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28 GIUGNO 2017

The influence of European Laws in the Cuban Legal System

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Abstract: In the last decades the Republic of Cuba has undergone deep changes. The fall of socialist countries and the resulting need to open to Western markets and to attract new capitals, have brought Cuba to renew its own legal system, notwithstanding the preservation of socialist and anti-imperialist principles that the Cuban Constitution states, in order to adapt it to social and economic changes occurred after the Cuban revolution and Fidel Castro's political rise. Cuban institutions result now as certainly strengthened, also because of the new international dimension, which has been reached by Cuba through a careful policy of investment promotion that has increased its prestige in the eyes of international investors, especially after the US President's recent visit to Cuba in March 2016.

Introduction

In 2014 Barack Obama declared his will to lift the embargo established after Castro's revolution, later he met the current leader of the Republic of Cuba – Raul Castro, in the attempt to make the diplomatic relations between Cuba and the USA come close again. This represents an important sign of political distension in the international relations between these two countries, although there is still much to be done in order to reach a definite solution of their long lasting conflict.

Cuba's recent international attitude will be particularly highlighted through an analysis of the institutions that have made Cuba a competitive and interesting country to investors all over the world.

The policy of investment promotions, the protection of intellectual and industrial property and the safeguard offered by Cuban legal system in different economic fields testify a modernity like EU countries, especially in the international fair exchange, considering that Cuba is a socialist country.

* Peer reviewed.

CHAPTER 1 – International law in the Cuban legal system

I. International treaties. How the Cuban legal system adapts to international law

International treaties are sources of law of the indirect type – treaties that the State of Cuba enters into with other countries or foreign institutions[1]. In order to be effective within the State of Cuba, these are subject to internal ratification and acknowledgement[2]. The Cuban Constitution does not talk about the issue of the internal effectiveness of international sources of law. In fact, article 11, par. 2, describes the contexts in which the State exercises its sovereignty, although it merely states that "The Republic of Cuba repudiates and considers illegal and void any treaties, pacts or concessions entered into under inequitable conditions, or those disregarding or diminishing its sovereignty and territorial integrity". This disposition links to article 12, letter *b)*, of the same Constitution that states that the Republic of Cuba, adopting anti-imperialist and internationalist principles, "bases its international relations on the principles of equality of rights, free determination of peoples, territorial integrity, independence of States, international cooperation for mutual and equitable benefit and interest, peaceful settlement of controversies, marked by equality and respect, and the other principles proclaimed in the United Nations Charter and in other international treaties to which Cuba is a party[3]". Both in theory[4] and in jurisprudence[5] there are many studies and contributions about the relationship between international and national law. Considering the case of the Republic of Cuba, "the effectiveness of international law is real if internal rules conform to it[6]". Therefore it is necessary for national law to acknowledge international rules through a specific procedure. The regulation of this procedure is useful also to understand the precise juridical context in which the relationship between the state of Cuba and the

1. O. RICHARDS MARTÍNEZ, 'Una aproximación desde el constitucionalismo cubano a la relación soberanía, indipendencia nacional y tratados internacionales', in A.M. ÁLVAREZ TABÍO, A. MATILLA CORREA (edited by), *El Derecho público en Cuba a comienzos del siglo XXI. Homenaje al Dr. Fernando Álvarez Tabío* (Editorial UH, L'Avana 2011).
2. E. DIHIGO, 'Valor de los Tratados ante los Tribunales Nacionales' in *Revista cubana de derecho* (year XXVIII, new series, n. 3, July-September 1956), 32 and following.
3. M.A. D'ESTÉFANO PISANI, 'Principios Internacionales que recoge la Constitución' in *Revista cubana de derecho* (year VII, n. 13, January-December 1977) 126.
4. M.A. D'ESTEFANO PISANI, *Fundamentos del derecho internacional publico contemporaneo, Ministerio de educacion Superior* (volume I, L'Avana, 1985) or A. PASTOR RIDRUEJO, *Curso de derecho internacional publico y organizaciones internacionales* (Tecnos, V. edition, Madrid 1994). See also A. RODRIGUEZ CARRION, *Lecciones de derecho internacional publico* (Tecnos, II. edition, Madrid 1990).
5. L. BETANCOURT AGUERO, 'Jurisprudencia cubana sobre derecho internacional' in *Anuario de la sociedad Cubana de derecho internacional* (vol. VI, L'Avana 1923); C.J. BRUZÓN VILTRES, I.R TAMAYO BLANCO, 'La jurisprudencia en Cuba: reconoscimiento dentro del sistema de fuentes del derecho y posibles consecuencias' in *Boletín Mexicano de derecho comparado* (n. 47, 2014) 139.
6. A. ASTOR RIDRUEJO, *Curso de derecho internacional publico y organizaciones internacionales* (Tecnos, V. edition, Madrid, 1994) 189.

international market, in other words between the economy[7] and the international policy of the same country[8], develops.

The acknowledgement procedure founds upon three steps: the approval by the Council of Ministers; the ratification by the Council of State that afterwards issues internal acts of acknowledgements; the execution by central state administrative bodies, as under art. 52, letter *u*), of the Decree-Law No. 67 dated 19 April 1983, as modified by the Decree-Law No.147 dated 21 April 1994, regarding the dispositions about the "Organization of the central state administrative bodies".

As far as regards the publicity regime of international treaties, Article 77, par. 2 of the Constitution states that Laws, decree-laws, decrees and resolutions, regulations and other general provisions of the national organs of the State are published in the *Official Gazette* of the Republic, but does not even mention international treaties. The Decree-Law No.191 dated 8 March 1999 introduces dispositions about international treaties, which regulate some specific aspects such as undersigning, custody, ratification and publication. It is to be noted that, except for rare cases, the "news" of the ratification is subject to publication, whereas the integral text of the ratified act is very seldom required to be published. The decision of publishing the integral text, in fact, pertains to the President of the Council of State. The fact that international acts are very seldom integrally published in the *Official Gazette* gives evidence to the theory that the State does not recognize any juridical effects of the rules of international law, unless a "legal mediation" takes place, and so never before the ratification, which would thus be constitutive in effect. Despite the current accepted practice that internal acknowledgement acts follow the signing of international treaties, the Cuban legal system does not provide any general prohibition of the direct applicability of international rules by internal administrative bodies, especially if it is about *self-executing* international rules (for example, treaties about human rights, subject to automatic adaptation, following the manifestation of will to adhere to the treaty, expressed in the international context). Procedures are quite complex. Such complexity can be seen, for example, in those hypotheses in which the exact juridical act that authorizes the acknowledgement of the international rule or which are the acknowledged rules themselves is not easy to detect, because internal rules do not always indicate explicitly the international treaties they intend to acknowledge. Moreover, according to some authors, the acknowledgement can be regulated also by dispositions that are lower than the law and by administrative practices[9]. Considering the remarkable complexity of acknowledgement procedures and the continuous evolution of economic phenomena, as well as taking into account that the Republic of

7. M.A. D'ESTEFANO PISANI., 'El bloqueo económico, financiero y comercial del Los Estados Unidos contra Cuba, violación flagrante del Derecho Internacional' in *Revista cubana de derecho* (n. 16, July-December, 2000) 4 and following.

