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# PUBLIC CONTROL FROM THE ENVIRONMENTAL DIMENSION

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## ABSTRACT

The advances in the environmental policy and the environmental step in the business organizations has allowed articulating strategies of conservation and use of the natural resources of the environment like paradigm and. These advances have been inclusive to the normative development of the constitutional text to the civil matters, white-collar worker, you would pay tribute for his protection, where environmental rights and civic participation to attain the sustainable development become established. You execute an analysis of the environmental auditing between the instruments of market and commerce, linked to the public control. For such reasons, the objective of the article is to examine the elements that conform the juridical institution of the environmental auditing, it breaks of the reading of the doctrine and the standard, as from the juridical dogmatics with a logic analysis of how it happened, because it happened and in order that it happened that, of the juridical legal bodies they establish it, his abuttals with another knowledge and sciences.

**Keywords:** Activity of control; Legality; Responsibility; Competition.

## *O CONTROLE PÚBLICO DESDE A DIMENSÃO AMBIENTAL*

### **RESUMO**

*Os avanços na política ambiental e gestão ambiental nas organizações empresariais permitiram a articulação de estratégias de conservação e uso dos recursos naturais e do meio ambiente como paradigma. Esses avanços abrangeram o desenvolvimento normativo desde o texto constitucional até as questões civis, administrativas e tributárias para sua proteção, onde os direitos ambientais e a participação cidadã são estabelecidos para alcançar o desenvolvimento sustentável. Uma análise da auditoria ambiental é executada entre instrumentos de mercado e de comércio, vinculados ao controle público. Por estas razões, o objetivo do artigo é analisar os elementos que compõem a instituição jurídica da auditoria ambiental, a partir da leitura da doutrina e da norma, da dogmática jurídica com uma análise lógica de como surgiu, porque surgiu e para que surgiu, dos órgãos jurídicos legais que o estabelecem, suas fronteiras com outros saberes e ciência.*

**Palavras-chave:** *atividade de controle; Legalidade; Responsabilidade; Competencia.*

## INTRODUCTION

The United Nations General Assembly convened the Conference on the Human Environment in 1972, known as the Stockholm Declaration, which was a milestone for environmental development. It was the founding start of Environmental Law, as the first document in an international forum, marked as the marriage between Environmental Law and International Law. Due to the degree of consensus generated and the depth of its concepts, this Declaration is recognized as a “Magna Carta” of International Environmental Law. Subsequently, during the Rio conferences started in 1992, documents were adopted, such as Agenda 21, the Rio Declaration, the Convention on Climate Change and the Convention on Biological Diversity, which extends this protection.

Cooperative market instruments, including environmental auditing as a control activity on sustainability, have become the focus of development thinking since the Bruthland Report. The 2002 Johannesburg Declaration reaffirmed this commitment. The environmental control transcended the traditional control carried out in the company and in the industry, in its beginning only to evaluate accounting and environmental management systems, to evaluate the public policies aimed at the protection of the environment through auditing of coordinated management to the water resources, biodiversity and monitoring of climate change, Van LEEUWEN (2013), ELSTEIN (2012), LUSTOSA DA COSTA (2014), ANTÚNEZ SÁNCHEZ (2015).

The objective of this control activity is to prevent, perfect the technology and give a more competitive character with mercantile influence, when granting the environmental certification, is what is lacking in the Cuban legal norm. We did not find in Cuban or foreign literature evidence that includes the integral conceptualization of the audit as a legal institution that characterizes it as a legal institution in structuring the elements from the theoretical, legislative and practical point of view.

Exacerbated by the lack of a special legal rule for its implementation, understanding, assimilation, and knowledge of its role in the business system. The legal essay characterizes the juridical institution of the environmental audit from the administrative doctrine by its adequate

regulation by means of the systematization of its elements, in order to improve the administrative environmental legal order for its practice in the private and state sector, that allows the Public Administration, with its employees, to help achieve sustainable development as a constitutional budget of the environmental dimension. The research methods used were: historical, synthetic analysis and comparative law and legal exegetical. It is not supported by any national or foreign research project.

## **1. THE ENVIRONMENTAL AUDIT AS A LEGAL INSTITUTION. THE ELEMENTS THAT CONFORM THEM FROM PUBLIC LAW**

The work of PACCIOLI published in 1494, TUA PEREDA (2012, pp. 1-2), in the treatise on the known method of “double entry”, shows that since 254 and already inspected and proved the accounts, a factor that allowed the parallel evolution of the audit activity as a result of the practice of accounting as a science and, at the same time, as a work tool of specialists dedicated to accounting with the industrial development by the subjects involved in commerce activities. TUA PEREDA (2008, p. 4-19), FRONTI DE GARCÍA (2007, p. 229).

Other data and documents confirm that, at the end of the thirteenth century and the beginning of the fourteenth century, the operations of public officials responsible for the State Funds were already audited. In 1799, there were certified companies owned by public accountants in countries such as Scotland, the United States of America and England, and were the first countries in which Public Accounting linked to the practice of State Audit gained relevance. GÓMEZ GARCÍA (2011, p. 27-29). Studies conducted by the Science of Accounting express that Audit practice was born in Britain during the first half of the nineteenth century, extended to other countries of the Anglo-Saxon business culture, as the goal of making accounting information reliable, give transparency to the stock market in the face of economic development and the expansion of economic relations, by demanding accurate and real information from its accounts, in order to give confidence and competitiveness, linked to the activity of Commerce<sup>1</sup>.

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<sup>1</sup> Ibero-American Trade Codes. Where the obligation of commercial accounting is established, as a compulsory requirement for the behavior of small business owners and merchants in commercial traffic.

In the already finished twentieth century, the legal regulations have been included as a will of the Public Administration, strengthening the triad Accounting, Auditing and Law, by charging new dimensions as administrative regulations to protect assets from potential transgressions, typifying along with the protection of property other legal infractions and environmental infractions, located under the generic term of environmental crimes reflected in the direct or indirect accounting. This legal institution, recognized as a management tool in Environmental Law, is framed in special legal regulations for its uniformity and has a causal nexus: the requirement of environmental responsibility and the quantification of environmental damages generated, the implementation of corporate social responsibility related to economics and environmental accounting. Elements that have allowed this field to evolve over time in relation to the country applying it and industrial technological development. MENDEZ ORTÍZ (2009), NOGUEIRA LÓPEZ (2010).

Its connection is related to the origins of its *jus* environmentalism as part of the International Public Agenda; the Supreme Audit Institutions point to the year 1969 as their beginning, after which the environmental summits discussed the planet's environmental problems and mitigation measures, contributing to the development of this legal institution of the Public Law doctrine. (Environment Summit, 1995). The Stockholm Declaration of 1972 pointed out that man has

[...] the fundamental right to freedom and equality, in a satisfactory living environment, that provides him the quality of life to live with dignity and well-being. It also has a fundamental duty to protect and improve the environment for present and future generations.

Consistent with the concern for environmental protection, which has reached significance and magnitude at the highest level, it is demonstrated by the Summits held and the treaty signed in this area, such as the 1971 Ramsar Convention, ISCED 1973, Vienna Convention for the Protection of the Ozone Layer in 1987, the 1992 United Nations Framework Convention on Climate Change and the 1992 Convention on Biological Diversity, among others.

The difficulty is with the issue of mitigation of greenhouse gases, it is not a consensus among states to adopt agreements in this regard, it is the lack of political will to comply with the agreed and adopt more effective. Today, there are agreements that address mitigation, such as the United Nations Framework Convention on Climate Change and the Protocol<sup>2</sup> of 1997, as well as the recently signed Paris Agreement of 2014.

