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Revista de Ciências Jurídicas
e-ISSN: 2317-2150
Universidade de Fortaleza

Retos del derecho ambiental en Cuba*

Desafios do direito ambiental em Cuba

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Resumen

El marco legal ambiental en Cuba parte del artículo 75 constitucional y la Ley 81, de 11 de julio de 1997, del medio ambiente, ley marco en la materia, con una serie de disposiciones complementarias, con rango de Decreto Ley o de Resolución ministerial. A pesar de los años transcurridos, hoy no se han dictado algunas normas complementarias para la gestión de determinados recursos naturales, como las de aguas y suelos, mientras que la propia ley marco necesita ser actualizada.La ponencia aborda alguna de estas áreas. En especial se refiere a proyectos normativos en los que ha trabajado el Ministerio de Ciencia, Tecnología y Medio Ambiente (CITMA), como son el Decreto Ley en materia de seguridad química, una nueva versión de la norma sobre la zona costera y su gestión, así como la correspondiente al cambio climático, primera de su tipo en el país, y a tono con los compromisos asumidos por Cuba a partir de la ratificación del Acuerdo de París.
Palabras claves: marco legal ambiental, ley marco, potestad reglamentaria.

Resumo

O marco legal ambiental em Cuba sobre o meio ambiente está baseado no Artigo 75 da Constituição e na Lei 81 de 11 de julho de 1997, uma Lei que é marco sobre a matéria, como uma série de disposições complementares, com o nível de Decreto-Lei ou Resolução Ministerial. Apesar dos anos decorridos, atualmente não há edição de regulamentos complementares para a gestão de determinados recurso naturais, como a água e o solo, sendo necessária a atualização da própria Lei-quadro. O documento aborda algumas dessas áreas e, em particular, refere-se a projetos normativos nos quais os Ministerios da Ciência, Tecnologia e Meio Ambiente (CITMA) têm trabalho, como o Decreto-Lei sobre segurança química, uma nova versão da norma sobre a zona costeira e sua gestão, bem como o correspondente à mudança climática, o primeiro do gênero no país, e em consonância com os compromissos assumidos por Cuba após a ratificação do Acordo de Paris.
Palavras-chaves: *Marco legal ambiental. Lei marco, Poder regulador.*

1 Introduction

The Cuban Constitution of 1976, which was reformed in 1978, 1992 and 2002, enshrined in Chapter VII the fundamental rights, duties and guarantees. Environmental protection, although present in its original wording, did not explicitly recognize the objective of sustainable development, which appears in the text of the 1992 Rio Declaration.

* Artigo traduzido por Inteligência Artificial.

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Precisely in the heat of this process, on the occasion of the constitutional reform of 1992, which brought with it a series of transformations in the economic, political and social order, Article 27 of the fundamental norm was redrafted:

"*The State protects the environment and the country's natural resources. It recognizes its close link with sustainable economic and social development in order to make human life more rational and to ensure the survival, well-being and security of current and future generations. It is the responsibility of the competent bodies to implement this policy. It is the duty of citizens to contribute to the protection of water, the atmosphere, the conservation of soil, flora, fauna and all the rich potential of nature*."

On the basis of the provisions of the aforementioned Article 27 of the 1976 Constitution, it could be argued that, by establishing the obligation of the State and citizens to protect the environment, it was enshrined as a constitutionally protected right, elevated to the category of a configurative principle of the political and legal system.[1]Although this right was not explicitly formulated in the constitutional text, which only included a general duty, it was possible to affirm its existence, based on the necessary nature that each duty corresponds to a correlative right. This interpretation corresponds to the recognition made by the Environmental Law in its article 4, which contains the principles of Cuban environmental policy and management, establishes in its paragraph a) that the right to a healthy environment is a fundamental right of all citizens and with the text of article 75 of the new Cuban constitutional text, proclaimed in April 2019, according to which "*all people have the right to enjoy a healthy and balanced environment*" and, following the previous text, establishes that "*The State protects the environment and the natural resources of the country. It recognizes its close link with the sustainable development of the economy and society in order to make human life more rational and to ensure the survival, well-being and security of current and future generations*."

However, the constitutional recognition of this right is not sufficient for its adequate protection, nor is the mere existence of appropriate factual conditions for its exercise, if legal mechanisms are not put in place to bring action before the judicial apparatus when that right is violated. The existence of a right to a healthy environment, to which every citizen would be entitled, does not correspond to a system of legitimation as restrictive as that established in the

[1]PASCUAL EXPÓSITO, L.; RODRÍGUEZ GUTIÉRREZ, L., "The protection of the environment as a human right" in, SYMPOSIUM ON CONTEMPORARY LEGAL THOUGHT, 2., Universidad Central Martha Abreu de Las Villas, 2004. Retrieved from http://derecho.sociales.uclv.edu.cu/PONENCIAS2.htm.