8. P.S. FONER, *Historia de Cuba y sus relaciones con los Estados Unidos* (Editora Universitaria, L'Avana 1966).

9 F. M. MARIÑO MENENDEZ, *Derecho Internacional publico. Parte general* (Trotta, IV. edition, Madrid 1999).

Cuba has opened towards an internationalist dimension, a more elastic and easy approach would be welcome.

II. International contracts

In Cuba international contracts are considered a subject of great importance and continuous interest. In the last few years the reference model of Cuban economic contracts has undergone some changes, due to the need of adapting contractual instruments to economic reality, in order to develop foreign trade and the relations between the Republic of Cuba and other countries, also through a policy of investments promotion.[10]

The approach to the discipline of Cuban international private relations shall firstly consider the existence of a conventional regime, under which all the aspects that are regulated by private international law fully pertain within the application of the Convention, undersigned in Havana on 2 February 1928, known as "Bustamante Code", with the only limitation of article 20 of the Cuban Civil Law. Beyond the Bustamante Code and Cuban Civil Code, there are other treaties that deal with some general aspects of international contracts - such as, for example, regulations about applicability conditions and the general principles - which regulate this matter and because of which the jurisdiction of Cuban judiciary bodies about international contracts is established. The most interesting aspects concern the international judicial jurisdiction and the law, applicable to the above-mentioned contracts. The international dimension of the economic contract has been variously interpreted according to the doctrinal approaches that have emerged on this matter. The diversity of the proposed approaches mainly concern the reason why the juridical relationship established by means of the contract is relevant at the international level. Therefore, the international character could be determined by the different collocation of the headquarters of the contracting parties, by their different places of habitual residence or also by the possibility that the contract falls within the application of different legislations. Cuba participates in the United Nations Convention on Contracts for the International Sale of Goods, signed in Vienna in 1980 and in force in Cuba since 1 December 1995. It is applicable to contracts for the international sale of goods, signed by subjects whose enterprises have their headquarters in different countries (so that the parties' nationality has no relevance), provided that the Contracting States have ratified the treaty by means of acknowledging acts that make the Convention applicable also within their respective legal systems.

10. R. DÁVALOS FERNÁNDEZ, *Fronteras y contratos (Derecho aplicable al contrato internacional)* (Editorial de Ciencias Sociales, L'Avana 2005); T. LORENZO PEÑA, M. DEL C. SANTIBÁÑEZ FREIRE, *Derecho Internacional Privado, Parte Especial*, (Editorial Félix Varela, L'Avana 2007); J.C. FERNÁNDEZ ROZAS, S. SÁNCHEZ LORENZO, *Derecho Internacional Privado*, (Civitas, II. edition, Madrid 2001);

Examining some of the Cuban current regulations in contractual matters, it is to be noted that there is a certain approximation regarding the international contracts. As previously mentioned, in fact, the application of the Decree-Law No. 304/2012, relating to economic contracts, is limited both in terms of the addressees and for the material scope, because of an express provision of the Decree-Law itself (art. 1). First, the rule excludes international contracts from its application; however, it has subsequently been applied, in case the parties voluntarily agree. In this provision there is no definition of "international contract". However, it is possible to deduce that it confers great importance to the residence or the collocation of the contracting parties' enterprise, because the rule applies to contracts «in which are involved both national individuals and legal entities and foreign individuals and legal entities that have their domicile or an enterprise or the authorization to work in the Country».

According to this definition, contracts shall be considered international, when one of the subjects is a foreign individual or legal entity that has no domicile or an enterprise or the authorization to work in the national territory. More specifically, Decree-Law No. 250 dated 30 July 2007, regarding dispositions about the Cuban Court of International Commercial Arbitration, indirectly provides a definition of "international", where it rules about the jurisdiction of this organ to judge international contractual or extra-contractual controversies, arising in the field of business that are voluntarily filed by the parties (article 9): "international" lawsuits are those in which the parties' enterprise or *habitual* residence is in different countries or those in which the parties, even though they have their domicile in the same country, are individual or legal entities with different citizenships or nationalities or those in which the place of the contract signing or of its execution is in a State that is different from the Republic of Cuba.

The Bustamante Code, particularly its Second title of the Fourth volume, regulates the conventional regime of the judicial jurisdiction in matter of international contracts. The Bustamante Code applies also to the following: civil and trade law litigation, criminal law, in case of exceptional circumstances that derogate from general rules on jurisdiction and, moreover, litigation both in contractual and in extra-contractual field.

There is a question of jurisdiction in civil and trade matters when it is about the parties' will[11]. Therefore, the competent judge would first be the one the parties designated, otherwise the one provided for by special laws or, further, the competent judge according to whether the instance founds on a real or a personal action. In the first case, the parties' will is the preferential criterion under which the judge's jurisdiction is determined: the judge having jurisdiction is in fact the one explicitly or tacitly chosen by the parties, in the limits determined by the same law in its articles 318, 319 and 320. Particularly, article 318 raises the will of the parties as a priority criterion in the choice of the competent

11. See articles 321 and 322 of the Bustamante Code, under which the will can be manifested through explicit or tacit submission.

court in civil or commercial controversies, therefore the nationality or residence of one of the parties or the Contracting State becomes a determining factor in the jurisdiction attribution. In the second case, the court having jurisdiction will differ according to whether the controversy concerns personal or real actions (art. 323 and 324). In case of personal actions it is provided that, except for cases of explicit or tacit submission and of contrary local law, the judge having jurisdiction is the one of the place of the contract execution or of the defendant's domicile and, secondarily, of their residence. On the other hand, as regards real actions, article 324 of the Bustamante Code confers the jurisdiction to the judge of the place where the res is located; where the defendant's residence or domicile are unknown, the jurisdiction is attributed to the judge of the defendant's place of residence. Besides the circumstances examined so far, there are two exceptions to the rule or two limitations to the exercise of the *prorogatio fori*: local legislation shall not oppose to a jurisdiction determined in this way and, in case of real or mixed actions against immovable property, there shall not be a prohibition under the law of the place where the immovable assets are located. With regard to litigation about not only civil, but also economic-commercial matters, what happens when the court's judicial jurisdiction is founded on an extra-conventional rule? What effect does the jurisdiction determined in this way produce on private relations?