The roots of the environmental crisis lie in the adoption of profit-based development models at any cost, this recognition is implicit in the need for sustainable development and its definition is available since 1984 in the report “Our Common Future”<sup>3</sup>. The contributions are not limited to this period, after Rio de Janeiro, were the Johannesburg Summit of 2002 and the Rio+20 Summit of 2012, FERNÁNDEZ RUBIO-LEGRÁ (2008), PAREJO ALFONSO (2015). It addressed issues related to climate change and its mitigation by leading polluter states.

The legal texts reveal that the environmental audit originated in the United States of America in the late 70’s of the twentieth century, which appeared to evaluate the company and serve as a steering tool for environmental management in the face of the increase and complexity of the state and federal legal regulations trying to solve a host of environmental problems that have occurred in the nation. LEE (1998, p. 7-29), HERRERIAS ARISTI (2009 p. 1-9).

The right to the environment and sustainable development as a paradigm of Public Administration in the 21st century, as they are rights of a special legal nature and, as a new right, it responds to new challenges. In 1973, the creation of the United Nations Environment Programme (UNEP), the organization responsible for disseminating environmental issues for the entire international community and for encouraging society’s participation in environmental protection and care, responding to its main international role. A challenge is the responsibility of the different actors involved in this protection of the legal environment, then ratified at the Rio Summit in 1992 and in Johannesburg in 2002, where public control of the environment is a relevant issue and where the idea originates for each country to be through the constitutional text, as was mentioned by FIX ZAMUDIO (2010), CARMONA LARA (2005).

2 Kyoto Protocol, UN, 1997; Convention on Climate Change, Paris, 2015.

3 Rio + 20 Declaration, Brazil, 2012.

In response to the global pollution problems generated by the Industrial Revolution and the technological advances it brought with it in the 1980s, the practice of environmental auditing was extended to the European Union as a consequence of the interests of US subsidiaries based in the continent after a decade. In the Netherlands, the year 1984 stands out and the Netherlands as the first country to adhere to the practice of this type of control. Their legal requirements were set out in their internal rights, according to Murad Robles (2009, p. 263-303), Navarrete Ligarte (2007, p. 20-29), as a result of the commitment supported by the BRUNDTLAND Commission in 1987, where the proposal “sustainable development that meets the needs of the current generations without compromising the possibilities of future generations to meet theirs.” HARLEM BURLAND (1984).

Its *path* falls after being recognized by the Supreme Audit Institutions in 1995 as an environmental management tool, although other accounting studies consider its genesis connected to the Accounting and Social Audit to address the problems caused to the environment as pollution air, discharge, light, noise; biodiversity protection, climate change, water resources, rising radiation levels, acid rain, increased concentrations of ozone generated by industry, urban air quality, land use and management, desertification, trade and the environment. (Supreme Audit Institutions, 2010).

MARTIN-RETORTILLO BAQUER (2006), (2006), pointed out that the regulation in the constitutional text, based on the political, social and economic foundations of States' responsibility for environmental protection, continued to mean that in the Universal Declaration of Human Rights of 1949 nothing is said about the environment, were other problems and other concerns. The environment would be slow to arrive. We know that there are fundamental rights, such as the environment, that imply a high cost. The society that commits itself to the environment assumes that it must dedicate large sums and monetary items that are very important for its proper and correct functioning, which means that states think about it, not that they have all the same availabilities or the same will.

The 1990s add new technological elements linked to international trade, making environmental management much more complex, complete

and dynamic by the economic actors who execute it; Thus the things, the techniques, the methods and the objectives of the audit as a control activity in a symmetrical way, evolved to be able to meet and give answers to the new demands of the twentieth century clients, until today, in a market of goods and services. MORA RUIZ (2007-2012). We analyze data about this control activity by the Higher Audit Institution, defined as

the technical management tool to perform a systematic, documented, periodic and objective assessment of the effectiveness of the audited organization; management teams and environment to protect the environment with better control of environmental practices and evaluation. Comply with the company's environmental policies and legal regulations, based on the institutionalization of environmental protection. ANTÚNEZ SÁNCHEZ (2010, p. 18).

The environmental technical standards ISO 14 001 and 19 011 define: "Systematic, autonomous and documented process to obtain evidence of the audit, it is objectively raised to determine the extent to which the audit criteria are"<sup>4</sup> The International Chamber of Commerce recognizes it as

a management tool that includes a systematic, documented, periodic and objective assessment of the functioning of the environmental organization. Provides the implementation of management, as well as the control equipment necessary to facilitate the control of the management of environmental practices and declare compliance with the Company's policy in accordance with environmental standards. It's the methodical approach that involves the analysis and verification of the environmental practices and procedures of a company or part of it. This term of the audit is synonymous with reviewing and verifying various aspects of a company<sup>5</sup>.

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4 ISO 14001 standards. *Environmental Audit Procedure*. SGMA: Specifications and usage guides. *ISO 19011*. Fundamentals of Environmental Auditing. Available at: <http://www.iso.org> ISO Standard 19011. *Guidelines for the audit of quality management systems* and NC ISO 14031: 2005. *Environmental management. Evaluation of environmental performance. Standard ISO 26000: 2010. Guide on social responsibility*.

5 The company ceases to be considered as the concrete expression of capitalism and appears more and more as a strategic unit in a competitive international market and an agent of use of new technologies. (Belmonte Martin, 2009, p. 57-78).

Environmental management is considered a control activity, as an instrument of environmental management of a public legal nature, its field of activity is the company, industry, and environment (legal entities and individuals), its execution is carried out by civil servants required of title professional and legal title, registered in the Registry of Auditors and Controllors<sup>6</sup>; its function is to evaluate and certify the environmental goals in relation to the environmental policy elaborated by the business organization, is a technique to prove the legality of a regulated power of the Public Administration. It is a process in itself, that in its practice procedures and methodologies are used, evaluates the accounting expense of execution of the patrimony destined to the environmental protection, can be executed internally or externally, evaluates the efficiency of the environmental management system in relation to the introduction of clean technologies into the business organization applies technical, administrative, labor, social, corporate, civil and criminal standards to the audited subjects. It has direct and binding effects to the auditee and may be costly or free. Its final certification results in an added value that has a positive effect on the trade and market for the legal or physical entity being audited.

From the hispano-american legal doctrine consulted on Environmental Administrative Law, we can see the consensus of the scholars like MARTÍN MATEO (1993), BUSTAMANTE ALSINA (1995), JORDANO FRAGA (1995), NOGUEIRA LÓPEZ (1997, 1998, 2010), QUINTANA LÓPEZ (2000), BETANCOR RODRÍGUEZ (2001), RODRÍGUEZ-CAMPOS GONZÁLEZ (2003), CAFERRATA (2003), CARMONA LARA (2005), MORA RUIZ (2007), DE GATTA SÁNCHEZ (2008), BELMONTE MARTIN (2009), HERRERAS ARISTI (2009), DE BESSA ANTUNES (2010), DI TRINDADE AMADO (2011), GÓMEZ GARCÍA (2011), RAMADORI (2013), LUSTOSA DA COSTA (2014), who highlight in their studies carried out from 1993-2014, which coincidentally agree that the audit environmental management as an activity of control, an instrument of environmental management, comprise a systemic evaluation; documented, periodic and objective assessment of the behavior of a business organization, the Environmental Management System and procedures designed to protect the environment. It evaluates

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<sup>6</sup> Refers to Public Records created by the Public Administration in each nation, in particular as regards the obligation to register the responsible company.

compliance with the environmental policy of the business organization, its environmental objectives and goals, and control of the environmental impact generated to the environment, allows an integrated environmental management system.