Environmental Law. As stated in the Rio Declaration, in its principle number 10, "...*States should facilitate and encourage public awareness and participation by making information available to all. Effective access to judicial and administrative procedures, including damages and remedies, shall be provided*."

In the face of a so-called third-generation right, such as the right to a healthy environment, since they are rights relating to collectivities or human groups, as are also the right to development or the right to peace, ordinary legislation recognizes two possible forms of jurisdictional exercise. A first variant is that contained in Article 71 of the Environmental Law which, in its first paragraphs, includes action of a public nature, whose owners are the organs and agencies of the State, their task being the protection of the environment or legality in a general sense, as is the case of the Office of the Attorney General of the Republic. In both cases, the representation of society and the State is given, as the holder of the interests that have been injured. The other form is the one that makes it possible to take action in favor of the person whose health, physical integrity or property has been affected by environmental damage so that he or she can be considered as a directly affected subject, which denotes a lack of correspondence between the ownership of the right to a healthy environment, and a system of legitimation of similar narrowness.

In any case, the presence of the environmental issue is not a guarantee of adequate protection. This has led to the enactment of normative provisions that seek to integrate cross-cutting environmental standards, applicable to any of the resources and ecosystems that merit special regulation.

On 11 July 1997, after the constitutional reform process had taken place in 1992 and the Ministry of Science, Technology and the Environment had been created in 1994, Law 81 on the Environment was promulgated. Its titles cover the name, principles, basic concepts, objectives and institutional framework. It also develops the instruments of environmental policy and management, specific areas of environmental protection, energy resources, standards relating to sustainable agriculture, sustainable development of tourism, preservation of the cultural heritage associated with the natural environment, among others.

It was conceived in the midst of a continental process, which followed the celebration of the Summit on Environment and Development known as the Earth Summit in Rio de Janeiro in 1992. Thus, gradually, the different legal bodies on the protection of the environment appeared, as framework laws, containing the fundamental precepts on the matter, which would later be

developed in bodies of equal or lower hierarchy.[2] In this process, the Office for Latin America and the Caribbean of the United Nations Environment Programme (UNEP) was consulted, which collaborated in the training of the human resources necessary to assume this task, the holding of workshops, the compilation of bibliographic and legislative information from the countries of the region, as well as in the structuring of a platform for the teaching of Environmental Law in the region.[3]

One of the most important precepts of the Environmental Law is Article 4, which contains the principles of environmental policy and management in the country. They are developed in the law itself and in the complementary legislation. Cuban Environmental Law is obviously not reduced to the Environmental Law. Complementary legislation is necessary due to the level of detail involved in the regulation of certain natural resources or processes, which would make codification in this area extremely difficult. Complementary legislation acquires special characteristics, since several of these provisions predate the framework law itself and, therefore, do not incorporate its inspiring principles. Such is the case of Decree-Law 164 of 28 May 1996, on the Fisheries Regulations, and Decree 179 of 2 February 1993 on the Protection, Use and Conservation of Soils and their Contraventions.

On this occasion, we follow another classification criterion, based on the rank of these complementary provisions. In the first place, it is necessary to mention the Forestry Law, Law 85/1998, which has the same rank as the environmental framework law. In the institutional order, the law differentiates between the functions of the Ministry of Agriculture, with a governing character, the Ministry of Science, Technology and the Environment, of the Ministry of the Interior, which directs the Forest Ranger Corps, as well as the activity of firefighting. The classification of the forests it contains is tripartite, distinguishing between production, protection forests, and conservation forests (Article 15). It also regulates forest management, and the procedure for the approval of management plans, recognizing a series of rights and duties in relation to the forest. Finally, the law contains a chapter VIII dedicated to administrative sanctions, civil and criminal liability for damage to forest heritage.

With the rank of Decree Law, product of the legislative activity of the Council of State, we find several normative bodies, of transcendental importance. Decree-Law 200 of 22

[2]MARTÍN MATEO, R.. **Manual de Derecho Administrativo**, 22nd edition., Editorial Thomson Aranzadi; Navarra, Spain, 2003.
[3]CÁNOVAS GONZÁLEZ, D. *et al.,* **Legal Bases for Environmental Planning – Final Report of the Project Not Associated with Program (PNAP)** Proposal for the Legal Implementation of Environmental Planning in Cuba, Institute of Tropical Geography, Havana, 2014, pp. 40-41.

December 1999 on Environmental Offences, which groups together offences according to the sphere of protection, such as those related to the environmental impact assessment process, protected areas, natural disasters, noise and vibrations, atmosphere, hazardous waste, etc. It does nothing more than develop Article 67 of the Environmental Law, which establishes: "*The regime of administrative sanctions in matters of environmental protection includes natural and legal persons who incur in the contraventions established in the complementary legislation to this Law*".