These aspects are regulated by the Code on Civil, Administrative, Labour and Economic Procedure, amended by the Decree-Law No. 241 dated 26 September 2006. The analysis of the rules should firstly consider the supplementary character of the civil rules in comparison with the special rules, in compliance with article 8 of the Cuban Civil Code and with the special disposition *ex* legislative decree 241/2006 that confirms the supplementary character of the rule contained in procedural law, in comparison with the Bustamante code. The Code on Civil, Administrative, Labour and Economic Procedure, has been amended by the rule in matter by adding Volume IV to provide for rules about jurisdiction in economic matters (Chapter I), and to regulate matters concerning competence (Chapter II). In the above-mentioned rules, it is to be noted that lawmakers do not talk about the application of rules that regulate jurisdiction and competence in international contexts, choosing a generic criterion in naming both chapters. Moreover, lawmakers define civil jurisdiction in Cuban courts and include the essential principles for the institution of the judicial competence system, dedicating much space to international commerce lawsuits. First, it states that Cuba has the jurisdiction to «judge in civil controversies arising between individuals and legal entities, provided that at least one of the parties is Cuban; judge in civil controversies arising between foreign individuals and legal entities, with representatives or domicile in Cuba, provided that the controversy does not concern assets located outside Cuba and that business is contractually or by means of a treaty subject to Cuban court

jurisdiction»[12]. Therefore, in order to apply the above- mentioned rule, it will be necessary to consider respectively: the criteria to determine the Cuban citizenship or nationality of individuals or legal entities, the assets' location in Cuba as a territorial requirement, the way in which the explicit or tacit submission realizes. As one can surmise, the identification requirements used are basically subjective: where one of the parties is Cuban the criterion will be citizenship and where there is a relationship between persons with another citizenship, the identifying factor will be the representation or the domicile in Cuban territory. Lastly, lawmakers refer to *prorogatio fori* or to the submission to jurisdiction that treaties, currently in force in Cuba, establish compulsorily. If one looks attentively, this rule raises criticalities. The expression «representative or domicile in Cuba», in fact, appears problematic because it makes the jurisdiction determination doubtful, if the parties are foreign subjects and not established in the national territory. In this case, when there are no representatives or domicile in Cuban territory, the court shall declare itself lacking in jurisdiction. To be meaningful, the rule should be interpreted in the sense that the elements of representation and domicile must be present and that the controversy does not focus on assets outside Cuba. Therefore, even if only one of these requirements fails, the Cuban court should raise a plea of lack of jurisdiction for incompetence.

Cuban courts' jurisdiction is deemed as irrevocable where one of the parties is Cuban or if the controversy focuses on assets located in Cuba, even though there is a pending judgement in another country or if the controversy has been submitted to the judgement of foreign courts, even arbitration ones. An exception is made in respect of controversies, arising in international trade, which are explicitly or tacitly, by law provision or under international treaties, submitted to arbitration courts. In this regard, it is to be noted that the rule does not include pending international litigation. In order to consider the above-mentioned exception, two conditions must be satisfied: that the controversy rises in international trade and, secondarily, that it is submitted to arbitration courts.

Article 739 of the Decree-Law No 241/2006 states the jurisdiction of Cuban judges, when it confers onto the Economic Division of People's Courts "the judgement and the dispute resolution, arising between Cuban or foreign individuals or legal entities, with representatives or assets or interests in Cuba, because of their contractual relations, except when they concern the population consumer field". Considering the general character of its formulation, it is not possible from such rule to infer the determination of the judicial jurisdiction attributed to the above mentioned judiciary sections. Nonetheless, it is held that the delimitation of the jurisdiction of the Economic Division of the People' court is to be found in article 740, where it defines the other competences of the Economic Division. Moreover, this rule seems to be applicable both to internal and international litigation. In this last case

[12] Decree-Law No 246/2006.

there must be two conditions – the participation of foreign individuals or legal entities with representatives or assets or interests in the country and a contract. In this respect, when the matter concerns an international contract, the requirements for the application of Cuban law, provided by internal regulations, are as follows: a) Cuban citizenship of one of the parties, where there is a contract between foreign subjects that have representatives or assets and, where there are economic-commercial contracts, interests in Cuba, b) contract execution in Cuba (see art. 746 of the Decree-Law No. 241/2006 that defines the jurisdiction of the Economic Division of People's Provincial Court).

Further, Decree-Law No. 250 dated 30 July 2007 regulates matters relating to the Cuban court competent for international trade arbitral proceedings, when it rules on the jurisdiction of such body in judging "contractual or extra-contractual international controversies, arising in dealings that the parties could have voluntarily filed" (art. 9). The Court jurisdiction extends also to "controversies that take place between joint ventures or totally foreign capital companies established in Cuba, in their mutual relations either with individuals or legal entities of Cuban nationalities, or to conflicts that arise between the parties to an international economic association contract or other activity with a foreign capital share" (art. 11).

To complete the regulation framework on the attribution of the Court's jurisdiction, let us consider article 12 of Decree-Law No 250/2007. Under this article, the Court judges on the mentioned controversies "provided that between the involved parties there is an agreement or arbitral convention to file it to the Court itself, when there are proceedings of the trial that show the will to file it to the Court or when the parties are bound to be subject to its judgement because its jurisdiction results as established in international treaties".

Lastly, it is worth mentioning Law No. 118 dated 29 March 2014 - the new law about foreign investments. Its Chapter XVII, entitled "Conflict resolution", defines some exclusive jurisdiction contexts of the Economic Division of the corresponding People's Provincial Court. Let us consider, in particular, art. 60.1 of the Decree that states that «the conflicts which may arise in the relationship between the partners of a joint venture or between national and foreign investors, which are parties to international economic association agreements, or between the partners of a totally foreign capital company in the form of a corporation with registered shares, shall be resolved as agreed in the constituent documents, except in the cases referred to in this Chapter». The same rule shall apply when a conflict arises between one or more partners and the joint venture or the totally foreign capital company to which they belong (art. 60. 2), whereas «the conflicts arising in connection with the inactivity of the governing bodies of the modalities of foreign investment established in this Act as well as with the winding-up, dissolution and termination of these shall all be resolved by the Economic Division of the corresponding People's Provincial Court» (art. 60.3). Lastly, «conflicts arising in the

relationship between the partners of a joint venture or a totally foreign capital company in the form of a corporation with registered shares or between national and foreign investors which are parties to international economic association agreements, who have been authorized to carry out activities related to natural resources, public services and public works shall be resolved by the Economic Division of the corresponding People's Provincial Court unless otherwise stated in the Authorization». Moreover, this rule shall apply when a conflict arises between one or more foreign partners and the joint venture or the totally foreign capital company to which they belong.

The second peculiar aspect of the doctrine governing international economic contracts concerns the applicable law. As in matters of international contracts, also in this field the parties' will is to be considered. In international contracts it is about "autonomy of the material will" and "autonomy of the conflictual will". The former is the parties' power to define clauses, agreements and conditions that regulate their contractual relations. This contractual freedom is regulated by common civil legislation (see art. 312 of Cuban Civil Code). On the contrary, the latter is the power of the parties to a contract to determine the law applicable to the contract itself, which will be the governing law in case it is necessary to interpret and define the contract context, effectiveness and effects. Conflictual perspective is typical for international contracts because of the presence of legislation that belongs to different legal systems involved in this field and subject to be applied to the case in question.