According to the authors consulted, its characteristic elements are perceived as an instrument of environmental management, it evaluates the pollution rates generated for the environment, compliance with legality, externalization, and internationalization of environmental costs, integrating environmental responsibility in the business organization. As an instrument of environmental protection, it has a horizontal character to adopt strategies of environmental protection by the Public Administration. Its adhesion is generally voluntary, although it can be obligatory; it provides and discloses environmental behavior to the audited business organization. It reaffirms that it is an environmental protection technique. Being the latter, recognized as a cooperating market instrument ( environmental certification). It allows the organization, after the evaluation results, to be audited, use a logo demonstrating that it is a responsible organization, which allows it to register in a Public Enabled Register. It is verified, since it is regulated in the legal systems of Hispanic America through laws related to Audit, Controllorship, Environmental Management, Environment and Laws of Environmental Responsibility.

LEFF (1998, p. 108), already pointed out in his studies that environmental knowledge arises from a new ethics and a new epistemology, in which knowledge is fused, values are projected and knowledge is internalized. These questions become questions about the ecological conditions of sustainability and the social bases of democracy and justice and allow the construction and communication of knowledge that challenges the strategies of power and the effects of judgment generated through forms of domination, appropriation, and transmission of knowledge. Relevant at our discretion, in this control activity developed to protect the environment as a public good. The purpose of this essay is to provide a systematization of the elements of environmental auditing as a legal institution and instrument of environmental protection, appreciated in the environmental legal relationship, pertinent to Public Law for a better understanding by those who practice it and those that will be practiced, due

to its impact on international trade, according to MORA RUIZ (2007), are:

The subjective elements: according to the subjects involved, those audited in environmental, legal or physical matters). Auditor or audit team (legal entity or individual).

The objective elements: the audit as a control activity. Development of the activity according to the administrative organization. Power of Audit. Public function. The technique of control or police material intervention. These elements are not incompatible with each other, but with different legal positions in the cycle of the audit activity (attributed by exorbitant powers under the regulated regime, public official empowered and activity of publicly disclosed facts with information documentation and proof). The preference for a set of auditors outside the audited activity, which provides a higher level of neutrality in the technical evaluations, which may be issued in the report resulting from the audit activity.

The development of the activity according to the form of the administrative activity: It is a control activity and a verification technique. It is a procedure consisting of phases (preparation-execution-conclusion) (Set of acts linked together and without individual autonomy, of different nature, leading to a conclusive formal act, containing information and evidence of infractions of legality in environmental matters; which seek the restoration of the environmental legal good caused by the actions or omissions of businessmen or traders, before whom obligations of various kinds are generated.

Scope: in relation to the scope of the environmental audit, the activity can be developed internally by virtue of self-control, as well as externally, in the activity of entities that carry out the environmental audit activity. The content of the auditable activity in environmental matters will be: The accounting patrimony destined to the environmental accounting cost. The effectiveness and efficiency of the environmental management system in relation to waste treatment. The Clean Technology Assessment. Evaluation of accounting principles. The implementation and evaluation of the Environmental Technical Standards. The evaluation of the Prevention Plan (Cosso II Report). Contamination indexes according to the levels allowed for business and commercial activities. Verification of environmental legality.

Legal nature of the auditable activity in environmental matters: it implies in a control activity through a technique of proof of legality of the commercial activity in environmental matters (legality) that is expressed in the environmental order as a management tool, according to the established rules, whether of general provisions authorized with preference by the Law Reserve, or of regulatory norms for the development of the environmental audit activity. It is a function of a technical nature. The performance of the function requires a high level of qualification and technical expertise for the performance, so its development attends factors such as competence, training of the auditor, knowledge and demonstrated skills in the activity. It was precisely this technocratic character which in recent years has influenced outsourcing in the development of this activity indirect management, through mechanisms of public-private collaboration. It is an exercised power there is no criterion in its application. It must fulfill a canon of objectivity, efficiency, transparency, and accountability, which guarantees, from the planning and control of its exercise, due neutrality, probity and strict compliance with the auditor's legality. It has an instrumental character for the exercise of other administrative powers, such as sanction, procedure or incentive of honorary character, in a specific activity developed by the Administration, independently of the management formula, the same in the authorization, in the taxation procedures or sanctions. For this reason, the power of the audit aims to verify the certainty of environmental legality; expressing the result of the control intervention, through documentary evidence that certifies the state of compatibility of the business and commercial activity with its management parameters.

Effects: Its form of expression (the audit results report) has a direct and obligatory effect on the activity audited, based on the presumption of legitimacy of the results imputed to the audited entity, to those in which the procedural and procedural attributes attribute the character binding in the evidentiary phase for the certainty and veracity that the competence of the auditor contributes to the report. Derivation of actions of the system of environmental responsibility in different orders: civil, administrative, contravention, Public Administration, employee-labor, social-business and criminal. It empowers the exercise of control competencies, given the

cyclical and systemic nature of environmental auditing as a management tool.

Relative onerosness of the activity: In some cases, especially in those of indirect management carried out by mercantile companies, an activity of an onerous nature can be obtained for the auditee, because this requires that it be certified facts or circumstances related to the fulfillment of environmental requirements in its activity by a third party with a procedural or technical interest.

Formal and procedural elements: Form of expression: environmental audit report. Feasibility initiative: at the request of the environmental auditor to fulfill requirements to allow the development of commercial and commercial activities. By imposition of the administrative entity according to the audit plan, complaint or complaint.

Challenging the result of the audit: Internal way before the superior of the entity of the Audit. Jurisdictional before the jurisdiction of ordinary courts (administrative litigation). Demarcation with related legal institutions: environmental inspection. Environmental impact assessment. Audit of Management in their modalities. Points of contact with institutions of other branches of Business Sciences: Accounting and Environmental Economics. Reengineering of companies (Productions in Chain of productive cycles). Environmental Sciences (Teaching degree and Environmental Engineering).

## **2. ORIGINS ANDEVOLUTION OF THE ENVIRONMENTAL AUDIT AS A LEGAL INSTITUTION IN CUBAN LEGAL ORDINANCE**

MATILLA CORREA (2011) affirmed that the appearance of the first effective chair of Administrative Law in Cuba, following the plan of 1842, with the situation of the rest of Latin America at that moment, where an event of this type had not yet manifested itself, we can understand, without major setbacks, that of Havana was the first chair of Enlightened Administrative Law in Latin America; that its head, José María Morilla, was the first to play in this context in Latin America; and that it is then up to Cuba to be the forerunner of the teaching of Administrative Law in the American continent, and that it is the one who is most interested in

this question, in order to shed all possible light on the peculiarities of this time in administrative procedure of Cuba and to clarify once and for all the origins and the first evolutionary steps of Administrative Law in our country.

Analyzing and systematizing this legal historical peculiarity, the accounting and historical knowledge, point out that the exercise of public auditing, a state function dedicated to control the assets by the Public Administration, because Cuba is one of the colonies of Spain, with an economy ruled and controlled by the metropolis, that when owning the business in a majority way, the evidence shows that Cubans of the time did not audit nor did they have the required knowledge; ARMADA TRABAS (2005), AGUILERA MESA (2005), POZO CEBALLOS (2011), AND CASTILLO TÉLLEZ (2014) SAY this activity was carried out by inspectors located in the Public Administration to control the business of their property.

