miller (2002), in order to present responsibility to the interested parties. This lack of comments on the dialogue also reflects in the damage observed in relation to the lack of transparency of organizations.

Generally, the findings in the judgments contribute to the lack of control by contracting bodies and Oscips, and zeal when performing accountability, which indicates that control mechanisms are flawed, and even in certain points, may be absent. This may be evidenced since there are recurrent infractions and even repeated by the same Oscip in different public bodies. The reports do not point to the audit of these Terms of Partnership by either party. It only indicates that there must be accountability, and this is the object used by the TCU to verify the irregularities observed by this investigation.

5 CONCLUSION

In the present work, we investigated the irregularities practiced by the Oscips, through document analysis of the audits performed by the TCU. This objective was intended to focus on the responsibility issue, as evidenced by issues related to accountability. In order to operationalize the research, the judgments were collected from the electronic site of the TCU, with subsequent document examination, covering the period from 2005 to 2016.

Concerning the Oscips, the findings indicate irregularities related to conflicts of interest, as commented by Graciliano et al. (2010), since there were employees belonging to the staff of some Oscips who were also present in the staff of the contractor, performing the role of manager of the contract signed between both. Other irregularities concern purpose deviations. This finding is in agreement with that was emphasized by Do Carmo et al. (2014), since the resource was used improperly, as in the case of overbilled invoices, and in some contracts, the object was not delivered as agreed.

Also noteworthy is the lack of control manners in organizations and responsibility when analyzing the parts of the accounts presented by the entities with their contracting bodies. Within the items highlighted by Koppel (2005), one should first observe the issue of transparency once they are only demanded to present what is indicated as mandatory by the TCU, disregarding other information that society needs to judge good conduct of Oscips. Secondly, control must be

analyzed, since there are shortcomings related to administrative management. Regarding liability, despite existing standards, there are still gaps in accountability, which impacts this item. Finally, responsiveness is an item that may be the object of future studies to observe what extra information is being disclosed and how they may contribute to meeting the needs of society, related to Oscip's final activity.

Furthermore, the discipline, as it uses the bidding as a contracting method also became recurrent in the findings of the TCU, since such practice was not confirmed in any of the reports analyzed, as well as in measurements of the performance and transparency of the resources used by Oscips by means of the Partnership Terms. This practice is defended in international research when emphasizing a greater evaluation of the projects of the third sector organizations (Arvidson, 2009), as it is a practice measuring the results to the detriment of the simplistic analysis of the processes performed (Shaw & Allen, 2006).

Regarding the examination of judgments from the TCU, we were able to identify that the audits have as a measure of accountability the assumption of bureaucratic control highlighted by Denhardt and Denhardt (2000), since the basis for the investigation is linked to Law no. 9,790/99, which qualifies Oscips, establishes and disciplines the Terms of the Partnership. In addition to this assumption, there is an emphasis on investigating the management of the organizations involved in order to safeguard the financial resources directed to projects of social interest (Kluvers, 2003; Koppell, 2005), as well as verify the execution of the financial expenditures of the Partnership Agreement.

The limitations of this study lie in the fact that we were not able to directly verify the accountability of the Oscips, as there is no obligation of presentation. We may understand that accountability is a formalization of the duty of those responsible for public resources to present where they have been applied. Checking these features demands reliable sources of information in a timely manner. Furthermore, we should note that the analysis is limited to Oscips in the 77 analyzed judgments.

For future research, in addition to responsiveness, in-depth analyzes of the performance of these organizations. And in the case of proven irregularities, punishments of the organizations and those responsible for overseeing the terms of partnership in their implementation are expected. We also suggest that the sample to be expanded in order to observe other non-profit entities.

REFERENCES

- Abouassi, K., & Trent, D. L. (2016) NGO Accountability from an NGO Perspective: Perceptions, Strategies, and Practices. *Public Administration and Development*, 36(4), 283-296.
- Arvidson, M. (2009). Impact and evaluation in the UK third sector: reviewing literature and exploring ideas. *Third Sector Research Centre*, 27, 1-28.
- Benjamin, L. M. (2008). Account space: How accountability requirements shape nonprofit practice. *Nonprofit and Voluntary Sector Quarterly*, 37(2), 201-223.
- Bode, I., & Brandsen, T. (2014). State-third sector partnerships: A short overview of key issues in the debate, introduction to the special issue on state-third sector partnerships. *Public Management Review*, 16, 1055-1066.
- Bovens, M. (2007). Analysing and assessing accountability: A conceptual framework 1. *European law journal*, 13(4), 447-468.