First of all, what provisions of the Bustamante Code and internal sources are of assistance. The rules under Chapter II of the Bustamante Code, relating to obligations and contracts, are of particular importance. After mentioning termination, nullity, nature and effects of some obligations, article 184 provides that "as a general rule, the contracts interpretation shall be executed in accordance with the presiding law". However, according to this interpretation, when this law applies and results from the parties' tacit will, the discipline to be applied is the one resulting from the combination of what provided by articles 185 and 186, even though this applies a different law to the contract, as a result of the interpretation of the parties' will. Article 185 states that «apart from already determined rules and rules which have been agreed in advance for special cases, in acceptance agreements, in lack of explicit or tacit will, the law of the party proponent that has materially drafted the contract is presumed as accepted », whereas article 186 provides that «in the majority of contracts and in the case provided in the previous article, the personal common law of the parties shall be applied first of all; in lack of this, the law in force in the signing place ».

CHAPTER 2 – The influence of European laws on trade law of Cuba

I. The influence of Italian and Spanish Law in the Cuban legal system

The Caribe is the key area of the dialectic between the Roman-Germanic legal systems and the *common law* that are established in Latin America, Anglo-Saxon America and Europe. This context of co-existence and mutual influence has been already studied in other academic fields, like Roman law, because it formed the basis of legal systems, which on one hand are characterized by a common basis, therefore associated in the wide classification of "*Iberian-American law regulations*", and on the other hand are different because of their respective historical, political, social, economic and cultural events.

As far as regards the differences, Cuban regulations are particular interesting. The various occupations and independences, first from Spain then the United States of America, the revolution and the later approach of soviet countries have characterized Cuban history, contributing to make its law system very different, indeed almost unique on the international stage.

However, Cuba is part of the Iberian-American area, therefore, apart from the specific political characteristics, its law system shares common history and culture with the surrounding Latin-American countries.

Despite the remarkable interest of Italian scholars in Iberian-American law systems, Cuban law has rarely been studied, in particular Cuban administrative law.

In comparison, Cuban lawyers have always carried out in-depth studies about European law systems – particularly the Spanish, French and Italian ones since the 19th century, because they considered them as scientifically developed. All publications on this matter, in fact, recall Spanish, French, Italian and German authors.

Since Cuban scholars have therefore studied Italian doctrine of the second half of the 19th and the first half of the 20th century, they have kept hundreds of volumes of Italian administrative law both in the University Library in the Capital and in private libraries, owned by scholars, academics or professionals.

The acquisition of Italian and European literature came to an end with the Revolution. One of the most important law magazines, the *Rivista cubana del derecho* (founded in 1929), stopped publications from 1959 to January 1972.

From that moment onwards there were limitations and difficulties in the acquisition of foreign literature. Hindering exchanges and communication with the rest of the world inevitably influenced the possibility of scientific enrichment, thus stopping the production of this kind.

However, in this period – from the Sixties to the end of the Millennium, handbooks and general essays about administrative law, aimed at teaching, were produced.

In these last few years scientific publications have increased – monographic issues and contribution to legal magazines have been published, thus testifying the actuality and liveliness of the current debate.

This is certainly due to many reasons: from the generational change of the academics, to more opportunities of going abroad and acquiring technology (information technology and telephones).
This seems like the premise of a future change in the interest towards internal administrative law, considering Cuba's opening to foreign, and particularly European law systems.
Actually Cuba's law system, society and market are in a transitional phase. Therefore, it is interesting to study how they were in the past, when they were very similar to other Caribbean islands and Latin-American countries, how they are now and how they might be in the future. In particular, Cuba's administrative law is the one that shows changes and that arises from comparisons.
Writing about Cuba means to create curiosity about a history, a society and, above all, a law system that has much in common with the Roman-German tradition[13] with which it shares its foundations and that in some cases shows some closeness to the US law systems and current or past socialist ones.

II. Cuban Trade Law: "unique law"

Because of the embargo imposed by the United States in order to hinder Cuba's commercial exchanges[14], the Cuban State could never completely share international trade regulations with the majority of world countries.
For this reason, in order to be compliant with the minimum provisions of international trade law, Cuba adhered to the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG), the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) and, each time, to international bilateral treaties with single countries called ARPPI (Agreement for reciprocal Promotion & Protection of Investment).
The most important trade treaties are with Spain and Italy, signed in 1995.
In the European Union, Italy is second only to Spain in the trade relations with Cuba and since 2009 the Italian exportations have been constantly increasing, registering a total amount of Euro 250.000,00 yearly.[15]
In this way, even though the greatest world power, the USA, opposed the Cuban trade policy, Cuba has tried to enact an internal fair trade law that could allow trade relations with the rest of the world.
Substantially, the Cuban trade law is included in the Bustamante Code.
In this code, which is very familiar with Italian and Spanish code, there are also all the fundamental elements of trade agreement.

[13] R. Sacco, 'Il substrato romanistico del diritto civile dei paesi socialisti' in *Riv. dir. civ.* (1969) 115 and in *Studi in onore di Giuseppe Grosso* (IV, Giappichelli, Torino 1971) 739.
[14] Torricelli Act, 1992 and the Helms-Burton Act, 1996.
[15] Giovanna Faggionato, 'Cuba, gli affari delle aziende italiane crescono' (Lettera43, Quotidiano online indipendente 2014) http://www.lettera43.it/autore/giovanna-faggionato_43675203.htm accessed August 2016.

In fact, as in Italy, for example, it is to be noted that the will of the parties will be considered in the determination of the applicable law to contracts; in absence of this, the law in common between the parties or the law of the place where the contract is signed is adopted as supplementary criteria.

It is to be highlighted that, in case of contracts pertaining to the discipline of the Vienna Convention, the latter will be applied, unless specifically excluded by the parties. In this regard, it is to be considered that this Convention shall be applied, as under article 1, directly, when States are qualified as Contracting States and indirectly, when private international rules provide the application of the law of one contracting state. In the internal legal system, article 17 of Title III of Cuban Civil Code provides that, in lack of explicit or tacit manifestation of the parties, the law in force in the place of the contract execution shall be applied. Further, from this rule it is clear the prominent role of the parties' will, whereas ratification becomes the essential connection criterion with respect to the law applicable to the contract. In order to determine the law applicable to international contracts, it is necessary to have a look also to the Decree-Law No. 304/2012 and to the Decree-Law No. 250/2007.

Defining its own application field, Article 1 of the Decree-Law No. 304/2012 states that it "does not apply to international contracts, unless the parties agree differently". This formulation has awoken different interpretations about its application in case the parties provide for or choose Cuban law as the law applicable to the contract. It is to be noted, in fact, that in this case the rule *de qua* has derogated from an important part of the Commercial Code. Therefore, this is the law we refer to, when we talk about "Cuban contract law".

The Bustamante Code, particularly its Second title of the Fourth volume, regulates the conventional regime of the judicial jurisdiction in matter of international contracts. The Bustamante Code applies also to what follows: civil and trade law litigation, criminal law, in case of exceptional circumstances that derogate from general rules about jurisdiction and litigation both in contractual and in extra-contractual field.