In order to carry out the analysis of the administrative control, it starts from the period between the seventeenth and eighteenth century, starting from the one marked by Matilla Correa (2011). The control by the Public Finance Administration was carried out by the Treasury Department and the Court of Auditors, public institutions that performed the functions of accounting records collection, monitoring of incomes and public resources. Economic history recognizes the tendencies that existed on the formation and constitution of the technical and economic organisms, factors that gave rise to the creation of the Board of Administration where the Intendente Geral da Fazenda and the President of the Court of Auditors participated, strengthening the mechanisms of control. The works of the Administrative Law of Cuban authors as LANCÍS Y SÁNCHEZ (1950-1952) were used as references.

Since the Constitution of the Republic of 1940, it has been analyzed how the control function regulated by public goods and by the Ministry of Finance, an institution created by the Organic Law of the Executive Power. According to the Constitution, the creation of the Court of Auditors had among its functions to supervise the State's assets, revenues, expenditures and autonomous organs to verify the execution of its budgets destined to the State for the provinces and municipalities, with the observance of laws and provisions relating to taxes, duties and contributions in force with all

administrative authorities to supervise the public management of officials and employees of the state apparatus as well as autonomous organizations<sup>7</sup>.

When the Revolution triumphed in 1959, a change in the socioeconomic structure of the country began, a process that brought about an accelerated transformation in the organization of the state apparatus and with it the accounting, auditing and control of economic facts in the state sector within its predominant forms of management, changing the form of ownership. With the changes that occurred worldwide in the objectives of control activity, this legal institution was dedicated exclusively to the detection of fraud, to the revision of systems and to the obtaining of evidence, it was progressively extended to environmental control, in view of the high levels of pollution generated by the industry. The government decided to implement other control mechanisms and the Ministry of Recovery of Deviated Goods was constituted, as a continuity of the public function. Subsequently, the country's control activity was carried out by the Ministry of Industries. The decision was taken to form the first Internal Audit Units in all agencies of the State Public Administration. During this period, it was evidenced the execution of the state audit throughout the country.

In 1976, a period of state institutionalization, based on Law 1323, the State Finance Committee was established for the control of public property with the Inspection Directorate. In its functions, the State has audited the State as a higher body established in the Cuban Constitution, in article 10:

all State organs, their leaders, employees, and employees act within the limits of their respective competencies and have the obligation to strictly observe socialist legality and watch over their respect in the life of the whole society<sup>8</sup> MENDEZ LÓPEZ (2003).

The evolution of the audit in the forms of management of the Cuban state sector since 1994 maintains functions carried out by the State Finance and Prices Committee, transferred to the Ministry of Finance and Prices (MFP). In this body, the National Audit Office (ONA) was formed in the local Public Power continued to perform state function for

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<sup>7</sup> Cuban constitution dated July 1, 1940. GO of December 20, 1940.

<sup>8</sup> Constitution of the Republic of Cuba. Extraordinary GO n° 3 dated January 31, 2003; Di Cagno (2005);

management matters. The legal regulations in relation to the analyzed legal institution were supported by Decree-Law no. 159 of 1995, which regulates the duties and the rights of auditors and audited as subjects of this legal-administrative relationship as a state function and for those who practice it autonomously, complemented by Agreement No. 2819 of the Executive Committee of the Council of Ministers of 1995 and by Decree No 228 of 1997<sup>9</sup>, to apply the Administrative Sanction Law.

Between 1999 and 2000, further studies were confirmed to complete the proposal to create a sovereign body based on the experience gained in Latin America and the European Union that would allow the public policies related to the control activity analyzed to be met and adapt to the characteristics of Cuba, to the new INTOSAI conceptions and to the international facts with repercussion in the activity of the public audit, since the dialectic and the development of the audit demanded a superior body. It was decided by the State to create the Ministry of Audit and Control (MAC) within the State Central Administration, this was the subject of the state that carried out the activity of governmental control and control, exercised revolutionary and modern functions of high values, to adequate control of the efficiency of the economy and the probity of the country's officials and executives in a third stage of state public control, since this is the predominant form of management in the country.

It is possible to show that the systematization carried out for auditing, as a legal institution of Public Law in this essay, the path of its historical and legal trajectory allowed to know the functions that, at each stage, analyzed by the Court of Auditors, the Ministry of the Recovery of Malversada Property, the National Bank of Cuba, ONA and MAC in the activity of control of public assets by the State, confirm that there was public control through these agencies and agencies as the origin of the audit in the country observes the evolutionary transit of the audit, the control governmental organization, and the inspection, initiated from the stage of institutionalization for the state sector in its forms of management, since this one of greater representability.

From a legal point of view, it is demonstrated that the audit practice carried out by ONA and MAC continued essentially to review the

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<sup>9</sup> Decree No. 228, Personal contraventions on audit, GO Ordinary no. ° 37 of 24 November 1997.

accounting systems for the management of the state sector as a majority, proving that the activity of environmental control was not practiced, there is only evidence of its execution in management and legal compliance audits, which controlled issues related to the protection of the environmental legal good and in the activity of self-control of the forms of management of the Cuban state sector. For this reason, it is worth noting that the trend followed by the Public Administration in Cuba indicates that the administrative control was carried out by the Central State Administration. As it regulates the audit in the Cuban legal system is characterized as free, mandatory and executed in a plan and methodologies approved by the superior control body. In its application, it establishes the constitutional principle of action to the organs of the State and becomes the informing support of the patriotic legal order. PRIETO VALDÉS (2003).

Article 27 of the Cuban Constitution enshrines environmental protection as a public function. Technically, while allowing competent bodies to intervene in protecting the environment, being inspired by sustainable development, it was requested to apply this authorization in order to make human life more rational and guarantee survival, well-being, and security for current and future generations, so that solidarity in terms of equity and inter-managerial rationality and sustainability transcends the Cuban constitutional text. With the constitutional amendment in 1992, as a result of Cuba's participation in the United Nations Conference, the Declaration on Environment and Development was signed by the states in 1992. The recognition in the original text of article 27 that reads: *“To ensure the well-being of citizens, that the State and society protect nature. It is incumbent upon the competent bodies and all citizens to ensure that the water and the atmosphere are kept clean and that soil, flora, and fauna are protected”* “...

Given all this legal perspective, based on the constitutional text, it is evaluated as within the environmental field with the audit function, carried out in its stages by the ONA and the MAC did not receive an adequate response in relation to article 27, when introduced at a time first, the environmental problem in this Charter, for not being recognized in Decree-Law no. 159 of 1995, the environmental audit to achieve the goal of sustainable development as a paradigm. The public environmental

function, performed by public officials, is complemented by the declaration of state sovereignty over natural resources and the environment, proclaimed in article 11 of the constitutional text together with article 27. Both articles constitute the fundamental constitutional foundations that validate the practice of environmental auditing as a control activity to protect the environmental public good. They reproduce the principle of sustainable economic and social development contained in Principles 3 and 4 of the Rio Declaration of 1992. MÉNDEZ LÓPEZ (2003), HERNÁNDEZ TORRES (2007), TOLEDANO CORDERO (2012).