Ministério da Administração Federal e Reforma do Estado. (1997). *Organizações sociais. Cadernos MARE da Reforma do Estado*. Brasília, DF.

Lei nº 9.637, de 15 de maio de 1998. (1998). Dispõe sobre a qualificação de entidades como organizações sociais, a criação do Programa Nacional de Publicização, a extinção dos órgãos e entidades que menciona e a absorção de suas atividades por organizações sociais, e dá outras providências. Brasília, DF. Recuperado em 31 janeiro, 2018, de http://www.planalto.gov.br/CCivil_03/leis/L9637.htm

Lei nº 9.790, de 23 de março de 1999. (1999). Dispõe sobre a qualificação de pessoas jurídicas de direito privado, sem fins lucrativos, como Organizações da Sociedade Civil de Interesse Público, institui e disciplina o Termo de Parceria, e dá outras providências. Brasília, DF. Recuperado em 31 janeiro, 2018, de http://www.planalto.gov.br/CCIVIL_03/leis/L9790.htm

Tribunal de Contas da União. (2000). *Manual de auditoria de natureza operacional*. Brasília, DF.

Cameron, W. (2004). Public accountability: Effectiveness, equity, ethics. *Australian Journal of Public Administration*, 63(4), 59-67.

Campos, G. M. A., Moreira, R. de L., & Scalzer, R. S. (2015). Financial reporting: reflection on transparency in the third sector. *Sociedade, contabilidade e gestão*, 9(3), 130-142.

Castaldelli Júnior, E. (2010). *Divulgação de desempenho de órgãos públicos: uma Análise de Conteúdo dos relatórios de gestão do Tribunal de Contas da União*. Tese de Doutorado, Universidade de São Paulo, São Paulo, SP, Brasil.

Chisolm, L. B. (1995). Accountability of nonprofit organizations and those who control them: The legal framework. *Nonprofit Management and Leadership*, 6(2), 141-156.

Clifford, D., Geyne-Rahme, F., & Mohan, J. (2013). Variations between organisations and localities in government funding of third-sector activity: evidence from the national survey of third-sector organisations in England. *Urban Studies*, 50(5), 959-976.

Coule, T. M. (2015). Nonprofit governance and accountability: Broadening the theoretical perspective. *Nonprofit and Voluntary Sector Quarterly*, 44(1), 75-97.

Dart, R. (2004). The legitimacy of social enterprise. *Nonprofit management and leadership*, 14(4), 411-424.

Denhardt, R. B., & Denhardt, J. V. (2000). The new public service: Serving rather than steering. *Public administration review*, 60(6), 549-559.

Di Pietro, M. S. Z. (2005). *Direito administrativo* (18a ed.). São Paulo: Editora Atlas.

Do Carmo Dalto, C., Nossa, V., & Lopo Martinez, A. (2014). Recursos de Convênio entre Fundações de Apoio e Universidades Federais no Brasil: um estudo dos acórdãos do Tribunal de Contas da União (TCU). *Revista Universo Contábil*, 10(2), 6-23.

- Ebrahim, A. (2003a). Accountability in practice: Mechanisms for NGOs. *World development*, 31(5), 813-829.
- Ebrahim, A. (2003b). Making sense of accountability: Conceptual perspectives for northern and southern nonprofits. *Nonprofit Management and Leadership*, 14(2), 191-212.
- Ebrahim, A. (2009). Placing the normative logics of accountability in “thick” perspective. *Amerimay Behavioral Scientist*, 52(6), 885-904.
- Fry, R. E. (1995). Accountability in organizational life: problem or opportunity for nonprofits?. *Nonprofit Management and Leadership*, 6(2), 181-195.
- Gray, R., Bebbington, J., & Collison, D. (2006). NGOs, civil society and accountability: making the people accountable to capital. *Accounting, Auditing & Accountability Journal*, 19(3), 319-348.
- Guimarães, L. S. R. (2008). *Governança no terceiro setor: estudo descritivo-exploratório do comportamento de conselhos curadores de fundações empresariais no Brasil*. Tese de Doutorado, Universidade de São Paulo, São Paulo, SP, Brasil.
- Furneaux, C., & Ryan, N. (2014). Modelling NPO–Government Relations: Australian case studies. *Public Management Review*, 16(8), 1113-1140.
- Garrow, E. E. (2010). Receipt of government revenue among nonprofit human service organizations. *Journal of Public Administration Research and Theory*, 21(3), 445-471.
- Godoy, A. (1995). Pesquisa qualitativa: tipos fundamentais. *RAE – Revista de Administração de Empresas*, 5(3): 20-29.
- Graciliano, E. A., Moreira Filho, J. C., Nunes, A. D. P., Pontes, F. C. D. M., & Zampa, F. F. (2010). Accountability na administração pública federal: contribuição das auditorias operacionais do TCU. *Pensar Contábil*, 12(47).
- Grateron, I. R. G. (1999). Auditoria de gestão: utilização de indicadores de gestão no setor público. *Caderno de estudos*, 21,01-18.
- Kendall, J. & Knapp, M. (2000) Measuring the performance of voluntary organizations. *Public Management Review*, 2(1), 105-132.
- Kluvers, R. (2003). Accountability for performance in local government. *Australian Journal of Public Administration*, 62(1), 57-69.
- Koppell, J. G. S. (2005), Pathologies of accountability: IMAYN and the challenge of “multiple accountabilities disorder”. *Public administration review*, 65(1), 94-108.
- Knutsen, W. L., & Brower, R. S. (2010). Managing expressive and instrumental accountabilities in nonprofit and voluntary organizations: A qualitative investigation. *Nonprofit and Voluntary Sector Quarterly*, 39(4), 588-610.
- Landim, L. (1987). Non-governmental organizations in Latin America. *World Development*, 15, 29-38.