There is a question of jurisdiction in civil and trade matters when it concerns the will of the parties[16]. Therefore, the competent judge would be the one the parties designated or, secondarily, the one provided for by special laws or, further, the competent judge according to whether the claim is brought in respect of a real or a personal action. In the first case, the parties' will is the preferential criterion according to which the judge's jurisdiction is determined: the judge having jurisdiction is in fact the one explicitly or tacitly chosen by the parties, in the limits determined by the same law in its articles 318, 319 and 320. Particularly, article 318 raises the will of the parties up to a priority criterion for the choice of the competent court in civil or commercial controversies, the nationality or residence of one of the

11. See articles 321 and 322 of the Bustamante Code, under which the will can be manifested through explicit or tacit submission.

parties or the Contracting State being thus a determining factor in the attribution of jurisdiction. In the second case, the court having jurisdiction is in fact different according to whether it is about personal or real actions (art. 323 and 324). In case of personal actions it is provided that, except for cases of explicit or tacit submission and of contrary local law, the judge having jurisdiction is the one in the place where the contract was executed or the place of the defendant's domicile and, secondarily, of their residence. On the other hand, as far as regards real actions, article 324 of the Bustamante Code confers the jurisdiction to the judge of the place where the res is located; if the defendant's residence or domicile are unknown, the jurisdiction is attributed to the judge of the defendant's place of residence. Beside the circumstances examined so far, there are two exceptions to the rule or two limitations to the exercise of the *prorogatio fori*: local legislation shall not oppose to a jurisdiction determined in this way and, in case of real or mixed actions against immovable property, there shall not be a prohibition under the law of the place where immovable assets are located.

As we know, considering that private companies do not exist in Cuba, one of the most important laws regarding the international trade is the one related to conflict resolution between State v State or Foreign Private Company v State.

Therefore, the Cuban government enacted the International Arbitration Law.

It is not governed by a proper substantive law, but by a "law of the court", the Decree-Law nr. 250/2007, which created the Cuban Court of International Commercial Arbitration /CCACI/, in its Spanish acronym. It was published in the Extraordinary Issue No 37 of the Official Gazette on 31 July 2007, and has no basis at all in the UNCITRAL model law.

As far as regards the law applicable to international contracts that are subject to the arbitral resolution of conflicts, Article 29 of the Decree-Law No. 250/2007 about the Cuban Court of International Commercial Arbitration provides that "the law applicable to international contracts is the one the parties chose". Later, the Decree-Law provides for the application of Cuban law for the resolution of controversies as under article 11 of the same source of law, that is "of controversies that take place between joint ventures or totally foreign capital companies established in Cuba, in their mutual relations either with individuals or legal entities of Cuban nationalities, or to conflicts that arise between the parties to an international economic association contract or other activity with a foreign capital share". In case the parties have not chosen an applicable law to the contracts, except for the exceptions stated in article 11, the law is defined by the Court conflict of law rules, as provided by usages and principles of international trade. In this case the arbitrator shall consider the conflicting system existing in Cuba and the possibility of applying the *lex mercatoria*.

From this analysis about the law applicable to an international contract, it is clear that there are no remarkable differences if one chooses the judiciary instead of the arbitral way, because in both options the autonomy of the parties' will is privileged; in absence of this, the court conflict rules are applied – the Bustamante Code or the Civil Code, according to cases. The only difference is that, in case of arbitration, the possibility of applying customs and usages is more explicit. However, this does not exclude the possibility that the judges do not apply it as source of commercial law.

Lastly, it should be noted that the above-mentioned rules apply in any event and anyway within the limits of and in compliance with the State imperative local rules. These are final in nature and shall be applied independently of the parties' will and the law chosen by them. I am referring to rules about foreign investments and to contracts implying transfer of technologies, just to mention a few.

CHAPTER 3 – Dispute resolutions in economic matters

I. Courts of Justice

In the course of time, as with all major Cuban institutions, the Courts of Justice have also undergone an evolution in rules. In order to understand such evolution, it is necessary to briefly report about the changes in rules that have affected this entity. In the post-revolutionary era, Cuba's dispute resolution on economic matters within administrative bodies was entrusted to Arbitration commissions, established by Law No. 1047 dated 6 October 1962. Such commissions, both at national level and within various Ministries and State bodies, have been active up to the institution of the State Arbitration system by Decree-Law No.10/1977 that has re-organized central government and officially established a system of special organs, whose functioning is regulated by Decree-Law No. 23/1978. In 1991, with Decree-Law No.129, the State Arbitration system comes to an end – knowledge and dispute resolution in economic matters are entrusted to Economic Divisions of ordinary courts. Later, Decree-Law No. 223/2001 abrogated Decree-Law No. 129, giving jurisdiction of these matters to the economic Chambers, without changing the existing procedure for economic disputes. This system has lasted for more than twenty-five years, its basis being the "Rules of Procedure for the State Arbitration System" contained in Decree 89/1981. Since 2006, when Decree-Law No.241 (lpcale) entered into force, there have been some changes and integrations to the Law on Civil, Administrative, Labour and Economic Procedure, No. 7 dated 19 August 1977.

At the moment, dispute resolutions in respect of economic matters pertain to the jurisdiction of the Economic Division, entrusted with knowledge and resolution of the following issues:

1. disputes between Cuban and foreign individuals or legal entities with representatives, assets or interests in Cuba, because of their contract relations;
2. disputes arising from facts or acts concerning transport or naval traffic, taking place in internal waters or in territory sea, or, even taking place outside of it, involving Cuban flag vessels;
3. disputes arising from non observation of rules in matter of environmental and natural resources protection, beyond relevant environmental damages;
4. contractual disputes arising from damages to third persons, following the execution of an activity of production of assets or services within national territory, this behaviour belonging both to an individual and a legal entity, both of Cuban and foreign nationality.

Disputes regarding public consumptions are not included in the jurisdiction of the Economic division, but pertain to the jurisdiction of civil courts. Moreover, another exception to the knowledge of these courts is constituted by economic disputes that are, expressly or tacitly, by virtue of the law or an international agreement, object of an international commercial arbitration. Further, disputes about foreign investments *ex* art. 746, letter *c)* of the Code on Civil, Administrative, Labour and Economic Procedure are entrusted to the jurisdiction of the ordinary judge, and not to the Economic division[17].

On the other hand, the following matters fall under the jurisdiction of the Economic Chamber within the Supreme Court: the knowledge of actions; the special revision procedure; requests for the acknowledgement and enforcement of foreign judgements and awards; requests to nullify an arbitration judgement by a Cuban arbitration court or issued in the course of international arbitration proceedings, taking place in Cuban territory; conflicts for the attribution by territory among Economic divisions of provincial courts.

The remaining cases concerning economic jurisdiction fall under the jurisdiction of the provincial Court of Justice[18].

Preliminarily, it should be said that the supplementary provisions concerning the civil procedure with relevant adaptations regulate the proceedings for dispute resolution on economic matters, particularly the aspects concerning the parties in the proceedings and their representatives, the conditions for the request's admissibility, the instances' requirements, the participation of third parties[19] in the proceedings and the proceeding's expenses. It is interesting to notice the power of the judge to propose preparatory actions, such as preliminary hearings and the possibility of remedying procedural matters and object determination. An attempt at conciliation is possible at any phase in the proceedings. In case it has

[17] Articles 60.3 and 60.4 of Law No. 118/2014 on foreign investments.
[18] Article 746 of the Decree-Law No. 241/2006.
[3] Chapters II, III, IV of the Decree-Law No. 241/2006.

positive results and the parties reach a definitive agreement, the Court shall examine the transaction terms and evaluate whether to accept it or not, closing the proceedings in the first case.