From the administrative law in the period from 60 to 80 of the last century, the contributions of authors such as GARCINI GUERRA and REYES SALÍA (1963), GARCINI GUERRA, REYES SALÍA, CABRERA (1976), GARCINI GUERRA (1978), MUÑOZ VALDÉS GARCINI GUERRA (1986. PP. 169-172), as antecedents of the study of this branch of the Law, and especially in the legal institution of the inspection as control activity; it is agreed that it is the power of an administrative body to examine the material acts and the preparatory and executive operations of the decision-making powers of subordinate workers, it shall never be designed in acts having legal effects. The control of socialist legality requires that all administrative organs act and remain within their sphere of competence, in accordance with the principle of legality. These authors are linked in the Cuban legal system to Decree-Law no. 67 of 1983, but it is observed that these authors did not study the legal institution of public audit, despite having been exercised by the Public Administration, as it has referred in previous paragraphs<sup>10</sup>.

However, it is important to point out that in this epistemological search carried out in the country by this author in the judgment, that from the legal science that reflects the legal institution of environmental audit in his work, DI Cagno (2005), but refers in a general manner. Other studies followed these studies on Administrative Law, made by authors such as CAÑIZARES ABELEDO, CASTANEDO ABAY, LANCE LOPEZ, DÍAZ SÁNCHEZ, LEZCANO Calcines, REYES PARET, and MATILLA CORREA, and were directed to the object of Administrative

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<sup>10</sup> Decree-Law no. 67, article 52), considers that it is one of the functions of the Central Administration Organisms, "... to carry out inspection visits to the territorial delegations, companies and dependencies of the organization, as well as administrative offices, companies and dependencies of Local Organs of People's Power."

Law, administrative silence, the organization of the Public Administration, the administrative contract for the management of the public service, the administrative concession of the public service, the procedures for selecting the concessionaire, administrative responsibility, administrative procedure and administrative legal instruments, in a material for the study of graduation from this branch of law (2010). But these studies do not indicate any reference because it considers that the activity of control, from a particularly public auditing of the environment, regulated by law to forms of management of the state sector was studied, although it must be made clear that it was already fomenting a principle of the private sector since the last decade of last century, legal organs of that time that endorse it, are linked to the commerce and to the market, like cooperative instruments. ANTÚNEZ Sánchez (2016).

In the issue of Cuban Environmental Law, the analyzes carried out related to the administrative control by REY SANTOS (2007) CANOVAS GONZÁLEZ (2010) are taken into account, Y PEREIRA BASANTA (2011), these were intended, framed in environmental management tools such as environmental licensing, permits in industrial projects or facilities and economic activities of considerable magnitude, generating strong environmental impacts, but not addressing the environmental audit in their studies. All these elements that are being systematized allow us to demonstrate that the this legal institution's (environmental audit) evolution in Cuba transcended by the environmental inspection carried out by CITMA, under the terms of Law No. 81 of 1997, but with a less comprehensive scope. Its original regulation was made in the Agreement of the Council of State of the Republic of Cuba of 2010, Regulation of the Law no. 107 of 2009, 30 years after its origin in the United States of North America, as reinforced.

Génesis y Evolución Comparada		Tendencias Históricas en Cuba	
2014: Auditoría de gestión coordinada a la biodiversidad	2010 - 2016	2014: Ejecución de Auditoría gestión coordinada al recurso hídrico (NO REGULADA)	Auditoría Contable Inspección Ambiental
2013: Auditoría de gestión coordinada al recurso hídrico 2011: Auditoría de seguimiento al cambio climático		2010: Reconocimiento normativo de la Auditoría Ambiental (NO PRACTICADA)	
Cambio del objeto de la Auditoría Ambiental de la Empresa a la Industria (EMAS)	1990 - 2010	Auditoría Contable Inspección Ambiental	Auditoría Contable Inspección Ambiental
Surgimiento de la Auditoría Ambiental (USA 1973)	1970 - 1990		
• Auditoría Social • Primeros reconocimientos de los Derechos de Tercera Generación (El Derecho al Medio Ambiente)	1950 - 1970		Auditoría Contable

However, since its appearance in the legal system in 2010, there is no evidence of its implementation in the state sector (business-industry) of the environmental audit, nor an adequate construction of Administrative Law as a branch of legal sciences. In its evolution in the 21st century's second decade, we can see how it changes from the scenario where it originated, transcending the company-industry in relation to the environment, with the environmental management audit and three types of audits: climate management audit, coordinated water management audit, and coordinated auditing of biodiversity management in the Latin American region. LUSTOSA DA COSTA (2014), VAN LEEUWEN (2014, p. 43-46)<sup>11</sup>.

The study of environmental auditing is considered as such if they have a broad analysis of the accounting sciences in Cuba, by authors such as PÉREZ BELLO (1999), ARMADA TRABA (2005), AGUILERA TABLE (2005), Pelegrin TABLE (2011), and RODRÍGUEZ (2016), these studies approach the management of accounting, environmental economics, internal control and the Controller General of the Republic, in relation to the work of auditors and specialists in accounting (GONZÁLEZ NOVO, 1998), FERNÁNDEZ RUBIO LEGRÁ (1999), MÉNDEZ LÓPEZ (1998) and others in the area of government, (2003), AYES Atmeller (2003), TOLEDANO CORDERO (2005), VILLAVELLA ARMENGOL (2011), Viamontes Guilbeaux (2012), CROSS Sardines (2013), CARABALLO Maqueira (2014), carried out other environmental law studies, focused on analyzing Cuban environmental thinking, clean production, environmental responsibility, environmental insurance, environmental protection of the Constitution, civil liability, environmental law, Forest Law, Law and Climate Change, Foreign Trade and Investment, Cuban Nuclear Law, Environmental Protection, Economic Process for Environmental Damage, Genetic Resources, Human Rights and the Environment; but the legal institution of the environmental audit was not studied in its analyzes.

Supported by legal dogmatics, to argue from theory, legal regulations and practice, allows to show a logical analysis of how the legal institution of environmental auditing was regulated in the Cuban

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<sup>11</sup> *Latin American regional report on the coordinated audit of water resources, CONTEMA-OLACEFS; Paraguay, 2014; Report on coordinated audits of water resources, monitoring of biodiversity and climate change, OLACEFS, Brazil, 2014.*

legal system and with the formulation of a series of invariants that are subject to improvement of the legal system, for the adequate public control in the future formation of the company responsible with the environment in the state sector, being the most predominant form of management in the commercial traffic, of the principle of legality. To formulate proposals, as primal contributions to the Right of Audit as a control activity and environmental protection instrument - management tool - In order to do this, taking the ideas provided by SANTI ROMANO (1963, P. 48), DIEZ PICASO (1976, P. 33), ROBERT ALEXY (1997), BULTE (2002), ATIENZA (2004), DE LUCAS (2006), on legal arguments, associated with the concept of the rule of law and constitutional democracy, allowed us to analyze the legal order of the number of legal provisions based on its unity, completeness, coherence, and harmony, linked to the legal institution of environmental auditing in Cuba and its application in the Cuban state sector, only two environmental audits were carried out in 2014 by the supervisory body, and its practice for the state sector - industry and business - will be a challenge in the future.

The related concepts were analyzed in this environmental *legal relationship*, such as audit, environmental inspection, audit, audit team, environmental accounting, environmental audit report and environmental liability system. The principles that inform the audit as legality, responsibility, precaution, cooperation, self-control and sustainable development. We delimit

the configuration elements in the environmental legal relationship: subjective and audited auditors; the objective elements of control activity, field of application, content, legal nature, effects, limits and demarcation with related legal institutions, points of contact with other branches of science, formal elements would be the documents proving validity, audit report from Environmental responsibility, environmental and complaints.

They allowed taking into account a first element, the beginnings of environmental control originate in the business sector as a need to know the pollution problems generated by industrial development in the twentieth century.