As for the applicable sanctions, in Article 4 of the Decree-Law, in addition to the fine, they are found in the warning, community benefit consisting of activity related to the environment; obligation to do that results in the cessation of the infringing activity; prohibition of carrying out certain activities; confiscation of the effects used to commit the contravention; temporary suspension of the activity or of the corresponding licences and permits, as well as the definitive closure of the establishment. An obvious value of the legal text under discussion is the fact that the penalties are not reduced to the fine, and that administrative liability also seeks to restore the situation prior to the occurrence of the damage.

Decree-Law 201/1999, on the National System of Protected Areas, also has the rank of Decree-Law. It contemplates different categories of management, regulates the proposal and declaration of protected areas, and their management plans, establishing public use in protected areas, as a general rule, regardless of the zoning that is carried out within them. These regulations must be read today in the light of Decree Law 331/2015, on areas with special regulations, including those of high environmental and cultural historical significance, economic development and interest for defense and security. The National System of Protected Areas is located within the general framework of areas with any type of special regulations, whatever the purpose for which they were constituted.

At this same level, Decree Law 212/2000, on Coastal Zone Management, is located. This defines the coastal zone and its protection zone, establishes its limits according to the type of coast, regulates its use, the permitted facilities and the corresponding prohibitions, among other aspects. We will return to this topic, as it is one of the complementary regulations to the framework law that is being reviewed.

With the rank of ministerial resolution are Resolution 132/2009, of the Ministry of Science, Technology and Environment (CITMA), Regulation of the environmental impact assessment process; Resolution 103/2008 of the same agency, Regulation of State Environmental Inspection, as well as Resolution 160/2011, Regulations for the control and

protection of species of special significance for biological diversity in the country, among the most significant, among others.

2 Recent developments: the Chemical Safety System

The enactment of Decree Law 309, on Chemical Safety, of February 23, 2013, incorporated in its text a chapter related to the obligations and civil liability of operators of hazardous chemical products, at any stage of their life cycle, which includes some precepts that are clearly procedural in nature. Subsequently, the significant changes introduced by this regulatory provision will be characterized in terms of the general regime for the demand of civil liability for environmental damage, as well as in the rules that regulate the economic process, included in the Law of Civil, Administrative, Labor and Economic Procedure. Thus, although this common legal regime is not repealed, at least special rules are established that must be observed in the event of liability for damages caused in the handling of these products, and which constitute a significant step forward.

It is a text that seeks to promote the demand for civil liability through the courts, in the event that there is or is a serious danger of environmental damage in this type of activity, facilitating access to environmental justice, and the effective fulfillment of the right to a healthy environment. This provision has as declared objectives "*...protect human health and the environment from the adverse effects derived from the improper management of hazardous chemical products and wastes, based on the organization and integration of national activities in the field of Chemical Safety*", as well as "*...contribute to the fulfillment of the international commitments assumed by the Cuban State in the field of Chemical Safety*" (Article 1). Therefore, its object of regulation is the activities carried out in the country in the field of chemical safety, such as the possession of dangerous chemicals and the existence of facilities that handle such products, without forgetting scientific research and the development of technologies in this area (Article 2).

The chemical products covered by the aforementioned provision are those that have some hazardous characteristic, of those listed in the Single Annex of the provision itself, where they are classified according to their physical-chemical properties, their toxicological properties, their specific effects on human health, and on the environment. In relation to these last aspects, carcinogenic products are mentioned, which can cause or increase the frequency of cancer, mutagenic, toxic to reproduction by causing negative effects of a non-hereditary nature in the

offspring, and those that, in their contact with the environment, may represent an immediate or future danger to any of the elements of the environment.

The regulations are divided into seven chapters, the first of which groups the generalities, including the objectives, scope of application, object of regulation and definitions, useful for their understanding. The second chapter (articles 5 to 8), is dedicated to the integrated Chemical Safety System "*...by the competent authorities, other agencies of the Central State Administration, the local organs of People's Power, as appropriate, the operators and institutions that are involved in the handling of hazardous chemicals throughout their life cycle...*", a system directed by the Ministry of Science, Technology and the Environment, although a series of responsibilities are imposed on all members of the System.

A transcendental aspect is the one dealt with in chapter three, which regulates the mechanisms that make up the Chemical Safety System, organized in a similar way to what Law 81, of July 11, 1997, on the Environment, calls environmental management instruments (articles 18 and following of that legal body). Among the mechanisms, information and public participation stand out for their novelty and the extension they occupy. Next, the regulations related to major danger installations are incorporated, to which a specific legal regime is imposed; with the management of hazardous chemical wastes, and the prevention and response to chemical emergencies. It ends with a chapter VII, referring to the obligations and civil liability of operators, transcendental in its procedural aspects, especially due to the modifications it introduces in the general regime for the requirement of civil liability for environmental damage, as noted above.