Interim measures, included in Decree-Law No. 241 of year 2006 and extended also to apply to non-economic disputes, have an unusual position in the Cuban law system. *Interim* measures range from confiscation and freezing of assets to annotation in public registers, from temporary custody of goods to the suspension of an activity or a specific behaviour and any other measure aimed at making proceedings effective.

First-degree judgements are appealable before the Supreme Court. In particular, this is allowed against Courts inadmissibility resolutions and against final judgements, provided that the law admits appeal against common procedures judgements and review decisions, issued during the judgement execution procedure[20]. For the remaining cases, the law admits the revision procedure against definitive judgements and other Court resolutions. The revision procedure follows the proceedings defined by articles 642-650 of the Cuban Code on Civil, Administrative, Labour and Economic Procedure. From a technical viewpoint, it is about an extraordinary proceeding, aiming at fighting a judicial result that cannot be appealed.

"Cuban courts jurisdiction is not declinable. Courts cannot refuse the knowledge of a lawsuit if any of the litigants is Cuban or the dispute is related to assets located in Cuba, even though the same case is pending before the judiciary authority in another country"[21].

II. The International Arbitration in Cuba

Among the sources that regulate international arbitration, the following ones are worth mentioning: Decree-Law No. 250 dated 30 July 2007, introducing provisions on the Cuban Court for International Commercial Arbitration; resolutions No. 11 dated 13 September 2007 and No.15 dated 21 September 2009 of the President of the Chamber of Commerce of the Republic of Cuba, introducing respectively provisions on "the Statute of the Cuban Court for International Commercial Arbitration" and on "the procedure before the Cuban Court for International Commercial Arbitration"; the New York Convention, that is the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in 1958 and the Geneva Convention on International Commercial Arbitration of 1961.

[4] Articles from 630 to 640 of the Cuban Code on Civil, Administrative, Labour and Economic Procedure (LPCALE).

[21] Article 3 of the Cuban Law on Civil, Administrative, Labour and Economic Procedure.

International arbitration[22] is a method of alternative dispute resolution, whose origin lies in the parties' will. It consists in undersigning an arbitration convention, whose object is to entrust the dispute resolution to an impartial third party, called "arbitrator", chosen by the parties themselves.

Some of the advantages of this instrument worth mentioning are simplicity, flexibility, informality, speed, neutrality, proceedings confidentiality, applicability of the regulation chosen by the parties, including the choice of the language and the place of signing, the decision enforceability and its minor burdensomeness in comparison with ordinary judgements.

The Foreign Trade Arbitration Court within the Chamber of Commerce of the Republic of Cuba was established by Law No. 1184 dated 15 September 1965, later abrogated by the Law No. 1303 dated 26 May 1976, entitled " International Commercial Arbitration Court". In 2007, Decree-Law No. 250 "the Cuban Court of International Commercial Arbitration" entered into force and is currently in force in Cuba. Beyond these regulations, the international commercial arbitration is also regulated by the following: all the resolutions adopted by the Chamber of Commerce of the Republic of Cuba; the regulation for the Cuban Court of International Commercial Arbitration procedure, its statute and the relevant Code of Ethics for arbitrators and mediators; the mediation regulation and, lastly, the regulation about rights and costs of the arbitration procedure and the costs of the parties. Here one thinks about, respectively, the resolution No. 15/2009 relating to the "Regulation for the Cuban Court of International Commercial Arbitration procedure", the resolution No. 13/2007 relating to the "Mediation regulation for the Cuban Court of International Commercial Arbitration procedure", abrogated by the resolution No. 21/2015, now "Mediation regulation"; the resolution No. 11/2007 relating to the "Statutes of the Cuban Court of International Commercial Arbitration" and to the resolution No. 19/2007 relating to the "Regulation about rights and costs of the arbitration procedure and the costs of the parties". Moreover, Cuba is a contracting State of the principal international conventions in matter of international commercial arbitration which are: the Geneva Convention of year 1961 - object of the presidential proclamation dated 8 August 1965, enforced on 30 November of the same year - and the New York Convention of year 1958. The "United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards" is recognized by the presidential proclamation dated 3 February 1975, entered into force on the 30 March of the same year. The proclamation states that "the Republic of Cuba will apply the Convention to the recognition and enforcement of arbitral awards made in the territory of another Contracting State. With respect to arbitral awards made by other non-contracting States it will apply the Convention only in so far as

[6] N. COBO ROURA, *Las nuevas Reglas de Procedimiento de la Corte Cubana de Arbitraje Comercial Internacional en Cuba. En Memorias del Congreso Internacional de Derecho Procesal*, L'Avana, April 2009; R. DÁVALOS FERNÁNDEZ, *El Arbitraje Comercial Internacional en Cuba*, in "Rivista della Corte spagnola di arbitrato", 2005, pp. 11-44.

those States grant reciprocal treatment as established by mutual agreement between the parties. Moreover, it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under Cuban legislation". Having a deeper look at this, an analysis of this proclamation allows us to deduce a series of conclusions regarding the criteria that determine the application of such Convention. *In primis*, Cuban authorities should revise the list of Contracting states in which the execution of judgement is required, aiming at the release of the recognition of the foreign awards; *in secundis*, the principle of reciprocity, relating to arbitration judgements made by non-contracting states, becomes a *conditio sine qua non* for the application of the Convention; *in tertiis*, Cuba made the reservation that it would apply the Convention, only in case of disputes arising from legal relationships, considered to be "commercial" under Cuban law, whether contractual or not. Therefore, they represent not only the two most important legal instruments in matter of international commercial arbitration, but also a source of law for the regulation of arbitration in Cuba. It is to be noted that in case of both conventions, in contrast with what usually takes place in matter of international sources which are subject to acknowledgement and execution acts in order to be applicable within the Cuban legal system[23], the judge belonging to Cuban judiciary system is compelled to apply them. Of course, application must respect the principles and rules established by ordinary law about the enforcement of international agreements or treaties, with direct application by the judges and the pre-eminence on national law in case international rules differ from the Cuban ones, with the only limitation of respecting public policy[24].

The Organization of American States (oas) has excluded Cuba, therefore the latter has not signed any of the Inter-American conventions in matter of arbitration, neither the one in Panama in year 1965, nor the one at Montevideo in year 1979. Moreover, Cuba is not a contracting State of the Washington Convention of 1965, that is the "Convention on the settlement of investment disputes between states and nationals of other states", which established the International Centre for Settlement of International Disputes (icsid), because the Republic of Cuba rejected the icsid system, connected with the international financial system (World Bank and International Monetary Fund). On the other hand, Cuba has signed various bilateral investment agreements, known as "Agreements on reciprocal promotion and protection of investments". In particular, Cuba signed the first agreement with the Italian state in 1993. Currently, 42 bilateral investment agreements are in force - they represent a series of important guarantees for investors.