However, after 30 years of international recognition, environmental auditing is not practiced in Cuba until the 21st century, it was carried out with the audit of the coordinated management of water resources, without the company and the industry of the state sector still being audited, as is already being done in the Latin American region and in the European Union. ANTÚNEZ SÁNCHEZ (2016). A second element, Law No. 107 of 2009 and its 2010 Regulations, define that environmental auditing is the process of verification of the use, administration, protection, preservation of the environment and natural resources, with the objective of evaluating compliance with the rules and principles governing its control and, where appropriate, quantifying the impact of the deterioration caused or likely to occur, which, in our view, is far from adequate construction from a doctrinal point of view. Its *juridical nature* was built neither in the theoretical order nor in the normative order. Its development as an activity according to the *administrative organization* was not built in the theoretical order sufficiently, having in view its two dimensions; In the normative order, it is recognized as a public function. As the control activity was not built in the theoretical order sufficiently, and in the normative order is insufficiently configured as a technique to verify the activity of the control material.

According to the *subjects involved*, there is no configuration based on the legal position of the people involved, and in the normative order auditors, auditors and specialists are recognized, without defining requirements, skills, abilities, and competencies, in particular. As a *business activity*, its theoretical construction is insufficient in the areas of application of this legal institution. There is a normative indeterminacy of the issues to be audited within the state sector since its broad conception of formulation in regulation does not coincide with the business sector in particular. Regarding *environmental accounting assets*, there is no environmental accounting regulation. Regarding environmental management for the treatment of waste, the organization of environmental management systems in the business sector is not systemized, although this is the key element in this type of audit. Evaluation of *clean technologies*, the inadequate participation of the Comptroller General in the process of incorporating technological advances in the business sector with the

purpose of evaluating its environmental impact with its implementation. *Environmental technical standards* in order to assess the pollution, there is an inadequate assessment in training environmental auditor.

Implementation of Cosso II report, Coopers & Lybrand (1997), Villardefrancos Alvarez (2006), on prevention and self-control in environmental issues in the Cuban business sector is appreciated that in their plans for recognition and implementation prevention, in relation to management of environmental risks and anticipating actions in relation to the manifestation of these environmental risks in the company and industry. The derivation of the actions of the environmental liability system is divided into several orders, but no limitation on the application in civil, administrative, contraventional, and civil-service orders. Direct and binding effect on the legal system gives the same effects as other types of audits so that it is in compliance with the royalties of the systematized constitution.

As for the onerosity of the activity, the legal regime of the audit and that of the environmental activity does not recognize the modality of *onerous* realization. It is recognized within a contractual figure of services that there are rendered by the civil societies of audit services, as established in the legal body that governs the audit in the Cuban nation. Its way of expression with the audit report that is notified and given, but in its *procedibilidade* initiative, there is a setting request of the environmental audit body and, in relation to the objectivity of the results of the audit is internally once limited access to the courts.

The *recognition in institutions*, in the normative order Law nº 81 of 1997, does not *recognize* the environmental audit in the instruments of environmental management. In *the theoretical order*, the limits of the environmental audit were not established with the environmental inspection, the environmental impact assessment and the management audit in its modalities. There is an *insufficient theoretical* and normative *delimitation* with the Business and Environmental Sciences related to the environmental audit. FERNÁNDEZ RUBIO-LEGRÁ (1999), SOLER DEL SOL (2013)<sup>12</sup>. In relation to the *fullness* of the environmental legal order, there is no express recognition of the Controller General of the Republic in the constitutional text as a control body, with attribution and

<sup>12</sup> Law No. 81 of the Environment. Extraordinary GO nº 7 of July 11, 1997;

competencies in the order of the audit. The environmental audit was also not regulated in Law No. 81 of 1997 on the Environment and also its regulation is lacking in the Law of Audit, Decree-Law n° 159 of 1995<sup>13</sup>, Antúnez Sánchez (2015).

Due to the lack of Corporate Law, there is no explicit regulation of environmental auditing as a control activity. There is no recognition of the environmental audit in the Environmental Responsibility System (on minor trials), Decree No. 228 of 1997. In Law 7 of 1977, as amended by Decree-Law no. 241 of 2006, there is no recognition of the General Controller of the Republic. Under the National Accounting System, there is a lack of legal regulation of the accounting subsystem of environmental accounting and environmental insurance. Pérez Bello (1999), Pelegrín Mesa (2011).

Regarding the *Unit* of the environmental legal order, Decree-Law no. 159 of 1995 *survives in the legal system*, although the Regulation of Law no. 107 of 2009, regulated its scope and types of audit, including environmental, without an express derogation. For the analysis and evaluation of budget items related to environmental protection, it is necessary to normatively *recognize environmental accounting*<sup>14</sup>. There is a lack of normative recognition of non-polluting productions in Law No. 81 of 1997, of the Environment and other norms of an entrepreneurial nature, not guaranteeing the observance of preventive and preventive principles in environmental protection. As for the normative procedures, there is no consultation or sufficient participation of specialists from different sciences and entities related to environmental activity in the creation of legal norms of the audit; there is insufficient training in environmental issues from the auditors of the General Agreement, the State Central Administration Organizations, the local governments and the Civil Service Societies that practice it. Antúnez Sánchez (2015)<sup>15</sup>.

All these elements indicate that the legal institution of the environmental audit was not adequately built from the doctrine of Public

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13 Decree-Law no. 159, Audit. GO Administrative Rule No. 20 of July 3, 1995.

14 Environmental Accounting is not a separate or special accounting system but rather the effects of the environment and the increase or decrease of natural resources or their ability to generate income and/or utilities, should be reflected in them, according to the corresponding models.

15 Law No. 107, of the General Controller of the Republic of Cuba. Ordinary GO n° 29 dated August 14, 2009.

Law, factors that influenced that its regulation is also not adequate. Another evolutionary step in Cuba is verified by the execution of the audit of the coordinated management of water resources carried out in the Almendares Vento Hydrographic Basin and in the Institute of Hydraulic Resources in 2014<sup>16</sup>, by the General Controller as the *first glimpse of environmental control*. This type of environmental management audit, assessment of administrative environmental management and technical environmental management, weigh the principles of economy, efficiency and effectiveness and is complete than the environmental audit regulated in the Regulation of Law 107 of 2009. Although it has not carried out this control activity in the state sector (company-industry), it is necessary to recognize the work carried out by the environmental inspection focused essentially on the evaluation of ecosystems, its incursion into the forms of state management has granted environmental endorsement as an honorific title; but the execution of the environmental audit will require extensive studies of the Public Administration and that in the state business sector will be done. It is important to focus on this essay in the context of the Cuban state sector, since history points out that from 1959 to 1968, when forms of property changed with the triumph of the revolutionary process, a socialist state, a trend that continued into the 21st century, weighted in the guidelines approved and updated in 2014, where it is confirmed that the form of management that will predominate will be the state. Their failures in this sense, we analyze them from two dimensions.

*In the legal order:*

- Cuba's constitutional texts, Articles 14, 15, 16 and 17 in relation to the ownership of the socialist State of all persons<sup>17</sup>.

- It is corroborated with the legal bodies that regulate this business sector, beginning with Decree No. 42 of 1979, General Regulation of the state enterprise, as the main link of the economy in the Central Planning Council (JUCEPLAN)<sup>18</sup>.

- Other legal bodies were regulated to improve the Cuban state

<sup>16</sup> Law No. 107, of the General Controller of the Republic of Cuba. Ordinary GO n° 29 dated August 14, 2009.