- Lawry, R. P. (1995). Accountability and nonprofit organizations: An ethical perspective. *Nonprofit Management and Leadership*, 6(2), 171-180.
- Mânica, F. B. (2007). *Panorama históricolegislativo do Terceiro Setor no Brasil: do conceito de Terceiro Setor à Lei das OSCIP*. Terceiro Setor. Empresas e Estado–Novas Fronteiras entre o Público e o Privado. Minas Gerais: Fórum, 163-194.
- Martins, H. F. (2004). *Reforma do Estado na era FHC: diversidade ou fragmentação da agenda de políticas de gestão pública*. Rio de Janeiro: EBAPE/FGV.
- Miller, J. L. (2002). The board as a monitor of organizational activity: The applicability of agency theory to nonprofit boards. *Nonprofit Management and Leadership*, 12(4), 429-450.
- Nakagawa, M. (1993). *Introdução à controladoria: conceitos, sistemas, implementação*. São Paulo: Atlas.
- Paes, J. E. S. (2004). Fundações e entidades de interesse social: aspectos jurídicos, administrativos, contábeis e tributários. *Brasília Jurídica*.
- Ranci, C. (2015). The Long-Term Evolution of the Government-Third Sector Partnership in Italy: Old Wine in a New Bottle?. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 26(6), 2311-2329.
- Rocha, A. C. (2009). Accountability na Administração Pública: a Atuação dos Tribunais de Contas. *Anais do Encontro Nacional da ANPAD*, São Paulo, SP, Brasil, 33.
- Rodríguez, M. Del M. G.; Pérez, M. Del C. C., & Godoy, M. L. (2012) Determining factors in online transparency of NGOs: A Spanish case study. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 23(3), 661-683.
- Salamon, L. M., & Anheier, H. K. (1996). *Defining the nonprofit sector: the United States*. Johns Hopkins University Institute for Policy Studies.
- Sano, H. (2003). *Nova Gestão Pública e accountability: o caso das organizações sociais paulistas*. Tese de Doutorado, Fundação Getúlio Vargas, São Paulo, SP, Brasil.
- Saxton, G. D., & Guo, C. (2011). Accountability online: Understanding the web-based accountability practices of nonprofit organizations. *Nonprofit and Voluntary Sector Quarterly*, 40(2), 270-295.
- Shaw, S., Allen, J. B. (2006). “We Actually Trust the Community:” Examining the dynamics of a nonprofit funding relationship in New Zealand. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 17(3), 211-220.
- Sinclair, A. (1995). The chameleon of accountability: forms and discourses. *Accounting, organizations and Society*, 20(2-3), 219-237.
- Soldi, A. R., Hatz, C. R., Santos, G. R. dos, & Silva, M. M. da. (2007). Transparência no terceiro setor: um estudo sobre as organizações filantrópicas. *Jovens Pesquisadores*, 4(1), 1-13.

Sunder, S. (2014). *Teoria da Contabilidade e do Controle*. São Paulo: Atlas.

Thompson, P., & R. Williams. (2014). Taking Your Eyes Off the Objective: The Relationship Between Income Sources and Satisfaction with Achieving Objectives in the UK Third Sector. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 25(1), 109–137.

Valencia, L. A. R., Queiruga, D., & González-Benito, J. (2015). Relationship between transparency and efficiency in the allocation of funds in nongovernmental development organizations. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 26(6), 2517-2535.

Wainwright, S. (2002). *Measuring impact: A guide to resources*. London, NCVO.