[7] Chapter II, paragraph I.

[8] Articles 20 and 21 of Law No. 50 dated 16 July 1987, under which Cuban Civil Code entered into force, that state the pre-eminence of rules contained in international treaties, with the only obligation of the respect of public policy.

Despite the differences between the various bilateral treaties in matter of investments that Cuba is a signatory to, their common denominators are the boundaries of the concept "investment", the incorporation of the criteria of fair and equitable dealing and the clauses of the "most favourite nation" and that of the "full protection and security". A careful analysis of the Agreements on mutual promotion and protection of investments signed by Cuba shows that the investor can choose the dispute resolution court. For example, according to the provisions of the agreement between Cuba and the Italian state, a dispute in matter of investments takes place, by choice of the investor, before a judge of the country where investments are destined or, alternatively, before an arbitration court *ad hoc*, though without specifying the procedural rules to be applied. The administrative bodies of the arbitration court that Cuban agreements choose are usually: the Permanent Court of Arbitration in Hague, the Arbitration Court of the International Chamber of Commerce in Paris and the Arbitration Courts *ad hoc* provided by the United Nations Commission on International Trade Law /uncitral/ Arbitration Rules.

After this brief analysis of the main international treaties signed by Cuba in commercial matters, let us deal with the internal rules regarding international commercial arbitration.

The Cuban legal system gives Cuban courts jurisdiction over international contractual or extra-contractual dispute resolution, arising from business, when the parties voluntarily so decide. Article 10 of Decree-Law No. 250/2007 considers "international" the dispute in which the parties' habitual residence is in a country other than the Cuban state, or, in case the parties' habitual residence is in the Republic of Cuba, it arises between individuals or legal entities of different nationality or citizenship, or, further, if the obligation execution place is other than Cuba. New laws give this Court also the knowledge of other kinds of disputes that were earlier object of compulsory courts jurisdiction. Article 11 of Decree-Law No. 250/2007 extends the Courts' jurisdiction to the knowledge of contractual or extra-contractual disputes, submitted by joint ventures or by other forms of foreign investments, during relations among them or with different national subjects, both individuals and legal entities. However, this does not mean that, in such cases, the parties' autonomy to determine the judge's jurisdiction is wider, because they are always subject to Cuban laws, being the ones to be applicable to this kind of matters, under what provided by Decree-Law No.250/2007.

Article 13 of Decree-Law No. 250/2007 recognizes the principle of the *Kompetenz-Kompetenz*, according to which the court preliminary resolves the issue about its own jurisdiction and, in case of positive results, it decides on the agreement's validity. The notion of "*Kompetenz-Kompetenz*" arose from the debate in Germany about the Federal Constitution in 1871. The concept was first defined by Hugo Böhlau (1883-1887), German lawyer of the XIX century, who established a theory about the sovereignty of the *Bund* like a "competence of competences", that is an unlimited jurisdiction "that the

Bund exercises in order to rule and decide about the enlargement of its own jurisdiction". Basically Böhlau states that, apart from the obligations that States mutually impose on one another when signing international treaties, the sovereignty remains available to States as masters of treaties themselves. From such a rule, it is clear that the existence of an arbitration agreement is a fundamental requirement for the activation of the Court. Here I would like to remind, as in Chapter II, par. III, that tacit presentation is another way of reaching the international commercial arbitration: in this case the parties' interests are evident by the analysis of the precedent procedural phases. It should be also reminded, though, that all the arbitration conventions contained in a contract or in a separate document are deemed as independent by the main contract. The consequence of this framework is that ordinary law judges shall not be entrusted with contractual or extra-contractual matters in respect of which an arbitration agreement is in force, except for matters relating to nullity, inoperativeness or inapplicability of the agreement[25]. This provision complies with the principles stated by the Geneva and the New York Conventions that regulate the efficacy of the arbitral agreement in order to deny the court jurisdiction. In other words, the exception of the arbitration causes the lack of court jurisdiction in favour of the arbitrators' one. Article 3 of the Cuban Law on Civil, Administrative, Labour and Economic Procedure state, in fact, the indeclinable character of Cuban courts' jurisdiction. Its second paragraph, though, deems as an exception those disputes about international exchanges that, explicitly or tacitly, by virtue of law or an international agreement, are entrusted to arbitration courts' jurisdiction. Therefore, under Cuban law[26], we have "the arbitral exception", defined as an exception to jurisdiction and that, according to the law on procedure, can be objected to in each step of the proceedings[27].

As regards international arbitration, the appointment of arbitrators of the Cuban Court for International Commercial Arbitration is an honorary title, because they do not receive any compensation for the job they carry out. They are appointed by the President of the Chamber of Commerce for two years and can be reappointed for two consecutive mandates. As a preliminary requirement for their appointment, arbitrators shall have total independence and impartiality: procedural rules and the Code of Ethics of the court arbitrators provide both requirements. Any circumstance that could influence their suitability is a reason to reject their candidature.

Arbitrators are chosen among a list filed at the court that includes 21 arbitrators, all Cuban citizens. However, law does not prohibit the appointment of a foreign official.

As already mentioned, one of the advantages of the arbitration is the principle of confidentiality as under article 1 of the procedure regulation of the Cuban Court for International Commercial

[25] Article 15 of the Decree-Law No. 250/2007

[26] Article 4 of the Law on Civil, Administrative, Labour and Economic Procedure

[27] The New York Convention, Part III, article 5.

Arbitration. This principle has always been strictly observed by the Cuban Court and has found further acknowledgement in the Court Statute, because of the disputes' private character[28].

As regards the Court domicile, the arbitration court constitutes and meets in the offices of the Chamber of Commerce of the Republic of Cuba. Decree-Law No.250/2007 authorizes meetings in a different place, if the parties so agree; such circumstance does not impact on the law applicable to the award issued[29].

According to article 29 of Decree-Law No.250/2007, in international commercial law disputes the law applicable to the court is the one agreed by the parties, except for what is provided by art. 11 of the Decree-Law No.250/2007, regarding disputes, whose object are economic contracts, signed by the parties for different kinds of foreign investments. In case the parties' agreement lacks, the arbitration court shall apply the law, determined by the rules of private international law. In contrast, the applicable rules of procedure remain the ones contained in the Cuban Law on Civil, Administrative, Labour and Economic Procedure.

Moreover, art. 25 of the above-mentioned law allows the parties to choose the application of special rules, in case an abbreviated procedure is chosen.