<sup>17</sup> Constitution of the Republic of Cuba. Extraordinary GO n° 3 dated January 31, 2003.

<sup>18</sup> Decree No. 42, general regulation of the state enterprise. Ordinary GO dated June 4, 1979. Modified by the Agreement of June 12, 1977, OJ No. 31 of June 8, 1989, and June 8, 1989.

enterprise, such as Decree-Law no. 252 of 2007, on the continuity and strengthening of the Cuban management and administration system, Decree n° 281 of 2007, Regulation for the implementation and consolidation of the state system of management and administration, Decree-Law no. 320 of 2014, Modifications to the System of Improvement of Business and Decree No. 323 of 2014<sup>19</sup>.

- These state enterprises are registered in the Register of State Entities and Budget Units of the Republic of Cuba of the National Office of Statistics and Information, in this instance there was registered 1,996 companies of the state business sector; the number of companies in the non-state sector is lower. Companies that are welcome in commercial development are registered in the Mercantile Registry of the Ministry of Justice of the Republic of Cuba, Decree-Law No. 226 of 2001<sup>20</sup>.

*In the extra-legal order:*

- The guidelines for the economic and social policy of the Communist Party of Cuba, updated at the 7th Congress of the Communist Party of Cuba and approved by the National Assembly of People's Power for 2016-2021, indicate that the updating of the economic model is recognized and promotes the development of non-state real estate management formulas, such as foreign investment, self-employment, cooperatives, but will follow the preponderant role of the socialist state enterprise, compared to the model of Economic Management<sup>21</sup>.

- Also due to the activity they carry out, today the technology implemented in most of the commercial sector shows aging, obsolescence

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19 Decree-Law no. 187, Bases of Business Improvement, Ordinary State no. 45 dated August 25, 1998; Decree-Law no. 252, Business Improvement. Extraordinary GO n° 41 of August 17, 2007; Decree-Law No. 281, of the Government Information System. Extraordinary GO n° 10 of February 23, 2007; Decree-Law no. 295, Modifying Decree-Law no. 252 Concerning the continuity and strengthening of the Cuban Business Management and Administration System, Ordinary GO n° 51 dated November 7, 2012; Decree No. 303 of 2012, Modification of Decree No. 281 Regulation for the implementation and consolidation of the system of management and management of state enterprises, Ordinary State No. 051 of November 7, 2012; Decree-Law no. 320, Modifications to the Business Improvement System, Extraordinary GO n° 21 dated April 28, 2014; Decree No. 323, Modification business improvement system. Ordinary GO No. 21 dated April 28, 2014; Tristá Arbesú (2014), newspaper article in the Granma digital newspaper, which refers to the amendments made to Decree-Law no. 252 and 281, in his capacity as Head of Entity Improvement Area of the Standing Committee on Implementation and Development where business development is implemented. And with that to comply with the guideline in the 15, which contributes to the updating of the economic model in the Cuban state sector.

20 Decree-Law no. 226 of December 6, 2001, is registered in the register: state-owned enterprises in commercial development, commercial enterprises, joint ventures, foreign individuals, other matters provided by the Executive Committee of the Council of Ministers.

21 Law 118, Foreign Investment Law. Extraordinary GO n° 20 dated April 16, 2014.

and industrial heterogeneity, with data of more than 55 years of exploration, elements that do not allow it to be competitive in other markets in the XXI century with demanding trade barriers, is the case with environmental labeling.

- Another element is the economic blockade that the country is subject by the United States, negatively affecting the development of the industry and the acquisition of clean technologies.

- The collapse of the socialist camp and the Council of Mutual Economic Assistance (CAME), an international body that allowed the Cuban nation to modernize part of its industrial and business park, disappeared and contributed to the heterogeneity of the industrial park previously reviewed.

All these analyzes allow to argue to this author, what are the main deficiencies of the legal framework of the environmental audit in Cuba for the state sector as a legal institution and of the concrete aspects for the improvement of the legal framework in Public Law considered in this essay are:

*In the substantive order:*

- The constitutional text does not recognize the Controller General in the organs of the State.

- Law No. 81 of 1997, Environmental Law (article 18) did not regulate environmental auditing, despite its linkage with environmental impact assessment, environmental licensing, clean production and economic regulation.

- The legal rules related to the practice of the audit - Decree-Law n° 159 of 1995,

Decree No. 219 of 2005 and Law No. 107 of 2009 - did not regulate the environmental audit<sup>22</sup>.

- The environmental audit is regulated in the legal system in the Agreement of the Council of State of 2010, Regulation of the Law n° 107 of 2009<sup>23</sup>.

- In the legal system coexist Decree-Law no. 159 of 1995 and

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<sup>22</sup> Law no. 107, of the General Controller of the Republic of Cuba. Ordinary GO n° 29 dated August 14, 2009; Decree-Law No. 219, of the Government Audit. GO Extraordinary Meeting No. 14 of April 25, 2001.

<sup>23</sup> Regulation of Law no. 107 of 2009, Agreement of the Council of State of the Republic of Cuba, 2010.

Law no. 107 of 2009, since the technique of derogation, is not used<sup>24</sup>.

- Decree No. 228 of 1997 and Decree-Law No. 200 of 1999, do not establish contravention assumptions for this control activity<sup>25</sup>.

*In the adjective order:*

- Law No. 7 of 1977, does not recognize as part of the economic process the Office of the Controller General of the Republic<sup>26</sup>.

- Law 107 of 2009 and its 2010 Regulations only establish the internal procedure before the non-compliance of the audited entity.

The leap that will allow progress in improving the Cuban legal system for this legal institution will be:

- Recognition to the CGR in the constitutional text.

- Recognition to the CGR in the constitutional text. - Regulation of the environmental audit in the Law of the Environment. - Regulate the environmental audit in the Audit Law.

- To withdraw Decree-Law no. 159 of 1995. - To recognize and regulate the environmental audit in the Commercial Companies Law. - Environmental audit incorporated into the regulatory bodies for administrative responsibility (Decree No. 228 of 1997 and Decree-Law No. 200 of 1999).

- Modify Law No. 7 to incorporate the CGR as part of the judicial economic process, Law No. 7 of 1977, Book IV. - Regulate in the National System of Accounting the subsystem of environmental accounting and environmental insurance.

- Incorporate environmental auditing into the Water Law project as a control activity<sup>27</sup>.

It serves this simulated, then contribute from the theoretically and theoretically systematized elements of environmental audit and management tool, a proposal of structure of subjective and formal elements, the objective of environmental audit weighted with the requirements imposes the current environmental order considering the interrelationship

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24 Decree-Law no. 159, Audit. Ordinary GO n° 20 dated July 3, 1995.

25 Decree-Law no. 200, Environmental contraventions. GO Ordinary n. 83 of 23 December 1999.

26 Law no. 7, of Civil, Administrative, Labor and Economic Procedure. Ordinary GO No. 34 dated August 19, 1977.

27 *Land Law Bill*. National Assembly of People's Power, La Habana, Cuba, 2016, article 122, where only the state inspection conducted by CITMA and the Ministry of Public Health is recognized, excluding environmental auditing, despite an audit coordinated management of water resources in 2014.

with Administrative Law, a primary historical, doctrinal and legislative assessment of the environmental audit; identify, analyze and contextualize the principles of environmental law that form it and builds a report and an inventory of the institutions involved in its legal order from the utility and purpose of each of the new trends in environmental control is formed. It brings with it the systematization and doctrinal explanation of the leaders of the administrative control in the legal field based on the adaptation to the conditions of Cuba, for that reason legal assumptions are created essentially to conform until now nonexistent, to support the improvement of the juridical framework for the environmental audit in Cuba and to inform future initiatives.