Among these modifications, it is worth mentioning the introduction of a purely objective imputation criterion in the case of environmental damage. According to Article 42, if human health, the environment or property is damaged in the handling of chemical products and wastes, the agent causing the damage is obliged "*...to cease his conduct and to repair the damages and compensate for the damages he causes, regardless of the culpability or negligence with which he has* acted". Strict liability is therefore clearly established, since it can be demanded of the subjects, regardless of the degree of culpability with which they have acted.

Although the new regulations do not include, as does the Environmental Law, specific grounds for exemption from liability, they do contain a rule of reference, not to the general regime of liability for unlawful acts of the Civil Code, but to the specific rules relating to activities that generate risk. Thus, Article 45 of the new legislation provides that, if there is no contractual relationship between the parties at the time the damage occurred, and in matters not

provided for in that body of law, "*...the rules corresponding to activities that generate risk, included in the Civil Code*."

A broader conception of standing is reflected in Article 44 of Decree Law 309 itself. This provision empowers the Office of the Attorney General of the Republic and the rest of the competent bodies to claim civil liability before the competent courts (paragraphs a and b). It can already be noted here that not only the environmental authority is empowered, but also the rest of the agencies to which the legal body itself recognizes some competence in matters of chemical safety, among which are the Ministries of Agriculture, Foreign Trade and Foreign Investment, Domestic Trade, Public Health, Interior, Transport and the General Customs of the Republic (Article 5.2). The next step is taken by section c), which, in compliance with the principle of citizen participation, recognizes the possibility that local organs of People's Power at the provincial and municipal levels may exercise the corresponding action, when the environmental damage affects the community and not specifically determined individuals. The qualitative leap in terms of legitimacy is made in the last of the paragraphs, which allows any person to demand the cessation of the harmful action or omission, as well as actions aimed at the rehabilitation of the environment, even if they have not suffered any damage or prejudice, provided that they are aware of the action that has provoked them. causes or may even cause damage to human health or the environment (subsection e). The broad system of legitimation that is enshrined is nothing more than the crystallization of access to environmental justice, one of the dimensions of the right to a healthy environment, recognized in favor of every person as a fundamental right.

Article 47 of Decree Law 309 of 23 February 2013 provides that in any proceeding where civil liability is required for damage to the environment or human health, "*...derived from the handling of hazardous chemical products or wastes...*", the burden of proof lies with the operator of such products or wastes. The legislator has preferred to establish here a special rule for the burden of proof in the event that damage occurs as a result of the handling of hazardous chemicals or wastes. It is not strictly speaking a question of establishing a rule different from the general one contemplated in Article 244 of the Civil Procedure Act, but it is specified for the specific case which subject will be responsible for proving such a fact. In this case, it is the operator of the chemical product who is responsible for proving the facts that exempt him from responsibility, otherwise the harmful conduct will be imputed to him.

On the other hand, especially in environmental damage, it is especially difficult to determine the specific individual or organization that has caused it with its conduct. For

example, several entities generating the same waste may operate in the same place, without it being possible to identify whether they have all contributed to the damage, and to what extent each one has done so. That is the raison d'être of Article 48, which provides that "...*in the event of a plurality of operators, all are jointly and severally liable for the damages caused, unless the corresponding individual participation can be established*". The legislator makes an option in favour of joint and several obligations, and this in accordance with the principle according to which solidarity is not presumed, but must be agreed or established directly by law. However, we consider that the provision, especially in its final wording, gives rise to the existence of collective responsibility in Cuba. This type of liability, which appears when the taxpayer is not individualized among a group of possible responsible parties, without being able to demonstrate the causal relationship with one of the members. Thus, in the event of uncertainty about the perpetrator of the damage, among several subjects with the ability to cause it, it must be imputed to each and every one of the members of the group, since they all contributed to its cause.[4]

3 A new challenge: another Environmental Law

Twenty years after the entry into force of the Environmental Law, Law 81/1997, it is necessary in Cuba to adopt a new Environmental Law that is tempered to the new projections and policies, in line with the process that has been called the updating of the Cuban economic model. On the one hand, this new legislation must preserve the theoretical and practical achievements obtained from its application, but at the same time correct the omissions of its predecessor. Law 81 of 1997 suffers from insufficiencies in terms of the contents it regulates, either because it does not adequately implement institutions that it recognizes, or because it did not achieve the development of regulatory provisions that would allow the effectiveness of its precepts or simply because it omitted some issues that it was essential to regulate and not leave to the discretion of the administration.[5]

The Environmental Law, while acknowledging its nature as a framework and general law, as mentioned above, is excessively declarative, often a mere enunciator of principles and, on the contrary, it is required that the new provision have a more prescriptive character, that it can