Among the most interesting procedural issues, the rule regulates:

1. Composition and constitution of the arbitration court;
2. Documentation the parties have to show the Court, with the aim of entering an appearance, that is the statements of claim and defence and the requirements for the counterclaim;
3. Issues about the parties' representatives that can appear in the proceedings even without legal assistance, with the possibility of foreign representation in case this is in the parties' interest;
4. Calling a preliminary hearing, with the aim of determining the object of the process and of evaluating the possibility of solving the dispute by carrying out an attempt at conciliation (the parties or the Court can propose judiciary conciliation. By effect of the conciliation, the court can approve the reached agreement, which is binding to the involved parties);
5. Including third party proceedings, in case the third party's interest is deemed worthy of protection by and with the consent of the court;
6. Evidences, for which the court can request legal assistance, with the aim of allowing the adoption of such measures that are able to grant a kind of proof, that would be impossible without legal assistance;
7. Precautionary measures (precautionary measures, introduced by new laws, can be adopted by both ordinary court and the arbitration one. In the latter case, measures are limited to the ones whose

[12] Article 4 of the Court Statute.
[13] Article 2 of the Cuban Law on Civil, Administrative, Labour and Economic Procedure.

objects are goods in possession of the parties or relating to their activity, as under articles 34 and 35 of the Decree-Law No. 250/2007 and article 23 of the Rules of Procedure of the Cuban Court for International Commercial Arbitration. According to Cuban Law on Civil, Administrative, Labour and Economic Procedure (art. 799) each claimant can ask for the application of a precautionary measure. Moreover, the court can issue temporary provisions);

8. Holding the arbitration hearing. Because of the principle of confidentiality in force during the arbitration procedure, usually the hearing is private; upon request of one of the parties, though, the judge can authorize the presence of third parties in compliance with art. 27 of Cuban Law on Civil, Administrative, Labour and Economic Procedure. The parties shall be informed about the possibility that the hearing takes place even in their absence[30] and that they can agree that the court's judgement is issued, basing only on the filed documents, without previous hearing of the parties[31].

9. Payment of the arbitration rights, pre-requirement for the proceeding to take place[32].

11. Effects of arbitration awards, binding for the parties, but appealable in court[33]. An award issued by the Cuban court is fully equal to a court's decision (art. 40 of the Decree-Law No. 250/2007 and art. 823 of Cuban Law on Civil, Administrative, Labour and Economic Procedure). This is important in case of non-observance of what is provided. For further information, see *infra* later in this paragraph.

As regards the execution of the award made by the Court, in case of non-fulfilment the party in favour of which the award itself has been issued can requested its execution. The jurisdiction pertains to the ordinary court, in compliance with law terms and applicable international conventions. The request shall be filed within one year from the date in which the award has become final and enforceable - that is within 10 days from its notice, provided that in the meantime no nullity claim[34] has been filed. In case the arbitration award has been made abroad and its execution is requested in Cuban territory, it is necessary that the Economic Division of the Supreme Court[35] acknowledges it. In this case, the

[14] Article 28 of the Rules of Procedure of the Cuban Court for International Commercial Arbitration.
[15] Article 31 of the Rules of Procedure of the Cuban Court for International Commercial Arbitration.
[16] Resolution of the President of the Chamber of Commerce No.19 dated 13 September 2007 about the "Regulation on arbitration rights, costs of the arbitration procedure and for the parties".
[17] Articles 38 and 39 of the Decree-Law No. 250/2007.
[18] So article 821 of Cuban Law on Civil, Administrative, Labour and Economic Procedure. On the contrary, as far as regards the arbitration agreement, that is the agreement under which the parties intend to grant the jurisdiction to a third and impartial arbitrator, different form an ordinary judge, the ordinary court has the power to examine its terms and decide upon its validity. In case the agreement is null and void, inoperative or incapable of being performed, the court can decide not to state its jurisdiction (see art. 2, paragraph III of the New York Convention of year 1958).
[19] Article 824 of Cuban Law on Civil, Administrative, Labour and Economic Procedure.

provisions about the execution of international judgements[36] and, as described above[37], the provisions of the Convention about private international law, known as "Bustamante Code" apply.

As regards the execution of foreign judgements, articles 423-435 of the Bustamante Code state the following conditions:

1. that the judge of the court which has rendered a foreign judgement has competence to take cognizance of the matter and to pass judgment upon them, in accordance with the rules of the Bustamante Code itself;

2. that the parties have been summoned for the trial either personally or through their legal representatives;

3. that the judgement does not conflict with public policy or public laws of the country in which its execution is sought;

4. that the judgement is executed in the State in which it was rendered;

5. that the judgement is translated by an official functionary or interpreter of the State in which it is to be executed;

6. that the document in which the judgement is contained fulfils the requirements necessary in order to be considered as authentic in the State from which it proceeds, and those which the legislation of the State in which the execution of the judgement is sought requires.

Further, as far as regards the execution of foreign awards and judgements, the provisions of the New York Convention of year 1958 recall, as integrated by some dispositions of the Geneva Convention of year 1961. As above mentioned, since awards are equal to national court judgements as far as regards execution power, ordinary procedural law[38] admits the possibility of issuing an execution order in order to grant their application. The requirements that foreign judgements and awards must contain the *exequatur* issued are the ones provided by international conventions and Cuban law. They correspond to the ones defined by doctrine and international practices: the jurisdiction of the judge rendering the award or the sentence; the respect of procedure guarantees; the judgement's execution power; the authenticity of documents and the respect of reciprocity.

Last hint is dedicated to the award's nullity. Cuban regulations, in case the awards concern economic matters, gives the Economic Division of the Supreme Court the jurisdiction to declare the award's nullity, in case both the award was rendered by a Cuban arbitrator and the international arbitration takes place in Cuba.

[20] Articles 483-485 of Cuban Law on Civil, Administrative, Labour and Economic Procedure.
[21] Chapter II, paragraph III.
[22] Article 473 and following of Cuban Law on Civil, Administrative, Labour and Economic Procedure.

Moreover, procedural law defines the grounds for annulment, in compliance with the ones provided by the Geneva Convention, that is the nullity of arbitration agreement or the parties' incapacity of act; the violation of the regulations that rule the constitution of the arbitral court or the failed notice to the parties of its appointment; the violation in the procedure determined by the incapacity of the party of appearing and defending itself; eventually, the award can be annulled in case it refers to a dispute that could or cannot be the object of the arbitration agreement or in case the term provided by law for its rendering[39] is expired). In respect of the party filing a request for the arbitration award's annulment, the law grants said party the possibility to ask the judge to withhold the execution of its own obligations[40].

Finally, I would like to highlight that, according to the procedures agreed by the parties and for which the parties have agreed that they take place in Cuban territory, the international commercial arbitration procedures carried out *ad hoc* enjoy the same guarantees granted to the arbitration procedures taking place before the Cuban court for international arbitration[41].

Conclusions

According to what has been described in this dissertation, I can certainly state that the Cuban legal system and the application of international law, in particular trade law, are continuously changing.

Today the *embargo* is still in force, not being completely revoked. Therefore, there are still political difficulties in issuing measures that comply with international law and the application of international conventions about trade law, already ratified in other countries.

However, as described in this dissertation, the Cuban government has already enacted some regulations that tend to adapt and make more equitable those internal rules, regulating international relations between the Cuban state and private companies and foreign countries.

Considering that Cuba is one of the few socialist countries left in the world, it is clear that this will not be a short process.

[23] Article 826 of Cuban Law on Civil, Administrative, Labour and Economic Procedure.
[24] Article 827 of Cuban Law on Civil, Administrative, Labour and Economic Procedure.
[25] Article 4 of the Geneva Convention of year 1961.

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