An updated bibliographic material, with the most modern doctrinal considerations on the subject, is made available to legal operators. From the legislative point of view, the strengths and weaknesses of the specific legal framework of environmental auditing in Cuba and their relation to the relevant general legal framework are identified on the basis of the object and limits of the investigation. To carry out the modifications according to the insertion of the new theoretical framework, which makes possible the improvement of the legal system of environmental auditing in the Cuban state sector. This will lead to feedback, justifying systematization in two plans: the evaluation and application of the current law and the formulation of new legal statements, valid to improve or serve as future in relation to the legal institution analyzed in Public Law. The contribution to legislative development will tax legal operators, auditors and comptrollers, axiological theological evaluation and socio-legal integration in the field of the ecologist and the administrative administrator, by interrelating doctrinal, axiological and technical aspects in the process of logic-normative and application through the assimilation of historical and socioeconomic elements of environmental control, with an interdisciplinary approach, being Multidimensional Environmental Law, and in this legal institution studied, we consider to be present the Administrative Environmental Law.

## CONCLUSIONS

To develop and update the environmental doctrine linked to the

activity of administrative control through environmental auditing. There is no allusion or treatment to the environmental audit, it is not mentioned or explained when management tools are enumerated and developed, nor indirectly was approached by another branch or legal knowledge ignoring it as an institution of this nature and therefore the special legal relationship between auditors and auditors of this type of audit. It was studied from economic and accounting knowledge, although it is not included in the national accounting system as one of its subsystems by the Ministry of Finance and Prices, which could tax legal science, as it is valid by regulation.

It requires the necessary interdisciplinary approach from the scientific point of view with the tempered theoretical development in the context of relevant categories and institutions already recognized and deepened by foreign doctrines, such as the company responsible for the environment, environmental accounting, process reengineering, environmental reengineering, environmental management, environmental labeling and environmental policy. This will allow verifying the multidimensionality of the legal institution. This will open debate and research on the science of the law on environmental issues, create a doctrinal basis that will lead to better regulatory construction and application and interpretation of the standard, as well as enrich and diversify Cuban legal science.

In the doctrinal configuration, the juridical conceptualization of environmental auditing as an environmental management tool and form of administrative activity and commercial incentive should be addressed. The understanding as a process materialized through a procedure divided into phases of preparation, execution, and completion, the foundation of the program for its realization. The differences between the environmental inspection and the environmental audit will be set according to its elements and purpose as administrative police. Due to its specialty and purpose, an environmental legal relationship will be established regardless of whether it is formalized as an administrative, commercial or other relationship, according to which it is regulated in the legal system.

The systematization of the environmental audit allowed the identification of the subjective, objective and formal elements. In the Cuban context, the subjective nature of the Office of the General Controller

of the Republic should be developed, if this audit could be carried out by civil and commercial audit companies, the aspect of Cuban corporate social responsibility. In the objective part, the concepts of clean technology issued in Cuba, the requirements of the label-environmental certification in the country, the contamination index linked to the new concept of tax in the tax system for the tax on discharges must be taken into consideration. In the formal elements, the forms that are recognized in the accomplishment of the environmental audit will determine the necessary documents: notification, contract (if applicable) and final report. Subjectives and objectives should determine the content of the audit report. The delivery of the environmental certification will be consistent with the performance of the environmental audit, is one of the purposes of the latter; is a requirement of applied technology and is expected to be introduced into the company responsible for the environment (clean production) as a market instrument.

To update the Cuban legal system regarding the recognition of environmental auditing as a tool for environmental management and administrative control. To address within the environmental regulations related to management tools, the inclusion of environmental auditing, identified in this way in international doctrine. The environmental audit should be incorporated into the legislation of the Environment, to the complementary legislation of the substantive law. For the Controller General of the Republic, an environmental audit program should be promulgated as a procedure, due to its interdisciplinarity and multidisciplinary, so that the environmental certification is delivered as part of the corporate social responsibility by the evaluating subject when concluding. To address the unity and coherence of legal regulations related to environmental auditing, as well as the principle of legality; since Decree-Law no. 159 of 1995 of the Audit in disuse, contradictory and redundant in occasions with the current and current norm in the application, Law No. 107 of the General Controller of the Republic of 2009. The regulation of environmental auditing in Cuba should not be revoked because of its differences with other types of audit in its elements, completeness, and purpose not only of control but also of environmental certification. To harmonize Administrative Law in its sanction system, so that, in the execution of the environmental audit, Decree No. 228 of 1997, by the auditors in accordance with the principles

of precaution and opportunity and Decree-Law No. 200 of part of the environmental inspection of the Ministry of Science, Technology and the Environment, accompanied by this activity of administrative control, in view of the articulation of the Cuban contravention system in relation to the requirement of administrative responsibility.

To develop within the legal system the recognition of environmental accounting in the National Accounting System. In order to address, within Cuban legislation in the National Accounting System, the inclusion of the terms of economics and environmental accounting from its recognition in the legal system as a necessary condition to be linked to environmental auditing as one of its subsystems thus identified in international doctrine of the Ministry of Finance and Prices, this will allow analyzing within the financial budget the analysis of cost-utility-volume to entrepreneurs as subjects of economic management of their budget items.

Update the legal system regarding the recognition of clean production and the company responsible for the environment in environmental standards. To address the challenges of environmental auditing applied in the Cuban state sector by implementing clean production to build the future responsible company with the environmentally certified environment, independent of the environmental quality regulations, with a conceptual and normative treatment according to our conditions, not recognized in the legal system thus identified in international doctrine. This will allow environmental regulations to be adjusted according to the principles of access to environmental information, financial coverage through environmental insurance, elements of popular participation in environmental decision-making and environmental impact assessment, identified in this way in international level doctrine. And thus recognize the categories mentioned earlier and others associated with the conceptual apparatus of the Law of the Environment.

To carry out interdisciplinary and interinstitutional approaches for the creation, interpretation, and application of legal norms related to the activity of environmental administrative control. To evaluate the creation of future legal, fiscal or administrative bodies exclusively responsible for the treatment and resolution of the environmental issue or for not ensuring, in a normative and administrative manner, the scope or sufficient participation

of those that already exist in environmental administrative control. It will be necessary to recognize in the legal order of the so-called Corporate Law, due to its commercial, labor, financial and economic importance in relation to the administrative control carried out through the environmental audit.

In future changes to the legal regulations, treat the legal right of environmental crimes in light of their specialization and the delimitation of the environmental criminal responsibility of the legal entity, since it constitutes the last index of conduct detected by the environmental audit, as the responsibility of administration matters audited in the Cuban state sector. Within criminal law, recognize the responsibility of the Legal Entity, the changes that operate in the new mercantile scenario with the updating of the economic and social model, which is not what operated in the 70's of last century with a centralized economy through the state enterprise socialist, where it defines its concept, the crimes in which it can participate as an active subject, the legal mechanisms that allow its detection and persecution and the procedure to be applied in these processes. In the national mercantile trade of the 21st century, there are several issues of economic management, which appear in this scenario the individual entrepreneur with private companies and non-agricultural cooperatives. The sanctioning system of environmental crimes is grouped in the family of crimes against the national economy and collective health in Law no. 62 of 1987, which makes it necessary to order them in the family of crimes against the environment to protect the ecosystems of the Cuban nation in accordance with the provisions of Law No. 81 of 1997, which defines the liability of the Legal Entity.

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