[4]CÁNOVAS GONZÁLEZ, D., "New rules on civil liability for damages arising from the handling of chemical products and wastes". **Revista de Derecho Ambiental**, number 42, May-June 2015, AbeledoPerrot, Buenos Aires.
[5]TOLEDO BARRIOS, Y., "New Environmental Law in Cuba: Urgent Need". **Environmental Law Journal**, number 51, 2017, AbeledoPerrot, Buenos Aires.

regulate from within at least the most important contents. Such is the case of the regulations relating to the National Environmental Information System, conceived under the heading of "Instruments of Environmental Policy and Management". It only establishes the objectives of the information system, and makes the Ministry of Science, Technology and the Environment (CITMA) responsible for the direction and control of the actions of said system. Article 37 of this same legal body establishes that CITMA will be in charge of designing the mechanisms and procedures for public access to information and disseminating it periodically through different channels. So far, these mechanisms have not appeared in a subsequent regulation.

The Law, in accordance with the institutional framework that has existed to date, preserves the competence of a series of agencies, other than the environmental authority, in the management of natural resources. Such is the case, for example, of soil and forest resources, which are the responsibility of the Ministry of Agriculture, or of terrestrial waters, currently under the control of the National Institute of Hydraulic Resources. This scheme has shown various weaknesses and deficiencies, so the new Law must try to overcome this visible contradiction, since these bodies have at the same time the role of managing these resources and their control, so it is to be expected that various institutional changes will occur, which favor integration around an environmental authority, the comprehensive control of the management of natural resources.

The Environmental Law in force, in accordance with the general legal framework existing at the time of its enactment, presents a centralized management and control scheme around the agencies of the Central State Administration and attributes a very narrow and subsidiary framework of competences to local bodies. According to Article 15, it is the responsibility of the Local Organs of People's Power, in their respective instances, to direct, coordinate and control, as far as they are concerned and in accordance with general legislation, the actions regarding the evaluation of the environmental priorities of the territory and the pertinent plans for their management, territorial planning, land use, afforestation, reforestation, roads, construction, public services and sanitation, protection of water supply sources, protection of the environment in human settlements, in relation to the effects derived from communal services, vehicle traffic and local transport, creation and maintenance of green areas, identification of the protected areas of the territory, participation in the proposal for their approval and support for the management of their administration, prevention, control and rehabilitation with respect to the occurrence of natural disasters or other types of catastrophes,

including the provision of the necessary resources for these purposes, and the preservation of the cultural heritage associated with the natural environment, among others.

However, some of these competencies have only been held nominally, and have not been realized in practice. Participation by local authorities, for example, in the establishment of regulations for the protection of the local environment, or of standards more demanding than those of national law, has been non-existent, despite being expressly recognized in article 16, according to which "...*may propose to the competent bodies and agencies the establishment in their respective territories, in view of their particular situation, of environmental standards and parameters more rigorous or specific than those established at the national level*". The new provision must produce substantial changes in this regard and for this purpose it must take advantage of the process of reorganization to which the local organs of People's Power are being subjected in the new provinces of Artemisa and Mayabeque, in which the functions of environmental control and regulation have passed from the Delegations of the Ministry of Science. Technology and Environment towards directions subordinate to the local government.

Among the debts of the current Environmental Law is the development of the rights to information on environmental matters and citizen participation, only enunciated in its article 4. There are successful experiences in this regard, but also processes in which such participation has not been as expected, precisely because of the silence of the Cuban legal system in this regard. Likewise, Law 81/1997 is silent on issues related to climate change, which are so topical today. But these elements will be addressed in the following pages.

4 The Foreseeable Future: Coastal and Climate Change Provisions

Since these are regulatory projects that have not yet been promulgated, we will only make a brief reference to them, highlighting their fundamental lines, as well as the novelties that they would incorporate into the Cuban environmental legal framework, once in force. In the first place, as has become common in recent years, work is being done on a preliminary draft of the Coastal Decree-Law, and a Decree that constitutes its regulations, without it being necessary to wait for a later time for its complementary rules to be issued. The approval of these legal texts would lead to the repeal of the current Decree Law 212/2000, on the Management of the Coastal Zone.

These provisions seek to apply Integrated Coastal Zone Management, understood as an administration and control tool, whose purpose is to organize activities and prioritize the socio-

economic interests of institutions, social organizations and the community, in order to direct the sustainable development of the territories, bearing in mind that all the aforementioned factors are located within a region. a sector, or a locality in the coastal area of the archipelago.

Among the principles that should underpin this process are the sustainable economic and social development of the territory; the use of an ecosystemic, comprehensive and multisectoral approach, which takes into account the relationship of the coastal zone with the tributary watersheds and the establishment of its environmental contributions to coastal zones, for the care of ecosystems; the priority of prevention actions over remedial actions; the guarantee that the basic information on the environment held by state bodies and agencies is public and can be accessed by any interested person in accordance with the legally established; the organization and development of environmental education actions at all levels, as well as environmental coordination and management in a comprehensive and cross-sectoral manner. In the same way, it will seek to ensure public participation, through consultations, or other forms of citizen participation, and to establish the ways in which compliance with the provisions of the administrative or judicial channels can be demanded, as appropriate.

The draft Decree Law introduces special rules for the protection of components of the coastal zone, such as sandy beaches, mangroves, coral reefs, among others. Similarly, like the current Decree Law 212, it is expected to include provisions regarding licenses and authorizations, prohibitions, as well as special rules for the keys and the peninsulas. However, among the most innovative aspects to be pointed out are the provisions on access to information and participation that have been introduced in the regulatory draft, and which would lay the foundations for extending them to all environmental matters by virtue of the new Environmental Law that will be enacted in due course.

The draft bill is based on the recognition that every person, natural or legal, has the right to receive basic environmental information on the coastal zone, in an affordable, effective and timely manner, adding that the right to information includes the right of every person to be advised as to the powers recognized by the Environmental Law. the Decree-Law on Costs and these Regulations, and their exercise, to receive the information within the established deadlines, to select the format in which the information is requested, as well as to know the costs thereof, when required to cover them.

Environmental information that is in the public domain is defined, which must include information on the elements that make up the coastal zone, environmental quality, the environmental and health impact of discharges and other factors that influence said area,

applications for environmental licenses, environmental impact studies, environmental licenses, as well as information on legislation, policies, plans and programmes relating to it and reports on their implementation. Obviously, this is not a power that can be exercised absolutely, so it is foreseen that access to environmental information on the coastal zone is limited to that which compromises international relations, the interests of defence and national security, relating to a judicial or administrative procedure in progress; that affects intellectual property rights, or the confidentiality of commercial data, as well as the protection of the environment itself. The refusal of information will always be made for these reasons and must be made in writing, indicating the reasons and within the legally established period. It then proposes the design of the mechanisms by which the authorities make the necessary information available to the public on a regular basis, as well as the procedure for requesting the information individually.

A section on public participation is also included in the preliminary draft. In order for the population to participate in the preparation or modification of plans, programmes and provisions of a general nature relating to the coastal zone, it is provided that the competent authority shall inform the public, by appropriate means, of the plan, programme or provision of a general nature, or of its revision, in an understandable manner, including the manner in which it may give effect to its right to participation; A reasonable period of time must also be granted for the formulation of observations and proposals, the proposals made in agreement being weighed, and in any case adopting a decision of a well-founded nature. Likewise, the public must be informed of the approval or not of the plan, program or provision of a general nature, or of its revision, by the same means in which the proposal was communicated. This, of course, with the usual exceptions of the plans, programs and general provisions on the coastal zone, linked to defense and national security.

It also seeks recognition, as mechanisms of public participation, of the hearings and assemblies established for public consultations; awareness-raising, training and communication workshops; communication and awareness campaigns through the mass media; and other information and public participation mechanisms recognized in national legislation. These mechanisms should also be applied in the adoption of decisions that admit or authorize the start of an activity in the coastal zone or its protection zone, including measures to adapt to climate change; and at any time that the competent authorities consider it or the population demands it.

Finally, a few words on the proposed provision on climate change. It aims to regulate the general bases for adaptation and mitigation actions, although the need for multiple specific provisions to deal with the issue in detail is not unknown, such as in the rules relating to

terrestrial waters or the coastal zone, and others that are required to be issued as the planned mechanisms are implemented. In this way, the suggested project focuses on developing from the normative point of view the Cuban State Plan to confront climate change and the previous Directives, approved by the Council of Ministers, taking into account the commitments assumed by the country when signing and ratifying the Paris Agreement.

This regulation is proposed to be carried out under the principles that confronting climate change is of public interest and social utility, that, in the planning of mitigation actions, the common and differentiated responsibilities of the States will be taken into account, according to the level of development achieved. It will be implemented with the application of the ecosystem approach, promoting energy and environmental culture, so as to favor modifications in people's behavior and consumption patterns. Likewise, the active participation of all actors in society in adaptation to climate change will be promoted, and the increase of their perception and level of knowledge on the subject, emphasizing the local level.

It is planned to include mitigation actions, such as those aimed at replacing the use and consumption of fossil fuels with renewable energy sources, the promotion of technologies whose emissions of greenhouse gases and compounds are low in carbon throughout their life cycle, the use of the energy potential contained in solid waste, the promotion of reforestation and sustainable use of forests and the fight against forest fires, as well as incentives for the gradual reduction of sugarcane burning and slash-and-burn practices. Greater use of gases associated with the exploitation of hydrocarbon deposits and the capture and conservation of carbon in the National System of Protected Areas (SNAP) will be promoted.

Adaptation actions should include the determination of land uses based on their natural vocation, the establishment or relocation of population settlements, especially coastal settlements; the management, protection, conservation and rehabilitation of ecosystems, forest resources and soils; the conservation, maintenance and rehabilitation of beaches, the carrying out of Hazard, Vulnerability and Risk studies in the disaster reduction cycle, the introduction in territorial and urban planning plans and schemes of the criteria for adaptation to climate change, as well as the operation of surveillance and early warning systems and programs to combat vector-borne diseases.

The draft regulation on climate change also includes a chapter on the institutional framework, in which competencies are distributed among different agencies such as the Ministry of Science, Technology and Environment, the Institute of Physical Planning, the

National Institute of Hydraulic Resources, the Ministry of Public Health, the Ministry of Agriculture, among others.

As a novelty in this case, the inclusion of a chapter referring to ordering and planning is foreseen, in which actions are established for the approval of environmental management models and land use and urban planning plans, which guarantee the reduction of vulnerability to hazards with an impact on the quality of life of the population. measures are taken to reduce coastal vulnerability for port infrastructure works, and the most appropriate solutions are determined in coastal settlements in the face of the expected effects. It also seeks to increase the effectiveness of monitoring and early warning systems for events related to climate change in their link with disaster risk reduction management, and the creation of a Climate Change Information System, as an integral part of the National Environmental Information System.

The proposed chapter on the use of economic instruments in the fight against climate change deserves special mention. These are tax, financial or market mechanisms, through which people assume the benefits and costs related to the mitigation and adaptation of climate change, encouraging them to carry out actions that favor the fulfillment of the objectives established in the regulation.

It is provided that the National Banking System incorporates a line of credit, which grants advantageous conditions in terms and interest, for the financing of programs, scientific, technological and innovation research projects aimed at the adaptation and mitigation of climate change, especially for the development of technologies with low carbon emissions. At the same time, with a view to reducing greenhouse gas emissions by avoiding deforestation and forest degradation, the creation of a Payment for Environmental Services System is provided, based on the State budget, and other sources of financing.

5 The exercise of the regulatory power of the Environmental Administration

The Cuban Environmental Administration is not exempt from the "bad act" that today characterizes the Administrations in the different spheres in which they operate, this is an event spread globally. Of course, the abnormal functioning of administrative authorities in other areas in which they tend to develop does not give rise to the same significance as the consequences produced by the incorrect action of the environmental authority given the often irreparable and irreversible nature of environmental damage.

The State, as the entity responsible for safeguarding public interests, has the Public Administrations, which it endows with certain functions and powers that are imposed on it by constitutional or legal mandate, in order to achieve the satisfaction of general interests. The Administration in the exercise of its functions can act in a correct way, but unfortunately there is the possibility that it does not exercise its prerogatives, either because it exceeds its limits in its compliance or because it omits an established behavior, refraining from acting. This last assumption is the one that refers to administrative inactivity, as a variant within the various hypotheses of abnormal functioning of the Administration.[6]

There is the possibility that the Administration is obliged by law to exercise the regulatory power with which it is vested and does not do so, in breach of a legal duty imposed on it, this is where we are faced with a case of regulatory inactivity of the Administration. It is very common to find in laws precepts that enable the Administration to expand the regulation through a regulation on this matter, but it is also common for laws to only outline a certain institution in a succinct manner and place all trust in the Administration, making it responsible for developing that institution through a regulation.[7] Unfortunately, as a result of the regulatory inactivity of the Public Administration, the legal regime of not a few institutions of transcendental importance in the legal and social field is left unprotected, without being regulated in a legal norm, which brings with it not only the harmfulness of the administered but also a malfunction of the public entity and with it a great level of institutional distrust.

The Ministry of Science, Technology and Environment is the highest administrative authority in the field in Cuba, an Administration that has been the protagonist of the greatest achievements that we have achieved in environmental issues in the country.[8] This is a merit of inestimable recognition, but there are barriers that have to be overcome because the legal protection of the environment entails duties that cannot be postponed, in order to avoid environmental damage, with consequences even for future generations. We are referring to the inactivity in which the environmental authority has incurred, which is a barrier but that has to be a goal that it intends to achieve as soon as possible, since we are referring to urgent issues. With this preamble we want to allude to three institutions that in Cuban Environmental Law are marked by the regulatory inactivity of the Administration, which does not mean that they are

[6]GÓMEZ PUENTE, M. **La inactividad de la Administración**, 3rd edition, Editorial Aranzadi, Navarra, Spain, 2002.
[7]GARCÍA DE ENTERRÍA, E. and RAMÓN FERNÁNDEZ, T. **Curso de Derecho Administrativo**, Tomo I, 14ª edición, Editorial Thomson Civitas, Madrid, 2008.
[8]REY SANTOS, O. **Fundamentals of Environmental Law**, ONBC Editions National Organization of Collective Law Firms, Havana, 2012.

the only ones. They are Strategic Environmental Assessment, in the articulation of Environmental and Territorial Planning and Mandatory Environmental Insurance.

Article 18 of Law No. 81 "Environmental Law" of 1997 "Instruments of Environmental Policy and Management" establishes the environmental management instruments, including the Environmental Impact Assessment, but the Strategic Environmental Assessment (SEA) did not have the same fate, which was not regulated in that article as another instrument. However, it seems that the debt is settled with the conceptualization given in Article 8 to the Environmental Impact Assessment (EIA), including in it not only the evaluation of the environmental impacts that are generated as a result of the execution of works projects or activities, but also includes the evaluation of plans and programs. that is, it does not distinguish the EIA from the SEA, encompassing them in the same concept.

From the letter of the law it could be inferred that it is only a matter of legislative technique, however, even when the relationship between both types of environmental assessments is established, its development does not result as such in Cuban legal practice, but is limited to applying only to specific works projects and this is corroborated by the fact that the list of activities that are established as mandatory in article 28, only refer to works, not to policies, or plans, or programs. Nor is Resolution 132, of August 11, 2009, Regulation of the Environmental Impact Assessment Process, regulated with regard to its application to plans or policies.[9]

Another case that is worth referring to, if we refer to regulatory inactivity, is that relating to compulsory environmental insurance. Environmental insurance is a topic that is little discussed from a theoretical, practical and regulatory point of view.

Article 18 of Law 81 includes liability systems, including civil liability, within the instruments of environmental management. In its Chapter XII on civil liability for environmental damage, in Article 74[10], it regulates what concerns the compulsory civil liability insurance to cover damage to the environment, caused accidentally. This provision empowers the Council of Ministers to issue the pertinent regulations to establish compulsory environmental insurance, at the proposal of the Ministry of Finance and Prices and CITMA. To date, and Law 81 dates from 1997, we do not have any regulation in this area, environmental

[9]COLLECTIVE OF AUTHORS. Strategic Environmental Assessment Process for the inclusion of the environmental dimension in development policies, plans and programs in the Republic of Cuba, Institute of Tropical Geography, Havana, 2012.

[10] "The Council of Ministers, at the proposal of the Ministry of Finance and Prices and the Ministry of Science, Technology and the Environment, shall issue the relevant regulations for the establishment of compulsory civil liability insurance to cover damage to the environment caused accidentally."

insurance, even when there is a legal mandate that obliges the Administration to execute the provisions, has not been subject to regulatory treatment.

Finally, Environmental Planning is another of the instruments of environmental management established as such by Law 81. The Law does not define environmental planning, but in Article 21 it states as its objectives "*...to ensure the sustainable development of the territory, on the basis of comprehensively considering environmental aspects and their link with economic, demographic and social factors, in order to achieve the maximum possible harmony in the interrelations of society with nature*...". The letter of the regulation is perceived as the first task of environmental planning and that is to establish a close link with territorial planning in order to ensure that the environmental approach is taken into account in territorial planning.

Article 22 of the aforementioned legal body establishes "In order to achieve sustainable land use, environmental planning interacts with land use, providing it with guidelines, regulations and standards". From this precept it can be deduced the existence of a duality of instruments in territorial planning: territorial and environmental planning. Added to this is the fact that both instruments are regulated separately by different legal bodies and that the legal mandate regarding their necessary interaction has not been fulfilled.

Once again we are faced with a case in which the environmental administration is clearly unable to act. We are referring to the lack of a norm that regulates and articulates both ordinances or that bases them on a single one in order to achieve an efficient management of the territory, which incorporates the environmental dimension. As can be deduced from the aforementioned precept, the articulation of environmental planning is binding for territorial planning, which in Cuban practice is often unknown.

These are just a few brushstrokes of the current state of the Cuban environmental legal macro, and the foreseeable developments that it will have, hopefully in the not so distant future. The urgency of some of these provisions, such as those relating to the coastal zone or climate change, suggests so. Not only does the state of the environment depend on it, but also the very possibilities of sustainable development for the country.

6 Conclusion

These are just a few brushstrokes of the current state of the Cuban environmental legal framework, and the foreseeable developments that it will have, hopefully in the not so distant future. The urgency of some of these provisions, such as those relating to the coastal zone or

climate change, suggests so. Not only does the state of the environment depend on it, but also the very possibilities of sustainable development for the country.

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Received on: 11.10.2022
Accepted on: 12.22.2022